

PLANNING BOARD  
REGULAR JANUARY MEETING  
MONDAY, JANUARY 8<sup>TH</sup>, 2024  
7:00 PM—TOWN HALL—1529 NYS RTE 12  
BINGHAMTON, NY 13901

Present: Brian Donnelly, Chairperson  
Thomas Eldridge, Vice Chairperson  
Jamie Szenher, Board Member  
Maura Cooley, Board Member

Also Present: Alex Urda, Town Engineer  
Gavin Stiles, Code Officer  
Nathan VanWhy, Attorney

Absent: Michael Boland, Alternate Board Member

Brian Donnelly: It's the January 2024 Planning Board meeting. Can I get a roll call?

Lindsey Fey: Ms. Cooley; present, Mr. Szenher; present, Mr. Eldridge; present, Mr. Donnelly; present.

Brian Donnelly: I think the first thing we need to do is do the approval of the minutes for the December 11<sup>th</sup>, 2023 meeting. Is there any discussion?

Jamie Szenher: I'll make a motion we accept the meeting minutes.

Thomas Eldridge: Second.

Lindsey Fey:	Ms. Cooley, Board Member	Voted: Aye
	Mr. Szenher, Board Member	Voted: Aye
	Mr. Eldridge, Vice Chairperson	Voted: Aye
	Mr. Donnelly, Chairperson	Voted: Abstain

The motion was thereupon declared adopted by a roll call of:

Ayes—3      Nays—0      Abstention—1 (Donnelly)

Brian Donnelly: Under new business we have Kevin Moyo from Harbor Freight, it's a reoccupancy of 1272 Upper Front St for a Harbor Freight store and I believe it's a site plan review. Mr. Urda?

Alex Urda: As you mentioned it's 1272 Upper Front St. It's the old NASCO building, the applicant is looking to reoccupy the site for use of the Harbor Freight. It's in a PDD-C zone. Mr. Moyo has been working back and forth with me and Gavin in the code office. Quite a few pieces have come in since September. There's a planning/zoning board application with permissions, applicant letter, site plans, truck turn diagram, easement agreement, NY deed information and warranty information, elevation certificate, TOC building permit application, zoning compliance request sheet, 239 Review Submission form, sign permit application,

elevation plans, PDD paperwork, short EAF, and an ALTA survey. At that time back in September there were pieces that were lacking that we discussed, also waiting on the application fee and when the applicant wanted to attend which ultimately rolled into today obviously. We've had some other dialogue between those dates and then recently on 1/3/24 we got an updated plan set of 60 sheets. It looks like it's all the same that we had earlier but completes all the electrical and plumbing sheets. We received that last week.

We had a letter of intent previously, we asked that that just be updated with more of the hours of operation, what the intent was, what Harbor Freight's traffic might be. The applicant provided us that plus the Harbor Freight Tools operations letter. We also got the photometric plan that we requested. There's site lighting that will change on site so as usual we ask for that plan. Griffiths Engineering prepared a couple of site drawings relative to the floodplain concerns. The site is in a floodplain so we got the C-2 drawing from them, there was a permit application from the applicant for a flood hazard area and development in a flood hazard area. That came in last week and then Griffiths modified it on Friday with the modified floodplain application plus their drawings and analysis that we requested. We didn't ask them for a HEC-RAS analysis on the river, we just understand the applicants have cuts and they took out the go-kart track earlier this year ahead of the process so we said quantify what you took out compared to what you put in and let's see it from an engineering standpoint so they provided that on Friday.

My comments: We've been coordinating with review to assist the applicant since earlier in 2023. Parking—The parking area was apparently rehabilitated with the go-kart track removed/flattened and the entire prior paved area overlaid with new asphalt; Parking Count—Our last count was 107 stalls, but based on the building square footage and retail use 109 are required per Town Code. We requested that the owner add the additional two stalls as it appears there is space available. The site plan meets the stall size of 8.5x18 as allowed, as well as 24 foot drive aisles. The applicant shall assure that they, or the owner, provide and maintain exterior ADA accessible parking spaces, aisles, access routes, markings, slopes, and signage in accordance with ICC/ANSI, A117.1, 2009 (or latest revision) and the current Building Code of the state of New York, Chapter 11 (or latest revision). Stall sizing shall be no less than 8.5x18 ft. Site lighting is proposed to be upgraded. A site Fixture schedule and layout is provided on the Plan Sheet E.02, however please provide product cut sheets for the outdoor lighting to the code office. A photometric plan was provided. It does not achieve the 0.0 footcandles at the property lines, but at this location this may not be a concern. Board discussion recommended. Is there a landscape plan? It's an existing site so there wasn't much opportunity to put things in. The site was previously maxed out for parking and still is. A grading plan was requested by me for the site, but it appears the owner graded the go-kart area and repaved in advance. No grading plan was received, but Griffiths Engineering conducted earthwork volume calculations relative to the flood plain per below.

Signage—Coordinate signage with the Code Office, water and sewer connections are existing. Coordinate any water meter installation/upgrade/backflow prevention with the Code Office and Water Department. Flood Plain was my biggest concern. The entire site and existing building are within the 100-year floodplain. We have advised the applicant of this and reviewed per below. An Application for Development in Flood Hazard Areas as required per Town Code. We have advised the applicant to provide an engineering study relative to onsite cuts/fills to prove

that any minor site modifications had no impact to the flood plain. This was provided to attest that the fills relative to addition of sidewalk in front of building, addition of loading dock, and addition of 2" pavement overlay, were offset by material cut and removed from the elevated go-kart track of the site. As a note: The ALTA survey provided by the applicant is flawed relative to indication of a Flood Zone C, when the site is within Flood Zone A. Coordinate with the code office for any necessary inspections/building permits. The project is within a §73-55 Wellhead Protection Zone. The site is currently in compliance with this code and the proposed project intends to remain so. SEQR clarify project area is perhaps 1.3 acres, which is different from the smaller area of disturbance for the go-kart track removal, loading dock, and front entrance modifications the result in <1.0 acre of disturbance as it related to NYSDEC SPDES stormwater permits. No permit is required and no SWPPP was required. Broome County 239 review was required. We have no engineering site objections to the project, however we have advised the applicant to work closely with the code office relative to building modifications and reoccupancy within the floodplain.

Brian Donnelly: Thank you. Gavin, do you have any comments at this time?

Gavin Stiles: I will probably do a little research and maybe send some questions to the Department of State tech support to try and wrap my head around these details prior to the issuance of a building permit.

Brian Donnelly: Mr. Moyo is here. Do you have any comments?

Kevin Moyo: Yeah, thank you all for your time. Harbor Freight's very excited to be here. They've been wanting to be in Binghamton for a long time. Being so close to Lowe's, being that this town's growing and there's a lot of traffic on the street they're kind of bugging me to get open as fast as possible and I'm like listen, we've got to go through the process. The building, we're not changing much in the building, just reoccupying the building and we just think it's a great location and honestly we're very excited to work with you guys, however we can achieve that. I think we're almost there but there's a couple things I need to iron out with Gavin. You guys let me know what you want from me and I will try to deliver.

Brian Donnelly: Ok. Does anyone on the Board have questions? Concerns?

Thomas Eldridge: So, with my past experience with stuff like this, the only stuff that's really going to fall on your shoulders being that it's basically a retail store is their mechanical has to be so many feet above the flood elevation, right?

Gavin Stiles: The whole floor is below base flood right now and I have to find out if they have to bring the floor up or if there's some kind of waiver they can do to say hey we're aware that we might get under water at some point and they can sign something to say we're out of the NFIP, the National Flood Insurance Program, I don't know if they can just say I don't want to be part of that program but if they want to be part of that program then they might have to bring their floor up a couple feet. I'm not knowledgeable about that right now. They are below base flood right now like what, two feet?

Thomas Eldridge: When I used to elevate houses, in order for them to have insurance, everything had to be x amount of feet above base flood but their mechanicals had to be so many feet above it regardless of where the house was so I assume this would fall under that as well.

Gavin Stiles: Yeah. We need to figure out where the floor needs to be and the mechanicals and the break aways and all the stuff underneath. I can't speak to it right now.

Lindsey Fey: Am I allowed to ask a question? If they raise the floor will that affect flooding at Spiedie and Rib Pit at all?

Alex Urda: It should already be obstructed by the building. It typically doesn't get factored into the flood calculation.

Lindsey Fey: Ok, just curious.

Nathan VanWhy: Under the Flood Damage Law of the town if there's substantial improvements to an existing structure, then they have to bring the property into compliance with the Flood Damage Law. That's defined as any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure. So, the question would be based on the plans that they've submitted, what's the market value of the property? How much is the estimate of the cost for the improvements? If greater than 50% they need to comply, then all the items that Gavin is talking about come into play. If they want variances from it then they apply to the ZBA and there's pretty strict criteria, you can't impact neighboring parcels as a result of your potential improvements. There needs to be a flood water analysis by an engineer with hydrology background showing math calculations that we'll all scratch our heads at and go sure but I mean there's a whole process for it under the code.

Alex Urda: Right now the outside looks good. They actually took the material out of the flood plain even though they've added a loading dock. I made them even calculate in the pavement overlay they had.

Lindsey Fey: I'm going on year 17 of working at Spiedie and Rib Pit so I want to make sure they're not going to affect it. They're my people.

Kevin Moyo: We did put in a dry well under the go kart track which helped with the runoff so we grade it away from the building.

Alex Urda: Once the building permit is further in the process he ends up looking at that substantial...

Kevin Moyo: Gavin, the tenant did apply but I think they tried to apply for a building permit.

Lindsey Fey: They called today.

Kevin Moyo: But they sent the drawings in? I'm pretty sure.

Gavin Stiles: I haven't seen any drawings.

Kevin Moyo: Ok, I think emailed them over to you as well.

Alex Urda: A 60-page set came through on Wednesday. There were some attachments and then a link.

Kevin Moyo: They were too big to send in an attachment.

Alex Urda: You'll just have to look for the building permit tomorrow.

Lindsey Fey: Ok.

Thomas Eldridge: So as far as site plan review there's really nothing for us to review because it's all internal in the building.

Brian Donnelly: Internal in the building and it's an existing building and it's really dependent on whether or not they can get their permit to occupy the building and that all depends basically on how the flood plain works out and that's basically Gavin's job so I don't know whether we just need to do a preliminary approval or if we can just do a site plan approval and depending on the results of the building permit approval.

Nathan VanWhy: I think you could do, in order to get a building permit, Gavin has to be satisfied that they do not need any flood damage prevention permits relating to that so Gavin will have to include that as part of his building permit analysis whether or not what they're proposing constitutes a substantial improvement. I guess I don't know if they've actually applied for the building permit and said exactly what they're going to do and Gavin's had the ability to say oh yeah in fact it does exceed that 50% threshold or not.

Gavin Stiles: Everybody comes here before they come to me.

Nathan VanWhy: Right, so you could issue a site plan approval and just note as a condition that the building permit review needs to include a flood damage compliance review and if code requires a flood permit in order to proceed then they need to get that but if code doesn't require it then they don't need one. It's things that should happen anyway but making it an express, I don't have any issue with that.

Alex Urda: Right now we have their flood application, site-related. That won't get signed off on until Gavin's confident that the rest of the stuff is all set.

Gavin Stiles: Yeah, we need to figure that out.

Alex Urda: We'll finalize those four pages as this thing moves through his office.

Brian Donnelly: Ok, I think we're all in the same understanding and think that possibly we can go ahead and do a site plan approval and then it will work it's way out through the Ordinance office if anyone wants to make that...

Alex Urda: I just ask for two more parking stalls is my lingering piece. As long as you're okay with the lighting. The lighting has a little bit of an increase on all sides. It's commercial right now, everybody lights, everybody spills out over there.

Jamie Szenher: It's all parking lots.

Alex Urda: Condition-wise if you guys could mention getting the parking up to 109 from 107.

Gavin Stiles: Doesn't it say somewhere in there lighting should be 0 at some line? That's cool?

Alex Urda: Yeah and I think we were trying to pin it down that the code actually required 0.0 anywhere...

Gavin Stiles: Right, I just didn't know if that...

Alex Urda: It's in the report.

Gavin Stiles: Ok.

Thomas Eldridge: I'll make a motion that we approve the site plan barring that they get a building permit with all the flood plain stuff and move to 109 parking spots from 107 and that the footcandles is ok that it doesn't explicitly say 0.0 some place that they can spill over slightly into the other parking lots.

Jamie Szenher: I'll second.

Nathan VanWhy: So, a couple questions on the motion. The first one is for them to add two more parking spaces to the site plan. I know Alex said there's plenty of space, it should be easy to do. I think the code office and engineer need to sign off on the exact location of those two parking space and if either of them have issues with it then it needs to come back to the Planning Board for approval because if they just add two spaces and we say whoa whoa whoa, you shouldn't have put them there, we just want to catch that. The point about the candles or lumens spilling over, are you also delegating to code or engineer and saying it is required to be that and the applicant needs to submit a plan showing it or are you saying we don't know what the requirement is...

Thomas Eldridge: Yeah, that's what Alex just said he's not sure if it says some place that it has to be 0.0. They're not currently at 0.0 and he doesn't know if it actually says that in our town code.

Alex Urda: I know it's been requested for decades even prior to me being here but I looked at it last week trying to find that 0.0 threshold and as far as I could find it just says we have to address site plan.

Nathan VanWhy: So then theoretically the Planning Board could choose to require 0.0. If it needs to be addressed in site plan then that's...

Alex Urda: One of the last applicants pinned us down on it a little bit and they were a little over and we discussed that at that point we're okay with a little tolerance.

Gavin Stiles: Kevin, if you could have your engineer draw something up with two more spots.

Kevin Moyo: I'll get ahold of him tomorrow.

Gavin Stiles: It looks like you've got wiggle room to do it.

Brian Donnelly: I think we want to request the motion to say that with those two criteria being approved by the engineer and Ordinance office. That's basically what you're saying. As long as we're comfortable with trusting that they're going to do their job then we're good with it.

Nathan VanWhy: I guess the only concern I have about the candles, lumens, is I think there needs to be some direction given to the engineer and code office about what does the Planning Board find to be an acceptable number? Because I think that you shouldn't just delegate things oh sure whatever you say. Often you take their recommendation on things but if there's no standard set forth in the code it just needs to say the Planning Board traditionally asks for 0.0. When Alex is looking at the photometric plan, how is he going to know whether what's on the plan is something that

the Planning Board has really approved. This is where now we're recommending the applicant to Alex and he can say what's a good light number? Is it .1? Is it .05? I'm not familiar with the exact numbering metrics of it but what's the Town Parking lot?

Alex Urda: We strive for a 2.0 in parking stalls for safety reasons so you don't get sued in case there's a slip and fall, 2.0 is kind of the bottom limit. Some actually strive for five but around an ATM there's 10s-20s. They want big numbers by those like daylight. On a casino site we want 10.0 throughout the entire parking lot because they historically get sued for x amount of dollars per year.

Thomas Eldridge: So this giving that all the parking spaces are around the outside for the most part right? The majority is on the outside and before we subscribed to 0.0 at the edge? That doesn't make any sense because that's contradictory.

Alex Urda: It's tough to do on an existing site unless you really end up with a lot of short poles and you'll still have some spillage out the back of that potentially. I was looking for a best effort on it and then some guidance from you guys.

Nathan VanWhy: To that point, do you have any idea what would be technically feasible in light of what lighting they have proposed for spillover?

Alex Urda: This doesn't look bad. There's some 1.1s in a little pocket on the North and on the Monro Muffler side.

Gavin Stiles: There's nothing residential. It's kind of a different ball game. There's nobody who lives and sleeps over there so I don't know if it's applicable. It's applicable by law but doesn't make a tremendous amount of sense in that Lowe's is over here. There's nothing. Nobody lives over here, there's a river behind it.

Nathan VanWhy: So then I guess the question would be, is this just something that you want to approve then? If this is what the applicant is saying they can achieve and what I think they're hearing from code and the engineer is this looks pretty good then is there a need to even delegate anything or just say it looks fine.

Alex Urda: I don't think so. I think that's a discussion more for my future reference. I might like to talk about it a little more later also.

Gavin Stiles: People don't live over there.

Brian Donnelly: Changing the motion to have approval for site plan with adding two more parking spaces with the approval of Alex and the Ordinance office and that's the end of it.

Jamie Szenher: Works for me.

Brian Donnelly: Can I have a second?

Jamie Szenher: Yes.

Lindsey Fey:	Ms. Cooley, Board Member	Voted: Aye
	Mr. Szenher, Board Member	Voted: Aye
	Mr. Eldridge, Vice Chairperson	Voted: Aye

Mr. Donnelly, Chairperson

Voted: Aye

The motion was thereupon declared adopted by a roll call of:

Ayes—4        Nays—0

Nathan VanWhy: One other thing to add. I haven't stopped anybody because I think this is a type II action under SEQR but I do prefer if the minutes reflect an action by the board to declare that just so that the minutes will show it was duly considered.

Brian Donnelly: Ok.

Maura Cooley: I'll make the motion.

Thomas Eldridge: Second.

Lindsey Fey:	Ms. Cooley, Board Member	Voted: Aye
	Mr. Szenher, Board Member	Voted: Aye
	Mr. Eldridge, Vice Chairperson	Voted: Aye
	Mr. Donnelly, Chairperson	Voted: Aye

The motion was thereupon declared adopted by a roll call of:

Ayes—4        Nays—0

Brian Donnelly: So it's a type II action, it's been approved by the Planning Board. You just needs to work with the Ordinance office and get everything straightened out with your flood plain and your parking spaces.

Kevin Moyo: I appreciate your time, thank you.

Brian Donnelly: Next on the agenda is Daniel Browne of Brotzman Road, is requesting an area variance to build a garage in front of their home. Mr. Urda?

Alex Urda: All right, 759 Brotzman Rd, a garage in front of the house in an Agricultural zone. The ZBA application was given, an applicant letter of intent, site sketch over an aerial photo, site sketch over the survey, and short EAF. General notes, the parcel is 5.8 acres and the garage will be approximately 298' from the road and substantially setback from adjacent parcels. Broome county 239 review was conducted with no resulting concerns. County Health had asked about the septic system location and I believe the owner discussed that with them and clarified that there's no construction over the existing system so they were ok with that. From my standpoint, given the size of the parcel, depth from the road, and setback to the neighbors, I had no engineering objections.

Brian Donnelly: Gavin, do you have any comments?

Gavin Stiles: I have no problem at all, no. Building permit, that's it.

Brian Donnelly: Does anybody have any questions? I guess the sewer system concern is resolved.

Daniel Browne: The septic system is on the opposite side of the driveway and well in front of where I plan on putting it.

Brian Donnelly: Anybody have any other questions? Anyone want to make a motion for a favorable advisory to the ZBA?

Jamie Szenher: I'll make a motion for a favorable advisory to the ZBA.

Thomas Eldridge: Second.

Lindsey Fey:	Ms. Cooley, Board Member	Voted: Aye
	Mr. Szenher, Board Member	Voted: Aye
	Mr. Eldridge, Vice Chairperson	Voted: Aye
	Mr. Donnelly, Chairperson	Voted: Aye

The motion was thereupon declared adopted by a roll call of:  
Ayes—4          Nays—0

Brian Donnelly: Simple as that, it goes to the ZBA with a favorable from us. Good luck with your pole barn. Anybody have anything else?

Dave Johnson: I'm Dave Johnson from the Town Board and I want to thank you folks for how well you behaved yourselves and handled the meetings with the smoke shop deal there. You had some crowds in here probably making you feel uncomfortable but you did a very professional job and I want to thank you for how things turned out. Thank you very much.

Brian Donnelly: Thank you for coming in to share that, I appreciate it. Anything else?

Jamie Szenher: I'll make a motion to adjourn.

Thomas Eldridge: Second.

Brian Donnelly: Done.

Respectfully submitted,



Kari Strabo