



PLANNING BOARD

MINUTES (FINAL)

THURSDAY, JANUARY 13, 2022

6:00 P.M.

CITY COUNCIL CHAMBERS

CALL TO ORDER: Mark Torpey, Chair, called the meeting to order at 6:00 P.M.

SALUTE TO THE FLAG:

PRESENT: Mark Torpey, Chair; Ruth Horton; Kerry Mayo; Justin Doty; Chuck Marshall

ABSENT: Todd Fabozzi; Al DalPos

STAFF: Susan Barden, Principal Planner, City of Saratoga Springs
Mark Schachner, Counsel to the Land Use Boards
Leah Everhart, Counsel to the Land Use Boards

COMMENTS FROM THE CHAIR:

Mark Torpey, Chair, stated we will hear a short address from the newly elected Mayor.

Mayor Ron Kim addressed the Board introducing himself and Deputy Mayor, Angela Rella. The mayor thanked the Board

for their hard work and volunteerism on behalf of the City of Saratoga Springs. The mayor also noted that he and the Deputy Mayor were always available, and their door was always open.

Mark Torpey, Chair, also welcomed Mark Schachner, Counsel to the Land Use Boards and his law partner Leah Everhart who will provide Counsel to the Planning Board.

Mark Torpey, Chair, welcomed new Planning Board member Chuck Marshall.

ANNOUNCEMENT OF RECORDING OF PROCEEDING:

The proceedings of this meeting are being recorded for the benefit of the secretary. Because the minutes are not a verbatim record of the proceedings, the minutes are not a word-for-word transcript of the recording.

A. APPROVAL OF MEETING MINUTES:

Approval of meeting minutes was deferred to the end of the meeting.

B. POSSIBLE CONSENT AGENDA ITEMS:

NOTE: The intent of a consent agenda is to identify any application that appear to be “approvable” without need for further evaluation or discussion. If anyone wished to further discuss any proposed consent agenda item, then that item would be pulled from the “consent agenda” and dealt with individually.

NONE AT THIS TIME.

C. APPLICATIONS UNDER CONSIDERATION:

1. **#20211225 18 CHERRY, 15 & 17 MARVIN ALLEY SITE PLAN MODIFICATIONS**, 18 Cherry St., 15 & 17 Marvin Alley Site Plan Modification of a previously approved Site Plan for a residential project in the Urban Residential-4 (UR-4) district.

Mark Torpey, Chair, stated this is a site plan modification. There are several parcels involved in this application. The Planning Board provided approval for this project in 2018. The applicant returned for modifications to that plan in 2019. They return now for proposed modifications to the previously approved site plan. Changes have been submitted on drawings provided to staff.

Applicant: Nick, BBL Construction Services

Agent: Kirsten Catellier, Jeff Anthony, Studio A.

Nick from BBL stated on the Marvin Street side two feet of a lawn strip and plantings proposed between the two-unit driveways. Due to the proximity for driveway entrance and exit radius the grass would not survive. These areas were filled in with permeable pavers. A second change is two benches were proposed in the rear of the site. They were never listed as a fixed item they appeared as a seasonal seating arrangement. We were looking to fence in this area for security of these seven units. This necessitated the removal of the arborvitae. There were additional trees leaning over from the neighbor's property to the courtyard. We did request permission from the neighbors prior to removal.

Ruth Horton requested a visual of the site be provided to the Board.

Chuck Marshall questioned if there is a management company to place and remove the benches.

The representative from BBL stated this is part of an HOA. The HOA will ensure that the benches are installed and removed seasonally.

Ruth Horton questioned if these changes had been made. She noted it is frustrating to approve something which has already happened.

Mark Torpey, Chair, stated it is very frustrating when the Planning Board specifies plantings and vegetative buffers and retention of mature trees, and the applicants disregard those requirements, and we find ourselves in a situation as with this project.

Kerry Mayo questioned what occurs if the Board does not give its approval.

Susan Barden, Principal Planner, stated the stage of this project is at the as-built stage. So, in reviewing the as-built drawings it was identified that there were changes from the approved plans. These issues are the outstanding issues or those that do not align with the approved plan. The Board can look at either trying to further modify what is being requested here. One thing which was not identified from the start was the removal of trees. You can approve that as it is, or you can require replanting or restoration of that. Other issues, the lawn strip between the driveways, the two benches, those are things you can discuss as well, and they could be changed as well as changes to the vegetation.

Mark Schachner, stated in theory there is not a legal obligation for a Land Use Board to show after the fact approvals. It is frustrating for Boards to deal with after the fact efforts. In theory this could be referred to the enforcement bureau and there could be an action, with fines, and court ordered removal of what was applied.

Nick from BBL stated the original arborvitae were located to provide buffering to a garage. We wanted to secure the site. We had unwanted foot traffic. The location of the new fencing was provided on the visual of the site.

Mark Torpey, Chair, questioned if the fencing installed was previously approved in 2019.

Kirsten Catellier stated in the approved set of construction documents noted the fence was approved. The fence was always approved to run along the property line along the alley it was not connected to the building in the approved plans.

Nick from BBL stated field conditions dictated a little more difficulty than on the drawing. This is a 4' high black aluminum fence. The arborvitae was not healthy vegetation.

Mr. Anthony stated in his assessment of those plantings they were marginal at best. Installation of the fence would have destroyed the root of those plants.

Kerry Mayo questioned if any additional trees were removed.

Nick from BBL stated there were trees leaning heavy from the neighbor's property into the courtyard area and were dangerous to be left.

Mr. Anthony stated these trees were abutting the lumber yard and against the neighbor to the west. There were two or three trees small multi-stem maples which were scrubby bent and hanging over to the neighbor's property and this property. They were not extremely specimen quality.

Jason Doty stated this is the type of situation where the Planning Board defers to the City Arborist.

Chuck Marshall stated he does not think the trees would have been on this site plan since they would have been identified on the neighbor's property.

Nick from BBL stated the City Arborist was contacted by one of the owners of the property. He does not know the exact the conversation, but the arborist did visit the site.

Mark Torpey, Chair, questioned changes made to the utility pole at the intersection of Cherry and Marvin.

Nick from BBL stated they have been in contact with Matt Zeno. There are existing conditions with two telephone poles which squeezed the sidewalk down to 3 ½ feet. We are pinned between the neighbor's property and the existing telephone poles. We have suggested and proposed putting that detectable warning strip down to the Cherry Street side instead of Marvin Alley and is still in discussion with Mr. Zeno.

Ruth Horton questioned the area between the driveways and the reasoning for the change in materials. Why this was not anticipated prior to construction.

Mr. Anthony stated the green strips between the driveways seemed a great idea on the plan but in practicality the actual turning radius into the driveways could not accommodate the grass strips. The cars continually drove over them and would be a continuous maintenance issue.

Mark Torpey, Chair, stated he understand the practicality of having the permeable pavers versus the grass strip. The biggest issue for him is the impact on the neighbors. These changes are hardening the buffering and bordering of those properties. He hates for the neighbors to look at something less aesthetic than was otherwise proposed, especially on the southern border. An appropriate remedy would be to work with the City Arborist to produce a re-planting plan to soften the area. The Chair spoke about the no cut buffer which is clearly stated on the website and what our requirements are to preserve the no cut buffer. We are trying to be equitable and fair with all applicants to provide mitigation if they just blatantly disregard what we have asked them to do. The Board does have options available to them.

Mark Torpey, Chair, questioned if the applicants have reached out to the neighbors. There is an opportunity to reach out to the neighbors and recreate a clean buffer to provide additional greenery. We need to provide a degree of buffering to the south and replant trees with the City Arborists recommendation.

Discussion ensued among the Board regarding how to proceed with the application. It was the consensus of the Board to defer the application until the applicant's agents reach out to the neighbors for their input and suggestions on the vegetative buffering plan.

Mark Torpey, Chair, stated we will table the application until such time as the applicant's agent speak to the adjoining neighbor regarding their input and suggestion on the vegetative buffering along with the suggestion of the City Arborist. The applicant will return before the Board following conversation with the neighbors.

2. #20211169 PEARL STREET SUBDIVISION, 1 Pearl Street, Final Plat Review of a two-lot subdivision in the Urban Residential -2 (UR-2) District.

Mark Torpey, Chair, stated this is a two-lot subdivision in the UR-2 District of the City. The Board reviewed this project. There are no variances required the applicant has sufficient street frontage as well as the area for the build for the proposed new lot.

Applicant: One Pearl Street, LLC

Agent: Tonya Yasenchak, Engineering America

Ms. Yasenchak provided a visual of the plan for the Board. The property is located at the northwest corner of Pearl Street and Van Dorn. There is an existing 14,520 sq. ft. lot in the UR-2 zone. Currently there exists a two story, two unit building at the corner. We are proposing a two-lot subdivision. Lot#1 is the new lot which is to the west along Pearl St. We have located a driveway along the west portion of the lot due to the location of the neighbor's driveway and the ability to provide privacy. The existing lot – Lot #2 is 7,320 sq. ft. and Lot#1 the new lot is 7,200 sq. ft. Both lots exceed the minimum lot area 6,600 sq. ft. for this zone. The driveway on Lot #2 was placed to provide adequate site distance from the intersection. Questions arose during staff review and the Planning Board Workshop. The legality of the two story-two-unit structure on Lot #2 was questioned. We provided information to the Board included correspondence from April 2003 from Mr. Biffer, Code Enforcement Officer. This correspondence noted that this building had been built and occupied as a two family prior to the codes and is a legal two family. Also, there was a question regarding the three meters on this existing structure. Verification was requested that this is a two-family home, not a three-family home. The owners did provide a letter of acknowledgement that there are only two units. The third meter is a house meter, for the basement and exterior lights, and sump pumps. We also included that letter as well as a quote from 2011 when the house meters were installed that this was for the house, and it indicated verification of where the third meter was located and what it was serving. Also, a question arose regarding the stone and concrete fire pit in the rear of the property. It is located very closed to the property line. Mr. Cogan, Zoning Officer, Building Inspector has deemed this an accessory structure and as such is too close to the property line. The owners can remove this and are willing to do this as a condition of the subdivision approval.

Mark Torpey, Chair, questioned if the plan as proposed meets the street lighting a street tree requirement.

Susan Barden, Principal Planner stated they are.

Mark Torpey, Chair, stated they did notice there is an encroachment by the neighbor to the west onto the applicant's property. This does not have anything to do with this application simply a courtesy notification to the property owner. All the Maple trees along the western side of this property of Lot#1 are indeed on the applicant's parcel. We would like to have the trees preserved to the extent possible.

Ms. Yasenchak stated she is unaware of the condition of the trees; she will note this on the plans as well as a conversation with the applicants to preserve the root ball as well as the trees.

Mark Torpey, Chair, stated since we have a pre-existing non-conforming but legal two-family structure here does that require additional parking to adhere to the rules in UR-2. Is a waiver required?

Susan Barden, Principal Planner stated that parking area for the two family is a condition which exists. There is no change there so action is required by the Board, except acknowledging that two parking spaces are required per unit and the parking area dimensionally can accommodate two. A discussion should occur whether the Board feels it is appropriate to provide additional parking on site or if the on-street parking on Van Dorn or Seward Street is adequate.

Mark Torpey, Chair, questioned if there were any questions, comments or concerns from the Board.

Kerry Mayo stated there appears to be large species trees in the center of Lot#2 as well which could also be included in those to be preserved.

Mark Torpey, Chair, summarized the conditions for this straightforward sub-division application approval. No variances are required. We spoke about preserving the maple trees along the western boundary of Lot#1. Removal of the firepit based upon the recommendation of the Building Inspector. A new address will be required for Lot#1 which will front on Pearl Street. No parking waiver required. The sidewalks should pass over the driveway to provide visual connection with the sidewalk for both lots.

PUBLIC HEARING:

Mark Torpey, Chair, opened the public hearing at 7:00 P.M.

Mark Torpey, Chair, asked if anyone in the audience who wished comment on this application. None heard.

Mark Torpey, Chair closed the public hearing at 7:01 P.M.

Discussion ensued among the Board regarding classification of SEQRA determination for an application.

Susan Barden, Principal Planner, provided information to the Board regarding the classification of an application for SEQRA Review purposes.

SEQRA REVIEW:

Action is an Unlisted Action. The Planning Board is the only involved agency. Part I of the SEQRA Short EAF was provided by the applicant as required and is accurate.

The Board reviewed Part II of the SEQRA Short EAF. No large or important areas of concern were noted.

SEQRA DECISION:

Ruth Horton stated, based upon the information provided by the applicant in Part I of the SEQR Short Environmental Assessment Form, and analysis of the information provided and presented in Part II of the SEQR Short Environmental Assessment Form, I make a motion for a SEQR negative declaration since the project will not result in any large and important impacts and, therefore, is one that will not have a significant adverse impact on the environment. Jason Doty seconded the motion.

Mark Torpey, Chair asked if there was any further discussion. None heard.

VOTE:

Mark Torpey, Chair, in favor; Ruth Horton, in favor; Kerry Mayo, in favor; Jason Doty, in favor; Chuck Marshall, in favor

MOTION PASSES: 5-0

Mark Torpey, Chair stated we will now move onto the subdivision approval.

Susan Barden, Principal Planner reviewed the conditions of approval previously noted by the Chair: Preservation and maintenance of the maple trees along the western boundary of Lot#1. Corresponding tree protection detail to be added to the site details on the final plan set. Removal of the firepit. Recreation fees – dedication of rec lands and fee in lieu of for the new lot.

Jason Doty made a motion in the matter of the Pearl Street Subdivision, 1 Pearl Street, final plat review of a two-lot subdivision in the UR-2 District be approved with the conditions as noted. Kerry Mayo seconded the application.

Mark Torpey, Chair, asked if there was any further discussion. None heard.

VOTE:

Mark Torpey, Chair, in favor; Ruth Horton, in favor; Kerry Mayo, in favor; Jason Doty, in favor; Chuck Marshall, in favor

MOTION PASSES: 5-0

3. **#20211156 63 HENNING ROAD SITE PLAN REVIEW**, 63 Henning Road, Site Plan review for a proposed horse barn expansion in the Rural Residential (RR) District.

Mark Torpey, Chair, stated this application is a site plan review of a previously approved project in 2014. In those drawings and diagrams, it included the area for this future barn expansion. When the original SEQRA was performed it included the broader project as envisioned. Mark Torpey, Chair stated a recent survey was also provided to the Board.

REQUIRED REFERRALS:

Mark Torpey, Chair noted the Saratoga County Planning Board review is required. A decision was issued on December 17th, 2021, indicating “No significant countywide or intercommunity impact”.

Applicant: Rood and Riddle Real Estate

Agent: Matt Brobston, LA Group

Mr. Brobston provided an aerial of the site along with a brief presentation of the proposed project. As noted by the Chair the project was contemplated at buildout when the first approvals were received. This project is behind the existing barn area where the centrality area is located. The existing barn houses the centrality area and surgery rooms are inside the main building. We are proposing to expand the existing barn to include 7 additional horse stalls to allow for increased recovery stalls for treatment of horses during the track season and beyond. Utilities were expanded to this area in anticipation of this future project. A retaining wall was installed at that time of the original project noting the location of the wetlands and avoidance of those areas. We are proposing building the new building exactly where it was originally proposed, maintaining the grading of the site in the same location. Mr. Brobston stated the project was part of a use variance for the site and the use. This use variance specifies a 20-stall barn. What was originally installed was a 4-stall barn and currently we are proposing 7 additional barn stalls for a total of 11 stalls out of the original 20 which were previously approved. A view of the amended layout plan was provided noting a 2500 sq. ft. barn added onto the existing facility, utilizing the existing flow of traffic. No storm water impacts to site. This is a site plan amendment. The proposed project was considered during the SEQRA evaluation as part of the 2014 project. No further SEQRA evaluation or

determination is required. There are no storm water impacts to the site or the wetlands resulting from soil erosion because of grading for the site preparation. No additional parking is requested or required.

Mark Torpey, Chair, questioned staff regarding SEQRA.

Susan Barden, Principal Planner, stated this was contemplated when the project was originally presented to the Board in 2014. It is consistent with the negative declaration issued at that time. No further evaluation would be required.

Mark Torpey, Chair asked if there was any further questions or comments from the Board. None heard.

Jason Doty made a motion in the matter of the application for 63 Henning Road Site Plan Review, 63 Henning Road, for a proposed horse barn expansion in the Rural Residential (RR) District be approved as submitted and shown this evening. Ruth Horton seconded the motion.

Mark Torpey, Chair, asked if there was any further discussion. None heard.

VOTE:

Mark Torpey, Chair, in favor; Ruth Horton, in favor; Kerry Mayo, in favor; Jason Doty, in favor; Chuck Marshall, in favor

MOTION PASSES: 5-0

4. **#20211132 68 WEIBEL AVENUE, SPECIAL USE PERMIT**, 68 Weibel Avenue, Renewable Special Use Permit to maintain existing non-residential (office, storage, driving range) land uses in the Transect-4 (T-4) District.
5. **#2021129 68 WEIBEL AVENUE SITE PLA REVIEW**, 68 Weibel Avenue, Site Plan review to maintain existing property as improved in the Transect-4 (T-4) District.

Mark Torpey, Chair, stated what is before the Board are two applications. A renewable Special Use Permit and Site Plan Review. The applicant has requested for a 5-year Renewable Special Use Permit. The public hearing has been noticed.

PUBLIC HEARING:

Mark Torpey, Chair opened the public hearing at 7:20 P.M.

Mark Torpey, Chair, stated the applicant is requesting to maintain and operate the existing uses at the site which currently entails a 900 sq ft. office building, two storage buildings, 12,500 sq. ft. office building in the rear, 1 ½ acre boat storage area, 150 sq ft. clubhouse and a driving range. We will provide the applicant an opportunity to walk through the project and provide background information to Board members who are unfamiliar with the project. The Planning Board issued a denial for a permanent Special Use Permit on January 16, 2020. The Chair questioned staff if anything with the Special Use Permit changed since presented in January 2020.

Susan Barden, Principal Planner, stated she believes it is the same application for the same uses in the same buildings. The improvement which are being proposed with this application are streetscape improvements which appear on the site plan consisting of installation of a sidewalk, streetlights, and two red Maple Street trees. That was also part of the plan in 2019-2020.

The Chair reviewed the three types of Special Use Permits available, one permanent, one renewable and one temporary.

Applicant: Gary Stone

Agent: Greg Teresi, Attorney

Mr. Teresi stated this is a byproduct of a Code Enforcement action. Mr. Stone has owned the property since the 1960's. Mr. Teresi provided a history of the property. The request for a 5-year Special Use Permit is the applicant's vision to find a developer to develop the entire property. Currently we have three tenants in 12,000 sq. ft. building which are good Saratoga businesses. A visual of the proposed site was provided to the Board. Connectivity on the Weibel Avenue side of the property, sidewalk, streetlights, and street trees. Mr. Teresi provided an overview of the buildings on the site and their location and their uses. The paramount concern for his client is to have authorization from the city to have those existing tenants be allowed to stay.

Mark Torpey, Chair, questioned the applicant's agent as to why request a five-year Special Use Permit?

Mr. Teresi stated they wanted to be reasonable. Mr. Stone owns 75 acres in total. This is just a small block of that parcel. We wanted to bring an application before the Board which is palatable to the Board and not something which would be an endless use.

Mr. Stone stated there is a great deal of activity on the driving range. People like this feature and tenants on both sides of the property, and we were hoping to get it going.

Mark Torpey, Chair, asked if there were any questions or comments from the Board.

Kerry Mayo questioned what was changed at the site since the applicant last appeared before the Board. We reviewed this application and denied it. What have you changed on the site to make this more amenable to the Board?

Mr. Teresi stated the biggest change is the applicant previously requested a Permanent Special Use Permit and this would be a temporary. This affords us the ability to represent. At that time, we had five tenants and currently we have three tenants. Part of our good faith attempt to try to work with the city and try to bring this property into compliance. We have not filled those vacancies. We are asking for a restricted window of time for this Special Use Permit. Our goal is to keep it as it is to find the right developer who presents the right plan for the community.

Chuck Marshall questioned if the property is currently being marketed.

Mr. Teresi stated the applicant's daughter is a real estate agent and is constantly looking for developers who could manage this project.

Ruth Horton stated she is interested in the violations that were reported by the city and if there were any movement by the applicant to address any of those.

Mr. Teresi stated the violations were related to the uses. The applicant plead guilty to those violations and in conversations with the City Attorney his options were to evict all the tenants which was put on hold due to the moratorium placed by NYS during Covid. Secondly, in knowing these are Saratoga businesses, they indicated not wanting to put them on the street but to work on a plan with the Planning Board. It was their direction to request a 5-year Special Use Permit, as opposed to a Permanent Special Use Permit. Currently, there are no active violations related to this property.

Mark Torpey, Chair, questioned how this project comports with the T-4 District. In reviewing the materials, the application is it sufficient for the Board to review a project that resolves outstanding issues but is in no way in compliance with the T-4 zone and what they are asking for.

Mr. Teresi stated T-4 does allow these uses with a Special Use Permit. These are not just allowable uses, but it is our contention given the size of the property and the distances from the neighbors we are not asking for a tremendous amount of development or use along the four buildings or the driving range. We are speaking about 62 acres of land in

total. These buildings are located towards the western side of the property, but it is a large enough parcel that the impact on the surrounding properties or neighbors is negligible.

Ruth Horton stated at some point the tenants will not be able to use the property.

Mr. Teresi stated that is correct. However, a project of that magnitude would take years to complete. At least a year or two which would provide enough time to provide the tenants with enough notice to locate to another location. The previous application did involve construction of new commercial structures with parking provided. We discussed the construction of these buildings however in retrospect why invest in these structures if it does not work with the overall scheme or plan of a developer. It seemed prudent to keep what we had and limit the time frame for use and continue to market the property.

Mark Torpey, Chair, questioned if the current tenants in these buildings know that they are in a building that has no CO, or building permit approvals. Do they know the liabilities they would be incurring because of their presence in the building?

Mr. Teresi stated they are aware of the current circumstances and without the applicant being successful with a plan with this Board, they may very well have to re-locate. If the Planning Board says this is not what we want to see, we are back to Plan B which is asking these people to re-locate. As previously stated in conversations with the previous City Attorney and restrictions placed on evictions that time would be provided to these tenants to relocate. This is not the way a project is normally presented but we are trying on behalf of our tenants and the community. We are willing to make modifications with the Board.

Ruth Horton stated she would like to hear from Mark Schachner, Counsel to the Land Use Boards on what the Planning Board options are.

Mark Schachner, stated, the Boards options are not radically different than they would be even if we did not have a history. The reason the application is allowed to proceed because the application addresses outstanding violations or failures to comply with the zoning laws. Mark Schachner questioned the Chair's comment regarding if the Board is allowed to review an application that clearly does not meet the T-4 District zoning requirements. His understanding is that the T-4 zone has such a breadth of allowed uses that the proposed uses were allowed in the T-4 district. Is the right or wrong?

Mark Torpey, Chair, stated it was not about the widespread set of uses which could occur on the property in a T-4. It was all about the community character and other aspects of the Comprehensive Plan and the goals of zoning.

Mark Schachner stated there is no obligation to approve existing things, or after the fact things or the like. Attorney Teresi has acknowledged that. If the Board feels that the application is warranting approval you have that opportunity. You are not obligated to approve it any more than the previous application years ago.

Ruth Horton questioned what the ramifications would be if the Board did not approve the Special Use Permit tonight?

Mark Schachner stated the Board does not have to decide tonight. There was a Stipulation or a Settlement the gist of which is to allow an application such as this to move forward. There is nothing to indicate that all the uses comply. The Stipulation of Settlement did not issue Building Permits or Certificates of Occupancy. If what is proposed this evening is not approved by the Planning Board and is affirmatively denied by the Board than the city would have the opportunity to re-initiate or continue enforcement for failure to comply.

Mr. Teresi stated that is an accurate reflection. There was a plea agreement which the applicant entered which predated this attorney's involvement which notes the property come into compliance or the applicant evict all the tenants. That was slightly altered by covid. The plan presented today was the culmination of meetings with city departments to try to produce a plan that the Planning Board approves, and we can all live with.

Mark Schachner stated the applicant's attorney, Mr. Teresi is being candid saying a meeting was held, a path toward resolution was identified. Mr. Teresi did not represent, nor could he represent that the former City Attorney, planning staff or code enforcement is urging or trying to pressure the Board in approving what was proposed but they did identify a path toward resolution. If the Board approves it a resolution will be achieved but that does not mean the Board has to approve it. If the Board finds it lacking and not in compliance with the relative criteria and the Board decides to deny the proposal, then as Mr. Teresi indicated they are back into the enforcement mode.

Susan Barden, Principal Planner stated we met with Mr. Teresi and Mr. Stone, Vince DeLeonardis, City Attorney, and Jack Donnelly from Code Enforcement and me. We did layout options, Renewable Special Use Permit, Temporary Special Use Permit those being two options. The other way is removing and vacating those structures. It was not something we encouraged but an option they could pursue to come into compliance.

Mr. Teresi stated in our meeting there were no assumptions made by city officials that this was going to fly. We discussed the possibilities available to us. I did make my client aware that to end the legal bills and battles and any additional enforcement proceedings on the part of the city with the tenants, would be to look for a developer and evict the tenants. Mr. Stone indicated to the attorney if we can salvage it than we can try it. That is why we are here this evening. We realize this does not comply with the master plan for this area. That is why we are trying to place a time frame on it until we find a developer.

Mark Torpey, Chair, stated one of the biggest issues he has with this property is not so much the uses per se. The Transect zones were established to provide maximum flexibility for those uses. The overall design, layout, and the district intent the T-4's is required to adhere to with specific zoning requirements relative to block grid patterning, upper floor residential, two stories' buildings and list goes on regarding what T-4 represents. This is so far off the mark that the Chair cannot see how we can approve this request. We have tried to collaborate with the applicant to better integrate with the neighbors to the north and south by providing vehicle connectivity, pedestrian connectivity, sidewalks, and safe ways to get in and out and cross the property. Also, providing an additional means of ingress and egress from the site to take pressure off the northerly and southerly entrances and exits which is a critical criterion in the Special Use Permit. You did have the ability to collaborate with the neighbors to try to create a T-4 design more than curbing and street trees on Weibel Avenue. The Chair noted he has seen no effort to do this and does not feel he can support the application.

Mr. Teresi stated regarding the interconnectivity requirement the concern we had in conversations with city staff and our engineers was the cost from \$300,000 to \$500,000. In conversations with the applicant is we have no idea what the developer would want to see in this area and do. It is entirely possible the developer does not want to consider beginning or ending on Weibel Avenue considering the amount of traffic in this area.

Ruth Horton stated we are being asked to consider a Renewable Special Use Permit and the length of time for the permit to be in effect instead of 5 we consider 3 or 2 years versus a Temporary Special Use Permit. What is the difference? If there is truly a sincere effort to develop this property which would be an asset to the community and comport with the Comprehensive Plan that would be a good outcome.

Susan Barden, Principal Planner provided information regarding the difference between Temporary Special Use Permit and the Renewable Special Use Permit. A Temporary Special Use Permit is not renewable. It is for a specific period and then it is no longer valid. The Renewable Special Use Permit is renewable.

Mark Torpey, Chair, questioned if the applicant would be amenable to a Temporary Special Use Permit.

Mr. Teresi stated their preference would be a Renewable Special Use Permit, however, if this were the only way the Board would consider this application to buy the tenant's time.

Mark Torpey, Chair, questioned how long the property has been actively marketed approximately 20 years?

Mr. Stone stated not 20 but about 10-15 years. This was not a T-4 zone at that time. When the zoning change was enacted, it made the zoning designation different.

Mark Torpey, Chair, questioned if it would be easier if these buildings were demolished.

Mr. Teresi stated he has advised his client to evict all the tenants and then the site would comply and then the buildings could be demolished. However, if this is done, the property could then lie dormant until a developer purchased the property.

Mr. Stone stated that he receives dozens of calls questioning if the driving range will be open. It is really a business that runs itself. It is really an honor system type of business.

Discussion ensued among the Board regarding conflicting messages. On one hand the applicant is looking to maintain the three tenants currently housed in these buildings and open the driving range business.

Ruth Horton questioned if the Board issued either a Temporary or Renewable Special Use Permit would the applicant reopen the driving range?

Mr. Teresi stated if it is property permitted absolutely. If the Board says no driving range, then it would not be opened.

Jason Doty stated from his perspective the applicant had five tenants, two have left, due to non-compliance. The other three remain knowing the applicant is out of compliance due to lack of a CO for those buildings. These businesses have operated there for years operating with major liabilities. The applicant is trying to come into compliance because this is an avenue to circumvent compliance with the approval of a Special Use Permit. Considering the comments from the Chair, looking at these Special Uses in the T-4 district and our responsibility to consider if they do meet the Comprehensive Plan and the heart of this district. He does not feel it does and made a motion in the matter of the 68 Weibel Avenue Special Use Permit, 68 Weibel Avenue the application be denied.

Mr. Teresi asked prior to the motion being denied, he requested the Board provide the applicant an opportunity to revisit the proposed uses, speak to the tenants, and obtain their input and return before this Board with a revised plan that does not encompass all the proposed uses if that is agreeable. Perhaps limit the time frame proposed.

Mark Torpey, Chair, asked if there were any comments from the Board.

Chuck Marshall stated he does not see the property actively listed on the MLS, outside of the signage on Louden Road. Secondly, his concern is that the property parcel 11.2 housing the building in violation extends to a secondary parcel 11.1 which would extend the area of the Special Use Permit. My suggestion would be to limit the uses to only the occupied tenant space. I would not be supportive of the golf course or any of the unoccupied spaces. Lastly, the second step to this is the site plan. While I understand the overall site plan does not conform to T-4. Visibility is the street frontage along Weibel. His suggestion would be that those improvements would have to be required separate from the Special Use Permit application. The Weibel Avenue side improvements would be made. He does not feel that the Special Use Permit should be opened to all elements of the proposed uses.

Mr. Teresi clarified if the Board were to entertain the Special Use Permit a condition of that Permit would be that those improvements on the Weibel Avenue frontage be a part of that approval.

Chuck Marshall stated that is the secondary portion of the application the Site Plan. While the overall site plan does not conform to the T-4 or visibility is the street frontage along Weibel. His desire would be that those improvements would have to be required separate from the Special Use Permit.

Mark Schachner stated, regardless of the way the applicant is presenting this evening which is very non-confrontational manner. If the Board is to proceed with Jason's motion than he advises in the strongest terms and is not comfortable

with the motion to deny the application. The motion is based on discussion. To protecting the Board in terms of legal vulnerability if you to proceed in that direction the motion should be made not with a single line but with reasoning stated in the motion. The second portion of his recommendation is that the Board does not deny many applications. If you are to deny an application who has obtained counsel and the like, we always advise composing a draft motion prepared in advance of the decision, that would mean not having that decision made this evening. We never suggest for the purpose of delay.

Jason Doty spoke regarding the reasoning for his motion.

Ruth Horton stated she feels the Board should table the motion but put a time limit requirement on the return to the Board 90 days. Then we can take the matter up at that time.

Mark Schachner questioned staff regarding the prior appearance of the application before the Board and the reasoning as to why their return appearance was given a time frame due to a pending enforcement action. Are we in a situation from the City's standpoint where we want this proceed quickly?

Susan Barden, Principal Planner, stated she is unsure.

Mark Torpey, Chair, stated he believes there was a time constraint proposed due to an active lawsuit.

Mr. Teresi stated they do not need 90 days. We have been dealing with this and dealing with the city for over a year now. If the Board is comfortable with a 45- or 60-days return date. The opportunity to return is appreciated.

Chuck Marshall stated the Stipulation of Agreement called for the application to made within 30 days. There was a 90-day period for the other elements of the Stipulation. He feels a quicker return before the Board would be appropriate since he feels these are not lengthy decisions to be made. The uses would be permitted via Special Use Permit but are the structures subsequently be subject to Code Enforcement Review. Would they be required to come under a type of building code compliance.

Susan Barden, Principal Planner, stated, Special Use Permit, Site Plan Review, Architectural Review, for those existing buildings, building permits, necessary inspections, and COs for those buildings, yes would all need to happen to bring the property into compliance.

Mr. Teresi stated those conversations were held with Jack Donnelly with respect to building permits, architectural plans, and building plans.

Mark Torpey, Chair, stated the Board is leaning toward tabling this application. Suggestions from counsel have been helpful. The Chair stated the applicant can return within 45 days halfway between the two. The Chair stated as Chuck suggested looking at the existing occupied space only for Special Use not entertaining any new uses and no additional tenants. The applicant returns before the Board with a request, something that is palatable from a temporary standpoint then just a renewable and what would be appropriate. The Board seemed inclined to look at a temporary as an option. Lastly, being able to connect to the other properties is critically important to gear more towards what the T-4 District is all about. Whether it is pedestrian connectivity and sidewalks or vehicular. The buyer may not wish to look at this but any potential buyer when before this Board we will be asking for connectivity. If you choose not to consider this the Chair cannot look at the project as comporting sufficiently to the T-4 zoning district and consistent with the Comprehensive Plan.

Mr. Teresi questioned if the Board is limiting the application to the tenants currently existing in the 12, 500 sq. ft. building. Is there any consideration for the boat storage which is an active business in the community? It is an allowable use under a Special Use Permit. He does not want to clear up one issue and open another. This is just for clarification. Currently it is not in compliance without a Special Use Permit.

Mark Torpey, Chair, stated both parcel numbers are included in the application information.

Susan Barden, Principal Planner questioned if its id appropriate to seek additional uses or would the application be limited to the areas of non-conformance to address the existing violations.

Mark Schachner stated the application is for whatever the application is for. It would be unusual for the application to state the applicant is allowed to apply to cure the violations but not to also apply for further modifications. The application is for whatever the application is for.

Susan Barden, Principal Planner stated the application does note both parcels, 11.1 and 11.2.

Mark Torpey, Chair, stated what I would like to do is work through the language of a decision as Counsel suggested and return having more thoughtfully worked through what was discussed this evening and prepare that outline draft which is more organized to work through as a potential starting point for a decision when the applicant returns.

Mark Schachner stated the applicant has made a good faith effort to massage the proposal. The Board is amenable to allowing the applicant this opportunity. It is a rea. able Board position. It will surprise me if the applicant returns without a zero change.

Mark Torpey, Chair, stated based on what the applicant has appeared with this evening, with no changes to what was previously presented when this Special Use Permit was approved two years ago. I am looking at past precedent. The Board will draft a more organized starting point.

Jason Doty stated he withdraws his motion for denial of this application. Jason Doty then made a motion in the matter of 68 Weibel Avenue Special Use Permit, 68 Weibel Avenue, to table the application with the conditions that we have just discussed. Ruth Horton seconded the motion.

Mark Torpey, Chair, asked if there was any further discussion. None heard.

VOTE:

Mark Torpey, Chair, in favor; Ruth Horton, in favor; Kerry Mayo, in favor; Jason Doty, in favor; Chuck Marshall, in favor

MOTION PASSES: 5-0

Mark Torpey, Chair thanked the applicant and asked the applicant to return with something that is beneficial for the applicant as well as the city.

APPROVAL OF MEETING MINUTES:

Jason Doty made a motion to approve the minutes of the December 9, 2021, Planning Board Meeting. Kerry Mayo seconded the motion.

VOTE:

Mark Torpey, Chair, in favor; Ruth Horton, in favor; Kerry Mayo, in favor; Jason Doty, in favor; Chuck Marshall, abstained

MOTION PASSES: 4-0-1

UPCOMING MEETINGS:

Planning Board Workshop, Thursday, January 20, 2022, at 5:00 P.M.

Planning Board Meeting, Thursday, January 27, 2022, at 6:00 PM.

MOTION TO ADJOURN:

There being no further business to discuss Mark Torpey, Chair adjourned the meeting at 8:37 P.M.

Respectfully submitted,

Diane M. Buzanowski
Recording Secretary

Approved: March 29, 2022