

PLANNING & DEVELOPMENT COMMITTEE
MINUTES

September 16, 2014, 6:00 pm

Council Board Room
One Batavia City Centre, Batavia NY

Members present: *Edward Jones, Alfred McGinnis, Duane Preston, Paul Viele, Jeffrey Scott*

Others present: *Councilperson Kathy Briggs, Mike Barrett, Donna Barrett, Joanne Beck, Kip Finley, Don Fryling, Mike Hyman, Mitchell McLaughlin, Jett Mehta, Mike Mikolajczyk, James Owen, Howard Owens, Yvonne Peck, Steve Pum, John Roach, Jane Scott, Nann Zorn, Meg Chilano – Recording Secretary, Doug Randall – Code Enforcement Officer*

I. Roll Call

Roll call of the members was conducted. Five members were present and Chairman Jones declared a quorum.

II. Call to order

Mr. Jones called the meeting to order at 6:01 pm.

III. Approval of minutes

Paul Viele made a motion to approve the August 26, 2014 minutes.

Seconded by: *Duane Preston*

Votes in favor: 4 (Edward Jones, Alfred McGinnis, Duane Preston, Paul Viele)

Votes opposed: 0

Votes abstained: 1 (Jeffrey Scott)

Result: Approval of August 26, 2014 minutes.

IV. Proposals

- A. Make exterior changes to this commercial building located in the BID by installing new metal and vinyl siding

Address: *99 Jackson Street*

Applicant: Vincent Adams (contractor)

- Actions:
1. Review application
 2. Public hearing
 3. Discussion and action by the board

1. Review Application

The applicant was not present to answer questions from the board.

Motion by: *Paul Viele*

“I move to table the application.”

Seconded by: *Alfred McGinnis*

Votes in favor: 5 (Edward Jones, Alfred McGinnis, Duane Preston, Jeffrey Scott, Paul Viele)

Votes opposed: 0

Votes abstained: 0

Result: Application tabled.

B. Install fence and make exterior changes to this commercial building located in the BID

Address: *150 Washington Avenue*

Applicant: Todd Thomson (contractor)

- Actions:
1. Review of application
 2. Public hearing
 3. Discussion and action by the board

1. Review of Application

Mike Hyman, Vice President/Senior Construction Manager for M & T Bank, was present in place of contractor Todd Thomson, to describe the project. Mr. Hyman explained that the bank's drive-through is located on this property. Currently, there are two windows and the bank would like to remove one of the windows and install an ATM. He directed the board to the photo accompanying the application. Mr. Hyman said that the architect recommended that the bank also install a fence along the property line to the east to prevent the reflection of light. He pointed out that the Tonawanda Valley Credit Union and First Niagara Bank also make use of one window and an ATM in their drive-throughs. Mr. Hyman said that they would upgrade the lights underneath the canopy to LED. Mr. Jones asked if it will still be a drive through and Mr. Hyman replied that it will. He explained that the ATM will be a new full function one that can accept deposits as well as make withdrawals. He said that a person will still be operating the second window. Mr. Jones asked about the construction material of the fence. Mr. Hyman answered that it will be board on board and will match the décor of the building.

2. Public Hearing

Mr. Jones opened the public hearing at 6:10 pm. There were no calls or correspondence and no one came to speak. Mr. Jones moved to close the public hearing at 6:11 pm. Mr. Scott seconded. All voted in favor.

3. Discussion and Action by the Board

Mr. McGinnis commented that the fence is a good idea because it will diffuse the light from the drive thru. The other board members agreed.

Motion by: *Duane Preston*

“I move that the proposed exterior changes to the commercial building at 150 Washington Avenue, as presented to the City of Batavia Planning & Development Committee on September 16, 2014 be approved.”

Seconded by: *Paul Viele*

Votes in favor: 5 (Edward Jones, Alfred McGinnis, Duane Preston, Jeffrey Scott, Paul Viele)

Votes opposed: 0

Votes abstained: 0

Result: Approval of exterior changes.

- C. Subdivide existing parcel into two separate parcels and construct an approximately 1,700 sq.’ Dunkin Donuts restaurant with a drive-through window on the newly created parcel

Address: *401-409 West Main Street*

Applicant: Kip Finley (agent for the owner)

- Actions:
1. Remove proposal from the table
 2. Review application
 3. Public hearing
 4. SEQR
 5. Discussion and action by the board

1. Remove Proposal from Table

Mr. Jones removed the proposal from the table at 6:13 pm.

2. Review of Application

Mr. Jones stated that the project first came before the Planning & Development Committee (PDC) in June and that the PDC had tabled it because of the concerns the board had regarding traffic and site layout, and the fact that they had requested a traffic study and modification of the site plan. Mr. Jones explained that the proposed development for the construction of a 1,700 sq.’ Dunkin Donuts restaurant would involve subdividing the property at the corner of West Main Street and River Street currently occupied by Five Star Bank. He said that there are a number of actions required including a special use permit for a drive-through restaurant, special sign permits, and the project will also require an Area Variance which would be decided by the Zoning Board of Appeals (ZBA). Mr. Jones

explained that the PDC is charged with the initial review and making recommendations to the ZBA. Based on the location, the project was referred to the Genesee County Planning Board (GCPB). Mr. Jones reported that the GCPB had taken no action. (See attached.) Mr. Jones turned the meeting over to the applicants so they could explain the modifications made since the original meeting. Jett Mehta introduced himself as the President of Indus Hospitality. He was accompanied by Kip Finley, Development Manager of Indus Hospitality, Mitch McLaughlin, Senior Vice President of Five Star Bank, Mike Mikolajczyk, who Mr. Mehta said will be the owner of the new Dunkin Donuts, Steve Pum, Site Engineer from Fitzgerald Engineering, and Yvonne Peck and Jane Scott, both Batavia Five Star Bank Managers.

Steve Pum was the first to speak about the project. He said that the current site plan incorporated the modifications requested by the PDC at the June meeting. The first modification addressed the issue of ingress/egress onto West Main Street, which in the original plans had consisted of a stop sign allowing customers to exit onto West Main. He said that to alleviate that stress, they created a right in/right out situation on Main Street.

The second issue Mr. Pum addressed was the length of the stacking queue. He stated that even though the PDC was concerned that the queue was too short and the engineers had created a longer one, only 6-8 cars was a typical amount for Dunkin Donuts drive-throughs. Mr. Mehta said that his company operates 19 Dunkin Donuts restaurants in the Rochester area so he has a lot of experience, and 20 cars in a queue is unheard of. Mr. Finley had a diagram on which he indicated where 6 cars would line up in the queue, and showed how the spot where six cars ended would create an escape route if someone needed to get out of the queue. Mr. Finley said that they rearranged the plan to show it was possible to fit 20 cars in the queue even though typically they do not have that many cars in the queue. He said, therefor, access to parking and Five Star Bank's drive-through would remain clear.

The third issue raised was cross access onto the project site by Mike Barrett's property. Mr. Finley said that after conferring with Mr. Barrett's attorney, he can find no easement on record which requires honoring. Mr. Finley said the only easement they are honoring is the one for three parking spaces at the front of Batavia Marine, Mr. Barrett's store.

The fourth concern was that the driveway will be less than 20' from the property line. In order to bring the drive around to get the drive-through on the correct side and create a parking area, they had to bring the drive to within 3' of the property line. Mr. Finley pointed out that it is on the agenda for the ZBA to obtain a Variance.

The next point was a request for more parking spaces. Batavia Municipal Code requires 68 parking spaces. This plan provides 26. Mr. Finley said that this issue is also scheduled to go before the ZBA. Mr. Finley said that even though the GCPB made no recommendations, he had a conversation with GCPB chairman, Felipe Oltramari, following the meeting. Mr. Finley related that Mr. Oltramari told him that the section of the City's code under Special Use Permits for drive ins and drive throughs has a part that requires more parking spots than

a business would normally have. Mr. Finley said that what they planned for on this project is what is under the regular restaurant code for parking which amounts to one space for every 100 sq.' of leasable area. Mr. Finley explained that he had incorrectly indicated there would be 30 spaces when in fact there were 26. He said that the entire parcel, combined with Five Star with whom Dunkin Donuts will share the access and the parking, affords 56 parking spaces. Mr. Finley said that he has discussed peak hour usage with Five Star and that there is only one hour on Saturday morning when the two businesses will have peak times coincide, but he is sure they will not draw enough people to fill 56 spaces. He said that he intends to go before the ZBA to ask them to consider his rationale for using the code for regular restaurants rather than the special use one. Mr. Jones asked Mr. Finley if he had discussed possible overflow with Five Star Bank. Mr. Finley said that there are a number of easements between the two parcels for traffic, ingress and egress, driveways, and directional signs that will need to be worked out. Mr. Jones said that he would not like to see a situation in the future where the bank complained because restaurant customers were parking in Five Star spaces. Mr. Finley responded that the issue could probably best be addressed by a Five Star representative.

Mr. McLaughlin, Senior Vice President of Five Star Bank in charge of facilities, explained that the amount of parking needed for customers and employees would generally not be expected to exceed 20 spaces, and he pointed out that there is plenty of parking behind the bank. He said that this generation of customers are more mobile and tend not to visit the bank branches very frequently. Mr. Viele asked about congestion in Five Star's queue and Mr. McLaughlin answered that one of Dunkin Donuts' peak times occurs before the bank even opens, and that the bank does not expect to have problems. Mr. Viele asked Mr. Pum what induced them to choose this spot for the Dunkin Donuts location. Mr. Pum responded that it was an excellent choice and they could not find a better spot. Mr. Viele asked Mr. Pum if he lives in Batavia and he replied that he does not. Mr. Pum returned to the last modification requested by the PDC, which was the architectural drawings. At this time the board examined the building elevations which had been provided for their perusal.

Mr. Jones pointed out that the height of the two towers where the sign will go needs to be changed prior to appearing before the ZBA. Mr. Finley said they would ask for a Variance. Mr. Jones reviewed the Sign Permits. One was for a sign on a post. Mr. Randall informed Mr. Jones that Mr. Finley had requested several signs but that the list was incomplete. Mr. Randall explained that they are allowed one sign on a pole and one wall sign per each street frontage, which in this case is one, so any other signs require Special Sign Permits. Mr. Finley said they had applied for seven signs, but Mr. Randall indicated that some had been left out, such as the Dunkin Donuts symbol and the menu board, which technically are considered signs. Mr. Jones spent a few moments sorting through the sign permits.

Mr. McGinnis asked how Dunkin Donuts plans to handle snow removal. Mr. Pum indicated a couple of areas on the diagram where they intend to deposit plowed snow, one of which consists of a portion of undeveloped property that backs up to the Tonawanda Creek.

Mr. Scott asked for an explanation of the drive-through pattern. Mr. Finley demonstrated on the diagram how the traffic would flow and where it would exit. Mr. Viele asked how the cars would get out if they jammed up and Mr. Finley said it would not happen. He said that it only looks like it could happen because they show on the plans that theoretically 20 cars could fit in the queue, but because in reality they did not expect to have 20 cars in the queue, it would not be a concern.

Mr. Preston said that the first proposal showed that 95% of traffic would exit onto River Street because that is how the flow went, but the new plan looks as though traffic is being pushed more toward West Main which is actually worse than the first plan. He said that though the new plan addresses back-up traffic, it is now forcing traffic to exit onto Main Street. Mr. Finley said that the first plan, from their perspective, was perfectly operational based on what they know drive-throughs to experience, but because the board said they wanted a longer stacking queue the engineers changed the plan and re-designed the whole site to show that it could physically fit 20 cars even though it will never have 20 cars. Mr. Viele stated that though Mr. Finley's group may have 19 Dunkin Donuts they do not live in Batavia. Mr. Finley responded that he lives eight miles away and knows what it is like to live in this area. He said that they could go back to the original plan or they could work with this plan. Dunkin Donuts could be flexible because they now have two plans that work.

Mr. McGinnis referred to the traffic study and asked if once the business becomes functional Mr. Finley would expect to see the accident statistics fulfilled. Mr. Finley answered that he did not because by designing the turns as right in/right out half of the turning units have been eliminated. He said that pulling out and heading west on Main Street would be one of the most dangerous moves and his design bypasses that situation. He said that it also helps that this area is low speed. Mr. Jones asked Mr. Finley to discuss the results of the traffic study and what he believes will be the impact of the project in the area. Mr. Finley responded that his company looks for high traffic areas. He said that the GCPB told him that Mr. Mikolajczyk's Dunkin Donuts at Oak and Main has one of the highest traffic volumes in the county. Mr. Finley stated that Dunkin Donuts is not a traffic generator; it captures traffic, so it needs to be located in an area with a high traffic volume. He said that Dunkin Donuts attracts impulse buyers, someone on their way to or from work who suddenly decides they want a cup of coffee or donut or sandwich.

Mr. McGinnis asked for an estimate of the amount of time a person spends at Dunkin Donuts. Mr. Mehta replied that depending on what someone orders, a person spends 1-2 minutes on average, so 90 seconds is a safe estimate. He said that people move through the drive-through fairly quickly because many of them just want coffee and it is frequently a single driver on the way to work. Mr. Finley said that at this pace 50-60 cars move through

the drive-through in an hour and that is about the maximum number a single lane drive-through like this one can physically handle. Mr. Mehta said that this Dunkin Donuts will complement Mr. Mikolajczyk's Dunkin Donuts because it is located at the other end of town and the other side of the street. Mr. Finley said that in terms of traffic, the load will be lightened and there will be fewer people trying to turn around, go around medians, and execute other dangerous moves, and people who want a drive through can come to this one.

3. Public Hearing

Mr. Jones opened the public hearing at 6:41 pm. The first person to speak was Don Fryling of 6 Redfield Parkway. Mr. Fryling said that he is concerned about long lines backing up onto Main Street, making traffic in an already congested area worse. He related a situation that occurred in 1990 when a small project was proposed at the corner of Redfield Parkway and Main Street. The GCPB disapproved of the project saying that "it would make traffic in an already congested area worse." Mr. Fryling pointed out that the project was proposed 26 years ago and the traffic is even worse today than it was back then. Mr. Fryling stated that when he tries to make a left onto Redfield, he frequently runs head on into cars turning into Batavia Marine and Taco Bell. He said that 70-75 cars per hour turning into Dunkin Donuts could make events like this an everyday occurrence.

Mr. Fryling stated that many people have said that they do not oppose another Dunkin Donuts but they do oppose the location. Mr. Fryling proposed an alternative location, such as, the old Sugar Creek site. Mr. Fryling stated that the Department of Transportation has designated Redfield Parkway a "culturally significant" street and that to put a pink donut shop at the end of the street would be "a travesty." Mr. Fryling referred to the 68 parking spaces required by code and said that Dunkin Donuts is trying to move onto a small piece of land that can only fit one third of the required spaces. Mr. Fryling commented that because Dunkin Donuts says that is the amount needed, it does not make it so.

Mr. Fryling said that he did not think the company should be conducting its own traffic study. Mr. Fryling mentioned Chief of Police Heubusch's concern over possible accidents. Then he quoted County Legislator Ed DeJaniero as saying, "This is the wrong place for this business," and he quoted Councilperson Pierluigi Cipollone as saying, "This area is too congested."

The next person to speak was Councilperson Kathy Briggs, who spoke on behalf of the adjacent neighbors. She stated that though the area is not in her ward, it is a "congestion nightmare" for the residents on Redfield Parkway and she wanted to voice her opposition to the project. She said that there are times when she is on River Street and realizes she cannot make a left turn onto Main Street. She stated that she is not against the business but she believes Dunkin Donuts should try to locate a site where there is not so much traffic congestion.

Mike Barrett, owner of Batavia Marine, spoke next. He said that he has nothing against Dunkin donuts but he believes that the project is ill conceived. He questioned whether anyone had contacted the Fire Department concerning the 400-gallon propane tank at the rear of his property, and he pointed out that next door is an auto parts store which he figures houses a lot of chemicals. He said that it is difficult enough to maneuver a tractor trailer behind his store and that it would be even more difficult to drive a pumper truck back there to put out a fire. Mr. Barrett also said that he noticed a trash receptacle on the site plan drawings that he believes Dunkin Donuts will have to move because it will block access to the area along the Tonawanda that the Department of Environmental Conservation requires to be kept mowed. Mr. Barrett finished by saying that while he has nothing against the business, he still thinks they are going to have problems with the driveway, and he does not think the project will work out in this location.

Nann Zorn, from 12 River Street where she said she has lived for 57 years, spoke next. Ms. Zorn said that the majority of traffic comes from Lewiston Road directly into the right lane from where cars can turn into Sportos, The Batavia Commons Plaza, Taco Bell, or Batavia Marine, or they are anticipating a turn onto River Street. She stated that an additional stop in that area will create more driving hazards. She said that she is not opposed to the business and drinks Dunkin Donuts' coffee frequently, but that she believes this is the wrong location. She said that this location is probably the most congested area in the city, second only to Oak Street and Main. An exit onto River Street, according to Ms. Zorn, would only create additional problems. Ms. Zorn explained that hers is the first house past the bridge on River Street, and that it is common for cars to be lined up in front of her house waiting for the light, and sometimes even lined up in front of houses farther down the street from hers.

Ms. Zorn had looked over the site plan drawings previously and she observed that the configuration looks as though cars will be crossing over other cars entering the queue. She expressed her confusion over what looked like a loop in the queue that has traffic exiting in both an easterly and southerly direction. She said that she is concerned over the idea of "capturing" traffic that drives past the restaurant and then realizes they want to get over quickly or turn around and go back. According to Ms. Zorn, a similar situation already occurs with traffic at Ellicott and Main at the current Dunkin Donuts.

Another issue for Ms. Zorn is the possibility of customers cutting through the Five Star parking lot to get to Dunkin Donuts. Her concern is that the turn into Five Star is very close to the intersection and the site of many near accidents and that it could become more dangerous with customers trying to use it to get to Dunkin Donuts. Ms. Zorn used the example of the lengthy lines at Tim Horton's as an argument against the assertion that the normal length of the queue at Dunkin Donuts will only be 6-8 cars long. She agreed with Mr. Barrett that trying to squeeze so much into a small area will create not only navigation problems, but fire hazards, as well. She added that Dunkin Donuts' plan for extensive landscaping, while commendable, is not a substitute for a poor design.

John Roach, of 19 Redfield Parkway, started by saying that he had nothing against the business but that he thought right in/right out was a bad idea. Mr. Roach pointed out that if he were traveling west on Main Street and was “captured” by Dunkin Donuts, he would have to make a U-turn in order to get in. He said that other people who are “captured” would be doing the same thing. Mr. Roach explained that people being “captured” are likely traveling on Main Street and unlikely to know about River Street. He argued that those who know River Street are likely planning to go to Dunkin Donuts for their morning coffee. He said that the same thing is true of Tim Horton’s; people plan to go to a particular place to get their coffee and he can easily envision more than 6-8 cars in the queue. Mr. Roach also said that he has observed cars sitting through 2-3 light changes at the corner of River Street, a situation he believes would worsen with the advent of Dunkin Donuts.

The next speaker was James Owen, 2 Redfield Parkway. Mr. Owen stated that they love Dunkin donuts but they do not need it in their side yard. He said that it is bad enough with the lights from the race track and the additional lights from Dunkin Donuts’ signs could affect their quality of life. According to Mr. Owen, the track already creates problems getting out from Redfield into traffic, and Dunkin Donuts would only increase the burden. Mr. Owen also said that even though the plan calls for cars to exit onto Main Street, people do not always follow the rules. He believes that people will sneak into and out of Dunkin Donuts going the wrong way and create additional hazards.

Considering Five Star an adjacent neighbor, Mr. Jones asked a representative from the bank to address the PDC. Mitch McLaughlin introduced himself as Vice President in charge of facilities. He pointed out that he is senior management and that he has worked for Five Star for 33 years. Mr. McLaughlin said that the bank sees being next to Dunkin Donuts as a benefit. He explained that to be positioned in front of Wegman’s, Dunkin Donuts, or Tim Horton’s is an advantage for the bank. According to Mr. McLaughlin, it is in the nature of banking right now for branches to be shrinking and traffic to be shrinking, so he knows the bank will not be as busy tomorrow as it is today. Even if the bank’s site is cut in half, it will still be sufficient to service their customers. He believes that Dunkin Donuts’ design for the drive-through makes traffic flow to the bank’s ATM much better.

Mr. Jones then asked for the possible future franchise owner, Mike Mikolajczyk, to speak. Mr. Mikolajczyk informed the PDC that he has been the franchise owner of the current Dunkin Donuts for 33 years. He said that the number one guest complaint is that there is no drive-through. According to Mr. Mikolajczyk, this is an opportunity to provide a service to the community.

Mr. Randall had received an email from Rev. John and Mrs. Mary Hatch, which Mr. Jones read into the minutes. The Hatches wished to go on record in opposition to the project. This email is an addition to the correspondence from the previous meeting in June concerning Dunkin Donuts. (See attached.) Mr. Jones moved to close the public hearing at 7:02 pm. Mr. Scott seconded. All voted in favor.

4 & 5. SEQR/Discussion and Action by the Board

Mr. Jones said that the PDC would begin their discussion and that they need to do SEQR. They also need to vote on a minor subdivision, site plan drawings, and then look at the Special Sign Permits and Special Use Permit. Mr. Jones said that Dunkin Donuts had addressed some of the issues the PDC brought up at the previous meeting, such as ingress, but he acknowledged some confusion on his part, as well as, on the part of the public, about how the driveways work. He wanted to clarify that you would still be able to pull in from Main Street from either direction, but if you miss River Street you cannot pull in; you would have to turn around. Mr. Finley used the diagram to show the flow of traffic. Mr. Jones commented that it is a good thing left turns are not allowed. Mr. Finley pointed out that by having right in/right out, opposing traffic is eliminated. Mr. Jones asked about peak flow and Mr. Mehta responded that they anticipated between 45 and 50 cars per hour using the drive-through.

Mr. Jones directed a question to Mr. Randall regarding needing a variance for the drive-through being too close to the property line. Mr. Randall said they do not because the drive-through is a drive lane rather than a drive way. Mr. Randall said they would need a variance for the eastern driveway being too close to the property line at Main Street, which would result following the subdivision of the parcel. Mr. Randall pointed out that the code was intended to address the volume of traffic.

Mr. McGinnis expressed concern about the proximity of the propane tank on Mr. Barrett's property. Mr. Randall stated that it meets all of the fire safety access requirements. Mr. Jones asked if there were any other comments from the board before they moved on to SEQR. Mr. Viele made a motion.

Motion by: *Paul Viele*

"I'd like to make a motion to disapprove the project for the congestion and the disruption of the lives of the people on Redfield and River Street." *Edward Jones* clarified for Doug Randall, who had not heard the motion, **"It's a motion to disapprove the site plan."**

Seconded by: *Alfred McGinnis*

Votes in favor: 5 (Edward Jones, Alfred McGinnis, Duane Preston, Jeffrey Scott, Paul Viele)

Votes opposed: 0

Votes abstained: 0

Result: Disapproval of the site plan drawings.

V. Setting of Next Meeting: October 21, 2014

VI. Adjournment

Mr. Jones made a motion to close the meeting at 7:13 pm. Mr. Viele seconded. All voted in favor.

Respectfully submitted,

Meg Chilano