

APPROVED

LAKE GEORGE VILLAGE JANUARY 14, 2009 PLANNING BOARD MINUTES

Board Members present:

Robert Mastrantoni, Dan Garay, Patricia Dow.

Others present:

Doug Frost (Code Enforcer), Carol Sullivan (Secretary).

Chairman Mastrantoni called the meeting to order a 6:00 PM.

ZONING ISSUES/CHANGES

Deck/outdoor dining moratorium

- The board reviewed the Mayor's memo dated 1/14/09 (attached as Exhibit 1) regarding the Village Trustees discussion on changes for decks/outdoor dining.
- Carol reminded the board there will be a joint meeting with the Planning Board members and Village Trustees to discuss this issue. No date has been set yet.
 - Patricia indicated she wouldn't be available from Feb 17 – 24.
- The board discussed the definitions for a full service restaurant and a fast food restaurant. In today's world where food can be quickly prepared there doesn't seem to be much difference. Doug also pointed out the Code doesn't differentiate between a restaurant that serves alcohol and one that does not. Carol added that in a conversation with Atty. Mark Schachner he indicated if a motion is detailed and explicitly states no alcohol will be served then it is that motion that prevails. Doug mentioned this would work for recently approved applications but we have some food service establishments who don't currently serve alcohol and may change to serving alcohol and currently this wouldn't be viewed as a change of use. We don't define restaurants as those who serve alcohol and those who do not. This may result in having to define change of use.
- The board agreed the idea is not to prohibit the serving of alcohol but rather if someone is changing the use the planning board can review that change of use.
- The board discussed the idea of not allowing a bar on an outside deck; alcohol can be served and consumed on an outdoor deck but there can't be a bar on an outside deck (i.e. Lobster Pot, Duffys – upstairs, DJ's).
- The board discussed prohibiting the construction of outside bars that are visible from or located on a public right of way. They agreed that a bar could be visible for some distance but would not necessarily be located on a public right of way. Ultimately the board agreed to "adjacent to" a public right of way and this should include backstreets and the lakefront walkway. The board suggested prohibiting bars from being located adjacent to a public right of way.
- The board discussed this new law affecting only new businesses and the fact that it would not be retroactive to existing businesses; this new law shouldn't make existing businesses/building nonconforming.
- Patricia pointed out we currently do not have a definition for bar. Currently "bar" refers you to the definition of "tavern". A definition will be needed for outside bars. Patricia suggested - any establishment primarily for the purpose of serving alcohol by the drink to your customers (not general public). Could also use the "tavern" definition excluding the "general public and food portions.
- The board discussed the possibility of imposing setback requirements and how on the ground level it would be different from a sidewalk café. Zero setback on ground level and 10 foot setback on second level and above.

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- The board discussed the terms “elevated from ground level” – does this include patios?
- The board discussed “bar” establishments that already have decks without a setback – Christies, Neptune’s, Shepard’s Cove. Neptune’s is level with the lake walk while the others are built up. Not having a setback on ground level could be an issue. Maybe there should be a different setback for bars/taverns. How can a distinction be made between taverns, restaurants, sidewalk cafes and the like? They all have some sort of food service.
- In the dimensional table for the commercial and commercial mixed use zones the front yard setback is zero. A new setback for decks, patios or bars/taverns would have to be referenced in the dimensional table. A building without a deck or patio can have a zero setback but if a building is going to have a deck or patio the setback will be 5 feet.
- Patricia suggested having a definition for a bar and changing the tavern definition.
- Carol pointed out if redefined the distinction between bar, tavern and restaurant could be food service and/or what is served as many bars/taverns could be classified as a restaurant. Doug mentioned the distinction between the different establishments could be based on a percentage of food sold and then the establishment would have to prove the percentage of food sales to the percentage of liquor sales. This could become an enforcement issue and new businesses do not have any records.
- Patricia mentioned it may be too difficult to change the definitions and perhaps the easiest method would be to require a 5 foot setback on the ground floor and a 10 foot setback on the second or third floors. This would be the simplest and clearest requirement.
- Should the reference be to outdoor dining and/or drinking and not use the term deck? Does this include patios – poured cement, paving stone, etc?
- Ultimately the board agreed that setting a setback would be the clearest way to handle outdoor dining and/or drinking. Ground level/sidewalk level (first floor) should have a 5 foot setback and floors above the first floor should have a 10 foot setback. As an example: the Villager has a very high first floor for the new outdoor dining addition. Under these new rules the first floor would be set back 5 feet and the second story outdoor dining area would be setback 10 feet.
- Patricia brought up the issue of the zero side setback. The same issues could arise on the sides that are cause for concern on the front with second story outdoor areas. The board discussed this possibility. If this is in the village code then a variance could be sought if a property owner felt they couldn’t meet the requirement. The commercial mixed use and commercial resort zones have side yard setbacks at zero unless the property is adjacent to single family residence and then the setback becomes 10 feet.
- The board discussed the possibility of allowing the deck size to be a percentage of the interior seating area or of the entire interior space. The board agreed 25% of the inside service area (areas customers are using), excluding bathrooms, seems to be a reasonable size for outside dining. Setbacks would be required as well.

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- Patricia, referring to page 5 of the research compiled decks and outdoor dining of other municipalities, stated she would like to see a preface similar to the West Hartford, Ct. preface and believes it links the comprehensive plan to the zoning. Patricia feels the purpose, scope and reason behind the design should be stated first. She feels this will help people who are looking at the zoning. Most people do not read the Comprehensive Plan and the intent gets lost in the zoning.

**Town of West Hartford, CT
Chapter 177: ZONING**

§ 177-37.2. Outdoor dining.

Outdoor dining areas that are accessory to restaurants can help to establish a vibrant, unique and friendly streetscape which benefit the entire surrounding area. Outdoor dining is an asset to the Town to the extent that it adds life and color to the streetscape and encourages pedestrian activity. Central to this benefit is the open-air nature of the dining areas, which must be both visible from, and physically proximate to, public pedestrian areas. That same proximity and visibility, however, dictates that the design of the outdoor dining area, including its furniture, should complement the design of the restaurant to which it is associated and contribute to the attractiveness of the streetscape. Diversity in the design of the furniture and outdoor dining areas is encouraged, therefore, provided that they complement the overall streetscape. Finally, while the operation of outdoor dining areas should contribute to the liveliness of the streetscape, they must not be allowed to create a nuisance, either by loud music, unruly customers, or disorderly premises. Where outdoor dining areas will further these goals without unduly impacting upon adjoining businesses or residential neighborhoods, they may be permitted as an accessory use on the premises of an existing restaurant, which premises shall be construed to include the street right-of-way adjacent to the property upon which such a restaurant is located, subject to the following requirements:

- Carol pointed out zoning is linked to the Comprehensive Plan in § 220-3.

§ 220-3. Purpose.

The regulations of this chapter shall be made in accordance with the Comprehensive Master Plan for the Village, and this chapter is designed to promote the health, safety and general welfare of the community. Further, it is the purpose of this chapter to protect the property values and aesthetics of the community by channeling and directing growth, and by regulating and restricting the height, number of stories and size of buildings and other structures; the percentage of lot that may be occupied; the size of the yard, courts and other open spaces; the density of population; and the location and use of buildings, structures and land for trade, industry, residence and other purposes, to the maximum extent permissible within the proper exercise of the police power as delegated by New York State Village Law. Further, it is the purpose of this chapter to preserve the beauty and character of the Adirondack Park setting to the benefit of the community, and to retain the natural vistas of the Adirondacks and of Lake George to the benefit of the residents and visitors to the community. Further, it is the purpose of this chapter to preserve the local history and culture through proper development and to preserve green space. Further, it is the purpose of this chapter to support existing recreation, cultural and historical features.

- Doug feels the Comprehensive Plan should be used to design and create the laws the planning board works with and that it is not law and not meant to be law.
- Carol handed out the proposal for the noise assessment on the Holly Raj project. (Patricia did not receive this.) Since there are only two board members available this evening to discuss this proposal the discussion was deferred to January 21, 2009 (regular planning board meeting).

Meeting adjourned.

Respectfully submitted,
Carol Sullivan
January 21, 2008