

**Village Of Woodbury
Planning Board Meeting
June 17, 2020**

Minutes of the Planning Board Meeting held on June 17, 2020 at 7:30 pm;
Due to technical difficulties the meeting commenced at 8:11 pm

Present: Christopher Gerver, Chairman
Robert Anzalone
Joseph Buglino
Sandra Capriglione
Thomas Deluca

Absent: None

Also Present: Dennis Lindsay, Village Board Engineer
Jonathan Lockman, Village Planner
Kelly Naughton, Attorney

Chairman Gerver opened the meeting introducing a new Village Planning Board member Thomas Deluca as well as thanking Richard Cataggio for his years of service to the Town and Village of Woodbury.

1. **Executive Session:** No Executive Session was necessary.
2. **Public Comment:** No member of the public had comments.
3. **New Business: N/A**
4. **Regular Agenda:**
 - A. **Woodbury Common – Coffee Truck** – Review application submitted for the installation of a coffee truck and associated outdoor seating area in the courtyard outside of the Polo Ralph Lauren store. Said property is located within the Woodbury Common shopping center and is known on the Village of Woodbury Tax Maps as Section 225-1-70.2 & 226-1-1.

General/Background – The applicant, Premium Outlet Partners, L.P. proposed application is to position a coffee “truck” with a consumer seating area at the East entrance to Polo Ralph Lauren. The proposed “truck” is to be stationary, with permanent utility connections (water, wastewater, and electric). These features are similar to kiosks that are permitted to sell food (unlike RMU’s and push carts) and stationary (unlike food trucks). Although the application refers to the unit as a truck, it will not have an engine or fuel tank and it’s believed this description is used because of its appearance.

Engineer, Dennis Lindsay mentioned similar applications (non-building uses) that have been reviewed by the board for kiosks, retail merchandising units (RMU’s), and other food trucks and pushcarts for Woodbury Common. The coffee truck will fall within the kiosk definition. It may look like a truck but more of a function of a Kiosk – *A structure, typically metal-framed, with shutters or doors that enclose merchandise and are lockable.* They are typically larger than RMUs and are more permanent and building-like. Kiosks are usually not mobile. Salespersons make sales from within to customers outside of

the structure. He continued to say that since it's considered a kiosk it will fall under the GLA requirements for Woodbury Common. He reminded the board that back in 2014 it was decided that year-round use of kiosks falls within the GLA requirements. The applicant and Vice President of Simon Premium Outlets John Villipiano were made aware of this. The Building Inspector, Gary Thomasberger is also in agreement. Mr. Lindsay recalls the comprehensive analysis provided previously by Mr. Villipiano, and there are some minor differences and discrepancies that would need to be looked over but, Woodbury Common will forgo with the expansion on building 20 that the board has approved in favor of the truck.

Engineer Lindsay comments:

From H2M Memo dated June 11, 2020:

Bulk Area –

GLA – Kiosks were approved in December 2014 for year-round use and subsequently subject to Gross Leasable Area (GLA) requirements. Building Inspector Thomasberger has determined, this application is subject to review of available GLA. The proposed “truck” is approximately 149 SF. In light of recent events, Woodbury Common had to suspend their efforts to finalize their GLA tabulation for review of this application’s compliance with GLA limits. However, recent correspondence from WC indicates that they would like to relinquish the 2018 PB approval for the Building 20 expansion eliminating 956 SF of approved GLA. We discussed this with Building Inspector Thomasberger and he advised if the Planning Board approves this change he would not issue a building permit for Building 20. We believe the 956 SF would adequately cover the GLA required for the food truck and any discrepancies remaining to resolve the GLA tabulation.

Site Plan –

- a) Pedestrian Circulation and Safety – The proposed work will be in an active area of pedestrian movement. Similar to other work of this type, the applicant must construct adequate barricades to separate construction zones from the public. Additionally, any overhead work will require a clear zone of construction or work to be performed off hours to protect the public safety. We recommend your action include a requirement all appropriate safety measures be provided to the satisfaction of the Village’s Building Department. Although the Village should have the authority to review safety plans, the applicant, contractor and Woodbury Common will oversee the construction procedures and have all responsibility for public safety and worker protection.*
- b) Utilities – All improvements must be coordinated with existing and proposed drainage facilities (pipes/inlets) and not inhibit existing or proposed drainage patterns. A site plan with grade elevations should be provided. The details of the sanitary, electric, gas (if proposed), and water services have not been shown and should be provided. We note existing utility lines (storm, electric, sanitary, gas, water, etc.) will need to have reasonable access for maintenance. Existing utilities should be shown on the plan for confirmation no conflicts exist.*
- c) ESO Access – As with all interior Common areas, a 20-foot clear passage must be maintained for emergency service access (with turning movements considered). Although the plan does not show a conflict with access other than perhaps the wayfinding sign (discussed below), it is important that the “truck”, benches, garbage cans, stands, awnings, or other extensions do not encroach into this ESO path. We recommend this be included in your action. As with other similar applications at the Common,*

comments from your ESO's should be solicited for confirmation of reasonable access to existing storefronts impacted by the work.

- d) *Trash/Refuse – Similar to Kiosk's with food sales and food truck operations, the coffee "truck" will generate trash during food preparation and by patrons. The applicant should confirm sufficient garbage receptacles will be located in the area and these must not inhibit pedestrian or ESO flow. We recommend a clear enforceable plan for solid waste control/handling be part of your action.*
- e) *Pedestrian Safety/Queuing – The use of the coffee "truck" may require consumers wait in line. We recommend you consider with the applicant an appropriate method to control the queue. This may be via ropes, cones, signage or other form the applicant suggests provided it does not impact ESO access. This may not be required but there should be an enforceable contingency for this should it be necessary in the building inspector's opinion for control of patrons to avoid blocking passageways and for the free flow of pedestrians and for consumer safety. Furthermore, in light of the ongoing pandemic, we would expect the applicant is developing procedures for directing consumers to maintain proper social distancing and an action plan for resuming their operations. You may wish to discuss this with them and how those procedures could be implemented for this application.*
- f) *Signage – The applicant proposes to remove and relocate an existing wayfinding sign that is located in the path of the ESO's. The applicant should show dimensions confirming a 20-ft clear passage is maintained for ESO access through this area. Confirmation of adequate access should be shown on a truck movement plan.*
- g) *ARB – The applicant has provided renderings and elevations of the proposed coffee truck and seating area. They have also provided the approved materials board for the Red Apple/Hudson Valley – Market Hall area of the proposed action. We recommend you review the color scheme for compatibility with the surrounding area. The Board should review the ARB materials and confirm they are to your satisfaction.*
- h) *Landscaping – The proposed "truck" and seating area will replace a number of planters. In lieu of the larger planters proposed for removal, a number of small planters are proposed between the tables in the seating area. As part of the 1999 approval for Kiosks, the Planning Village of Woodbury Planning Board Memo No. 243-20-011 June 11, 2020 Page 4 of 4 Board required landscaping planters near the kiosks to help them blend into the surrounding area. You should consider whether this requirement is met.*
- i) *Lighting – Although the legend on the site plan provided indicates a light post is proposed for removal, it is not clear where this is located. It appears the existing light posts are intended to remain. The applicant should confirm no additional lighting is proposed on the "truck" or as part of this application. In general, the "truck" should provide lighting for their needs and location; it should not block other needed general site lighting.*
- j) *General Safety – Although the proposed coffee "truck" is stationary, with no engine or fuel tank, the colored renderings show tires and what appears to be a fully mobile truck. You may wish to consider a safety mechanism that will prevent intentional movement of the structure by tampering with the "truck" or vandalism. We note the utility connections may provide this means, but you may wish to discuss additional precautions.*

SEQRA – As you know, the 2012 improvements were subjected to a complete SEQRA review including a draft environmental impact statement, a final impact statement and findings by the Board. We believe the use of this “truck” may be within the scope of the prior SEQRA review (assuming within GLA permitted upon agreement to retract Planning Board approval for Building No. 20 Expansion as described above) and, if you agree, you can reaffirm your prior SEQRA action thereby concluding SEQRA.

Mr. Lindsay comments on his notes. About Pedestrian Circulation and Safety he recommends the area to be barricaded from the public when men are at work so that people shouldn't wander inadvertently where they shouldn't be. He recommends this be a condition to that effect. About utilities, Mr. Lindsay stated the drawing for the site plan does not have the details for sewer, water, and drainage. The requirement is that the drainage ways are not blocked; water should be able to flow and drain. The current drawings do not show a clear picture of that and one should be provided.

According to the ESO plan where the truck will be standing, it does not present a problem. Although there are benches, garbage cans, stands, awnings, and other things the applicant is proposing, it's recommended a plan be provided showing if those items were to be pushed or moved it won't interfere with the 20-foot clear path. The plan also shows a wayfinding sign in that area, removed to another location causing a similar problem. He recommends the applicant to show a plan showing a 20-foot clear path.

Mr. Lindsay recommends the applicant to provide sufficient garbage receptacles in appropriate location so that the area does not become unsightly. For Pedestrian Safety/Queuing he recommends the applicant to have a plan to use cones, signs, or ropes to help control the large grouping of people. If the kiosk doesn't generate a large grouping of people it may not be necessary, but a plan should be put in place just in case. Also due to the pandemic, Mr. Lindsay said there should be a temporary restriction for 6 foot spacing on the line. He made references to the ARB, noting that the applicant has provided the board with information on the appearance of the truck, the colors, and also on the palette of colors that was approved for the Red Apple Hudson Valley Market Hall area. He requests the board to review and to make sure it's compatible and to their approval. He continued referencing the landscaping, noting the applicant removed large planters and added small planters. They also added new umbrellas for seating. For lighting, it's not clear if there is any new lighting, but the truck should not block general lighting or create shadows. For general safety, he recommends the applicant to make it quite clear by putting on the record that the truck is not mobile since they did a great job in making it look just like a truck. He is concerned that vandals would go and try to move it. He referenced SEQRA by saying that in the 2012 improvements there was a DEIS and FEIS prepared and there were findings that he believes are minor and if Attorney, Ms. Kelly Naughton is in agreement SEQRA can be concluded by saying those findings are under SEQRA.

Mrs. Capriglione asked if the other kiosks have outdoor seating as the applicant plans have. Mr. Lindsay said he wasn't quite sure he noted there is one but believes it may be nominal seating or special seating; adding Mr. Villipiano would be best to answer that question. Mrs. Capriglione continued to ask why the other kiosk outdoor seating wasn't considered under the GLA. Mr. Lindsay said there was one outdoor seating in an area, but he believes Mr. Thomasberger was under the impression it would be temporary at the time. She also asked about building 20 a location previously discussed to be demolished, she would like to know the status of that location. Mr. Lindsay said there were several things to be done; noting Mr. Villapiano would be able to explain exactly what they have done. He had asked Mr. Thomasberger if he would be issuing a building permit for building 20 and Mr. Thomasberger told him he would not be issuing a building permit but Mr. Lindsay believes they may have done some renovation.

Mr. Anzalone asked Mr. Lindsay if the ESO responded to the question of safety. Mr. Lindsay said he doesn't know if it has been referred to the ESO yet. If the applicant maintains the 20-foot separation and clear path he doesn't think it will be a problem and it may be sent over to the ESO just so they can have it. If the applicant

removes the sign it would be an improvement and therefore have a clear 20-foot path. Mr. Anzalone asked will there be any construction on the building of the truck on-site or will it be wheeled in. Mr. Lindsay said he knows utilities are being brought on to the site but whether it's prefabricated and brought to the site or constructed on the site he does not know. The applicant should be able to answer the question.

Village Planner, Jonathan Lockman briefly commented on his memo dated June 11, 2020. He stated that most of Mr. Lindsay's comments on planning are similar to his. He believes the kiosk use will be for existing patrons of Woodbury Common. He doesn't anticipate people traveling to Woodbury Commons to visit this kiosk for coffee, therefore creating an increase in pedestrians. He added to a question Mrs. Capriglione asked about the seating. The seating area could be used for getting coffee or for people who just want to sit because they are tired. The seating is not exclusive to the kiosk. The seating area can be used by anyone who is in the commons.

Mr. Gerver asked Mr. Lindsay if there was a memo from Mr. Thomasberger stating what the coffee truck will be categorized as a kiosk or was it a conversation between the two of them. Mr. Lindsay confirmed it was a conversation because he wanted to know if it would stand under the GLA and as per Mr. Thomasberger opinion it falls under the GLA.

Ms. Naughton referred to Mr. Lindsay's comments on SEQRA. As per the application under SEQRA she said she doesn't think it implicates any significant adverse environmental impacts. She believes the findings that were done in 2012 would be appropriate. As far as GML referrals it is required and was referred on March 11th, a response was received on April 9th stating it was a local determination; also it's an amended site plan and special permit approval as well as ARB approval for the additional coffee truck. Previously the board had approved 8 kiosks that were seasonal this would be the 9th kiosk an additional. It is not stated that this kiosk will be seasonal and the applicant needs to clarify if this truck will be seasonal or year-round. She also stated a public hearing is required.

Mr. Villipiano stated the coffee truck will be located in a courtyard outside Polo's flagship store. The applicant has been working with the Ralph Polo coffee team on how to integrate into the commons. He said the plan is to activate a section of Woodbury Commons and provide more amenities to the customer which is the ongoing theme. Keep customers coming and keep them there longer in the best interest of Simon Premium Outlets and the Village of Woodbury.

Mr. Erin Romberg overseas real estate for Ralph Lauren Polo factory stores in North America proposes the Ralph Coffee truck. He stated this is the first truck of its kind to be placed in a mall and is excited to bring it to the Town of Woodbury. He feels it will enhance the shopping experience. Mr. Brendan Curran from the Hospitality Group gave an introduction to Ralph Coffee. He said it started about 2 years ago. There are currently operating 3 coffee shops in New York City (2 coffee shops and one truck located in Rockefeller Center) and also overseas (2 locations in Hong Kong and 3 in Japan). He stated they have had positive feedback from customers. Since Ralph Polo outlet has a good relationship with Simon Premium Outlets, it was natural the idea of bringing Ralph Coffee to Woodbury. In terms of the day by day operations based on their other coffee shops, they expect to have 200-400 transactions a day. In terms of employment based on seasonality, there would probably be 8-12 employees and a manager on site. Mr. Curran confirmed the truck will be a kiosk, with no engine. Every space seen is designed to be used for storage and maximizing the space for operation. There will be back up from the flagship store for instance storage space. He believes it can be successful. Mr. Ralf Dremel from the Architectural and Design group thinks the location of the truck is suitable. The truck is about 20 feet by 6 feet wide and less than 8 feet in height. It's completely self-sufficient in terms of amenities (food and beverages). A backup house will be placed in the store that's accessible from the exterior of the store to the right of the space the truck will occupy. He believes the additional seating under the arcade will enhance the architectural and the color palette based on the approved and previously used in the center.

Mr. Gerver asked if there would be any use of portable propane heaters in the falls or winters to keep the seating open. Mr. Dremel said they were told they were not allowed to use propane heaters. Mr. Gerver asked if the coffee truck will be open all year round. Mr. Dremel said yes, it will. Mrs. Capriglione asked if there will be any cooking on the truck. Mr. Curran confirmed there will be no cooking. There will be third party baked goods delivered daily to be provided. She proceeded to ask Mr. Curran if he can be specific on the coffee merchandise. He confirmed it will be coffee mugs, canteens, T-shirts, and tote bags. Stating these items can also be purchased in the store. She asked about the access of the truck and Mr. Curran explained the function of the truck. It's an old shell of a truck making use of every square inch of the space inside. An employee will enter through a door on one side of the truck. There will be an open counter on one side of the truck, while the opposite side will have no window(s). On the back of the truck, there's a flap, the idea is the customer will order by the main counter where the cashier is stationed. The order will then be given to the barista and the customer will then move along towards the back where there will be a milk station. Mr. Curran then confirmed to Mrs. Capriglione that it will be one line moving in one direction. She is concerned with the ESO in the area and Mr. Curran assured her that they do have a plan when things may get crowded by having the baristas going to the line and taking orders having the line move as quickly as possible. Mr. Eric Waite added when they reach the stage of bringing in the utilities to the truck they will be using the same engineer who did the Woodbury Commons.

Mr. Gerver asked if the backup storage house behind the store will be the storage of dried goods. Mr. Curran confirmed it will be dried goods and refrigeration for things like milk. Mr. Anzalone asked if the truck will be pre-constructed or constructed on sight. Mr. Curran confirmed it will be reconstructed. Mr. Anzalone asked if the truck can be wheeled away or moved since it's going to be attached to water lines. Mr. Curran said yes it can be moved but moved by a professional, no amateur can move the truck. Mr. Curran said the real parts of the truck are the 4 wheels and the 2 axles. Mr. Gerver commented on the narrative stating it had no wheels or axle. Mr. Curran confirmed it has wheels and axles but no engine or internal system. Mrs. Capriglione asked if there were bathroom facilities in the truck. Mr. Curran said no. Mr. Lindsay asked if the truck sits on its wheels or is there another foundation or an interior to support the floor. Mr. Curran said it sits on its wheels, but there will be a box underneath where garbage won't collect underneath.

Mr. Gerver and Mr. Lindsay went on to confirm what the applicant needs to do. The applicant is to provide a site plan from their engineer and a public hearing needs to be scheduled. Mr. Lindsay confirmed they will talk to the ESO. Mr. Gerver stated that usually the markup boards are shown for the public hearings. Ms. Naughton suggested some ideas of showing the colors and the plans on the screen or visiting Village Hall for the public hearing and the board. Mrs. Capriglione asked if the green color presented is the correct color and Mr. Curran confirmed that is the brand color. Mr. Villipiano added the coffee truck propose location is visible to only pedestrians in Woodbury Common. Mrs. Capriglione stated she asked about the green because she is accustomed to seeing blue as the brand color. She asked Mr. Lindsay if he can get Mr. Thomasberger's opinion in writing on the truck being a kiosk.

Motion was offered by Chairman Gerver, seconded by Mrs. Capriglione, to hold a public hearing on the Woodbury Common – Ralph's Coffee Truck application on July 1, 2020; contingent that the applicant has all needed information to the building department by June 24, 2020.

ADOPTED

AYES 5 Chairman Gerver, R. Anzalone, S. Capriglione, J. Buglino and T. Deluca
NOES 0

Motion was offered by Chairman Gerver, seconded by Mrs. Capriglione, to reaffirm SEQRA.

ADOPTED

AYES 5 Chairman Gerver, R. Anzalone, S. Capriglione, J. Buglino and T. Deluca

NOES 0

Mrs. Capriglione asked Mr. Villipiano the status on building 20. He said the building has not been touched. It has been delayed due to the circumstances we are facing nowadays, the plan to demolish and rebuild suite 315 which the board approved back in February of this year has been pushed back into early 2021. They are looking to have the building completed by October of 2021. They will then move to work on building 20. At the moment he has no idea on what will happen to the building which is why they were comfortable relinquishing the approval from 2018. He then restated nothing has been done to building 20.

B) Local Law # 6 – Review referral by the Village Board of Trustees of Local Law #6 entitled “A Local Law amending Section 57-2(B) and 310-49(A) of the Code of the Village of Woodbury to provide for uniform terms and term limits for Village Planning Board an Village Zoning Board of Appeals.”

As per the Village code the Village Board of Trustees (VB) is requesting the Planning Board to review the term limits for the Zoning Board of Appeals (ZBA).

Mr. Gerver confirmed the board is to only to review the term limits. Ms. Naughton confirmed that was the portion of the law that is located within the zoning code and that portion is being referred to the Planning Board per 310-52. Mr. Gerver stated the terms are similar to the Planning Board. It would be 2 consecutive 5 year terms then a 5 year break and then they can come back. Ms. Naughton said that is correct. Mrs. Capriglione asked if someone serves 2 terms on ZBA they have to have a 5 year absence, does it preclude them from joining the Planning Board. Ms. Naughton said not the way it is written. Mrs. Capriglione then asked if the person can serve in those 5 years on the Planning Board and then go back to the ZBA. Ms. Naughton said technically yes. She continued to say a lot of people start on the ZBA and then go to the Planning Board having that mix, but the local law does not prohibits that. Mrs. Capriglione said, so after the 5 year absence is complete the clock is reset and then can another 2 terms on the ZBA. Ms. Naughton said yes.

Mr. Anzalone asked if other towns have similar clause, term limits or regulation. Ms. Naughton replied saying having term limits is not something new. There are places that have them wanting fresh blood. Mr. Anzalone asked if there were sufficient people that are willing to come forth and volunteer and if so, what is the average number of people that put in their application when there’s a seat available. Ms. Naughton said that is a question the village clerk can answer and added that the VB was looking for applicants for 2 committees (the Comprehensive Plan Committee and Land and Preservation Committee) and they had about 10 volunteers for each. She thinks there are a lot of people in Woodbury interested in participating; hopefully it would extend to board openings.

Mr. Gerver asked if there was a member that cannot serve for some reason; you can go back and start over. Ms. Naughton said if there’s a vacancy they can continue in that place without the necessary 5 year break. Mr. Gerver thinks it’s a good idea, saying it keeps the board fresh. People change, the environment change and it’s good to have a new perspective on thing and he’s glad the VB is moving on with this. Mr. Anzalone comment the VB have complete control over renewing someone’s 5 year period at any time and when the applicant goes forth again the applicant has to be approved by majority vote of the VB. They already have the power if they choose not to have someone. Ms. Naughton said she thinks the board is trying to set some expectation on time limits and they have the ability to appoint and reappoint and set some expectation to the person who is appointed. Mr. Anzalone is not comfortable with the idea that the VB has the ability approving people on a

term or not and asked if there were other groups with similarities. Mrs. Capriglione said she believes it encourages new residents, community members as well as younger people to get involved in important position.

Mr. Anzalone added a volunteer position requires a lot of commitment and man hours. Ms. Naughton will address to the VB that the Planning Board is in favor of essentially grandfathering and the effective date of the law going forward and not including the terms that have already occurred. Mr. Gerver thinks that is a good compromise. The Planning Board agreed to the term grandfathering and should be written in the law; although the term grandfathering would be worded differently and in detail.

C) Local Law # 1 – Review referral by the Village Board of Trustees (VB) of Local Law #1 entitled “A Local Law amending Chapter 310 of Code of the Village of Woodbury by creating a subsection 31.4 entitled ‘Water Quality Protection Overlay District.’”

General – The VB is revisiting Local Law No. 1 of 2018 for the creation of a Water Protection Overlay District and has requested the Planning Board review the revised law and report its findings/opinions. Attorney Naughton can advise further on any legal requirements on the form and content of this report.

Background – Defer to Counsel on the history of the VB’s consideration of the Local Law (LL). Appended is a memorandum submitted to the VB on behalf of the Planning Board in February 2018 after this was last considered by the Planning Board. The attached memorandum included comments from the Planning Board and consultants Burke, Miele, Golden and Naughton. Recently, the VB requested H2M review the current revisions to the law and provide technical comments. That memorandum is also appended (June 5, 2020) and is based on the revised LL now under consideration. In H2M comments to the VB, they are to provide technical background and support for the law and specific comments on the legislation. Below are highlighted areas of the law that will impact the Planning Board review of new applications.

Mr. Lindsay stated the VB is revisiting this law introduced back in 2018. A memo with comments was presented before from the Planning Board and counsel. In those comments were changes to the Highway Dept. practice of snow removal. When snow gets accumulated and there’s too much along the main streets of Woodbury, the Highway Dept. moves the snow by putting it in trucks and moving it to the yard to melt the snow. Mr. Lindsay thinks the code states you cannot move or transport materials into or out of the village. Mr. Gerver then recalled 2 additional resolutions with approved site plan in reference to snow removal as well. He believes those properties are located in Central Valley. Mr. Lindsay continues to say if the removal of snow was taken out of the village he wasn’t sure if it would be a violation; if its moved within the village it would be the same as the Highway Dept. where it can then be a problem. It’s something the board needs to look into; if it needs to be transported out there should be a plan so that it may not be dumped into Woodbury Creek or some other avenue where the salt could accumulate. There was also a concern with the ability to maintain the mowing and fertilizing existing lawns in the Riparian zone. The Riparian zone states you can’t clear any vegetation though it was discussed that a person can have a cultured lawn up to the stream bank and some do.

Mr. Lindsay believes it would be appropriate for the board to consider when and how the law will be implemented during the review of a Planning Board application and also where the board might want authority to exercise discretion to allow or prohibit activities. Mr. Lindsay briefly goes over his memo under “Recommendations” summarizing prohibited activities. He makes reference to 3 different areas in the law. The overlay zone makes reference to all the properties except for the state parks and the military reservation. It’s anything that goes into the aquifer for the Woodbury creek and the Ramapo. The prohibited activity in the zone are to not dispose or discharge solid liquid waste unless you have approval from the health department, DEC,

building inspector or Planning Board. There's no outdoor storage for chemicals and hazardous materials and petroleum products. Petroleum products stored underground is fine with the approval of DEC.

Mr. Gerver questioned the status of already owning a property, shouldn't there be a signed affidavit stating all underground storage on the property have been properly removed or delegated. Mr. Lindsay believes that comes into play when the property is sold or refinanced adding there may be owners who don't know there's a tank on their property. Mrs. Capriglione stated it's aware when the property is sold the documents come to surface. Ms. Naughton added sometimes it is not known if the property has a tank especially when it's in foreclosure or when the bank owns the property. Comments of possible properties in the areas that may or may not be of hazard were mentioned. There seem to be 2 a properties, nevertheless going forward they would have to use the updated application to the DEC.

Engineer Lindsay comments:

From H2M Memo dated June 11, 2020:

Overlay Zone – Includes all land in the Village, outside the US Military Reservation and Harriman and Schunnemunk State parks, that contribute to the aquifers of the Woodbury Creek and Ramapo River. This may exclude areas that do not drain into these aquifers, as determined to the satisfaction of the Building Inspector (in consultation with the Village Engineer).

Prohibited Activities:

- 1. Disposal, deposit or discharge of solid or liquid wastes onto any land or waters in the Overlay District, except for subsurface wastewater disposal systems approved by the OCDOH and SWPPP's approved by the Building Inspector, Planning Board, or DEC.*
 - 2. Outdoor storage of bulk chemicals, hazardous materials, petroleum products, fertilizers, herbicides, pesticides, and manure except in protective structures approved by the Building Inspector.*
 - 3. Underground storage of any petroleum product except as approved by the NYSDEC.*
 - 4. Mining or commercial removal or relocation of earth materials, including but not limited to sand, gravel, topsoil, metallic ores, or bedrock. Any such existing facilities must file a Water Pollution Control Plan (WPCP) within one year after date of the law.*
 - 5. Drilling of wells for oil, gas, gas storage, brine disposal, or similar purposes.*
 - 6. Junkyards and refuse dumps. Existing facilities must file a WPCP within one year.*
 - 7. Bulk salt or de-icing chemical storage unless in protective structure approved by the Building Inspector.*
 - 8. Transportation into and deposit of snow contaminated with salt.*
- B. Buffer Zone – All lands within 100-feet of a stream or water body in the Overlay District. Prohibited Activities (in addition to those of the Overlay Zone):**
- 1. Burial of human remains within 100-feet of a stream or water body.*

2. *No animal feedlots, manure storage or chemical storage.*

C. *Riparian Zone – Land within 50-feet of a stream or water body.
Prohibited Activities (in addition to those of the Overlay Zone and Buffer Zone):*

1. *No fertilizers, pesticides, herbicides or manure may be applied.*

2. *Removal of vegetation that has not already been cleared, except dead and dangerous trees upon approval of the Building Inspector.*

3. *Land disturbance in unpaved areas, except for flag poles, signs, and security lights, necessary stream bank or shoreline stabilization, unless approved by the Building Inspector with consultation of the Village Engineer.*

Mr. Lindsay believes it would be appropriate for the board to consider when and how the law will be implemented during their review of a Planning Board application and also where the board might want authority to exercise discretion to allow or prohibit activities. The following sections are highlighted for the Planning Board consideration:

- *Section A) 2) grants Planning Board authority to reconcile disparities in the Code for the Overlay and underlying zone.*
- *Section D) 2) authorizes the Building Inspector in consultation with the Village Engineer to exclude areas from the requirements of the overlay district if it is proven that waters do not drain into the water bodies regulated by the LL.*
- *Section F) 2) b) iii) authorizes the Planning Board to decide if proposed development within a riparian zone is necessary because the needs of the community outweigh the need for protection of a water body or if the restrictions of the overlay district render a property unusable by a property owner. You may wish to consider whether this section provides enough guidance for you to decide and implement restrictions on applications in the riparian zone.*
- *Section G) 1) provides guidelines for Planning Board review of applications for development within the buffer zone. This section details requirements that the applicant must demonstrate prior to approval. We think this is useful during your review of applications for establishing a standard for applicants. You should review whether there are other requirements you would expect all applicants to comply with when reviewing applications in the buffer zone or if greater discretion is required.*
- *Section G) 1) c) broadens your authority to require Stormwater Pollution Control Plans in buffer area even if not required by the DEC and Stormwater regulations. This might be beneficial under the right circumstances (e.g. disturbance of close to but less than 1 acre where the work might impair a water body without permanent stormwater controls).*

As per Mr. Lindsay and Ms. Naughton in the midst of reviewing applications the law will give the Planning Board the authority to review and clarify disparities. If there was a dispute it would generally go to the building inspector then be appealed to the ZBA. Mrs. Capriglione asked if on an application its noticed a repair in the riparian zone is near body of water. She wants to know if it would affect the net lot area. Mr. Lindsay replied saying the net lot area will only be affected by the things that are in the net lot area definition which he would look back into the definition since he doesn't recall previous applications stating the buffer or riparian zone. He recalls area flooded, streams, slopes and easements and right of way are excluded. Mrs. Capriglione had set an

example of a home owner having a large part of their land in either zone would not be affected and Mr. Lindsay said no it will affect to certain extent. He then continued to be detailed based on Mrs. Capriglione example. Mr. Lindsay then noted the Planning Board has jurisdiction for review and approval over project bodies and reservoirs.

Mr. Anzalone mention on how he was uncomfortable and if the riparian zone definition can be more structured. He feels there should be further guidance on it being he wouldn't want an applicant to take advantage and claime its for the good of the community when it may not be the case. Mr. Lindsay replied he would try to balance it enough to satisfy the Planning Board. Mr. Anzalone also commented on the buffer zone for human remains. He would like Mr. Lindsay to add animal's remains as well.

Mr. Gerver commented on the overlay section A-2. He would like the procedure to have a better definition. Asking that the applicant will need to go to the ZBA and then appeal the ZBA position to the building inspector. Ms. Naughton thinks it should be clarified so there wouldn't be any confusion amongst the boards so there could be a proper procedure. Mr. Lindsay brought up the renewal of special permit and said in conjunction to that the Planning Board should receive a complete written report from the building inspector after one year to see if they are compliant and if they are the permit should be annually renewed; if there are no complaint(s) from the building department.

Mr. Lindsay said it's a comprehensive law and it has implication throughout the village. The VB would like to get it right so its worthy of the Planning boards consideration and opinion.

Just to confirm Mr. Gerver asked this won't prevent the Highway Dept. from putting down salt or calcium chloride; for example the putting down salt on Rte. 105 and getting washed into the bedside of the road. Mr. Lindsay said salt and calcium chlorine are a major problem on the road. Salt does have an significant impact on the aquifer, there is a mixture called sensible salting that is place on the roads prior to a storm arrival. That is done with the intent of reducing the amount of salt used. Mr. Lindsay had spoken to the Highway Superintendent Robert Weyant and he is trying to practice sensible salting and doing what he can for the safety of the public. Ms. Naughton noted the VB was advised to speak to the Highway Dept. to consider language that's compatible to the highway maintenance practices. Mr. Lindsay briefly mentioned a meeting he attended led by Rockland County Health Department, the State, the County and Thruway. The idea of changing their salting practices to sensible salting and agreeing to change their practices went great for the state and county but at that time the Thruway wasn't so much on board.

Mr. Gerver asked Ms. Naughton if a homeowner is in front of the Planning Board and is told to change their sight plan due to the riparian zone in the buffer zone. The homeowner then appears to the ZBA stating their right to build on their property, then getting a variance bypassing the law. How can this be prevented? Ms. Naughton answered saying there is a provision placed so that there couldn't be a taking claim therefore giving the Planning Board some leeway. The homeowner in this case does have the ability to go to the ZBA and then it would be up to the ZBA to do a 5 part balance test for a variance. Mr. Gerver admits it's a great law, but he would just hate to see a person who's been denied say they will just go to the ZBA and get a variance and call it a day. Ms. Naughton replied that is where the ZBA comes in and have the person understand their site plan should be less than what they are asking for and also the ZBA have the authority to deny the variance. Variances are not always granted, a mistake that many make.

Mrs. Capriglione asked Mr. Lindsay a question in reference to water bodies. She wanted to know if Cromwell Lake drains into anything. Ms. Naughton added that Cromwell Lake is considered a reservoir. Mr. Lindsay said Earl and Cromwell are reservoirs. Mrs. Capriglione asked about Shadow Lake and Mr. Gerver added that Shadow Lake goes into Cromwell according to Google Earth. Mr. Lindsay acknowledges Shadow Lake is considered a water body.

Mr. Gerver asked counsel what phase of the application should it take effect or should the Planning Board comment back to the VB? Ms. Naughton said for now the Planning Board should comment back to the VB. Mr. Gerver's comment for the VB is that per the application SEQRA should be concluded. Mrs. Capriglione, Mr. Anzalone, Mr. Buglino and Mr. Deluca are in agreement. Mr. Gerver went over Section A) 2. In response Ms. Naughton said it would be best if it goes from the building inspector to the ZBA that way if there's another issue it would go for article 78. Mr. Gerver reviewed the definition of the buffer zone and asked that the definition be clearer and Mr. Lindsay said he provide a better definition.

Mrs. Capriglione asked Ms. Naughton if she can clarify a statement in a memo dated February 22, 2018;

section E(3) – this prohibits the application of fertilizers, etc., but seems overly restrictive. Perhaps this should be amended to the commercial application of these substances.

Ms. Naughton said she was thinking if single family homes wanted to go and fertilize their lawn and had a swing set in the back and wanted grass growing underneath it. It would be different if it was a big company doing just that for their warehouse. She suggested Mr. Lindsay could come up with a better language for this section. Mr. Gerver included he would appreciate a better language since he wouldn't want to prohibit residents from using organic companies that would do treatments for mosquitos or ticks. Mr. Anzalone suggested adding language referencing to fertilizers, pesticides or other substances used that are not up to date, acceptable or banned. Mrs. Capriglione questioned how would you police something like that and Mr. Lindsay said it's very difficult to police something like that. He said, Mr. Thomasberger would have to see someone applying something and asked them what they are applying or put a notice out. It would be easier to regulate landscapers when it comes to this.

Ms. Naughton said it would be helpful to summarize what was spoken and pass it along to the VB by the end of the week. Mr. Lindsay said he will get his notes together and will pass it along to her.

Adjournment:

With no further business to discuss, a motion was offered by Chairman Gerver, seconded by J. Buglino, to adjourn the meeting at 10:11 PM.

ADOPTED

AYES 5 Chairman Gerver, R. Anzalone, J. Buglino, S. Capriglione, T. Deluca
NOES 0

Claudia Romanisin, Planning Board Secretary