

**APPROVED – 7/16/08**

**LAKE GEORGE VILLAGE  
JUNE 11, 2008  
SPECIAL PLANNING BOARD MEETING  
MINUTES  
VILLAGE ADMINISTRATION BUILDING – OLD POST ROAD**

**Board Members present:**

Robert Mastrantoni, Dan Garay, Margy Mannix

**Recused:** Dan Courtney, Patricia Dow

**Others present:**

Doug Frost (Code Enforcer), Carol Sullivan (Secretary), Mark Schachner (Attorney for the Planning Board), Linda Duffy, Michael Duffy, Rich Lancett, Heather Courtney, Dan Courtney, Nick Cutro, Patricia Dow

Chairman Mastrantoni called the meeting to order @ 8:15 PM and advised the members of the audience that this meeting is not a Public Hearing and that letters received will go on record (see attached exhibits).

**DUFFY'S TAVERN**

**22 AMHERST ST**

**TAX MAP # 251.14-3-37**

**SITE PLAN 0823 – RESUBMISSION FOR EAST SIDE DECK.**

- Linda addressed the Board by stating she was continuing to pursue the addition of a deck to the east side of Duffy's Tavern.
- She presented some pictures she had taken. She described the first as the view from the existing deck of the lake and the Boardwalk parking lot. She mentioned at the previous Board meeting there was a discussion that this deck would overlook the Pine Point neighborhood. She presented the second picture and described it as the alcove where they would like to put the deck this application pertains to. The third picture Linda described as the Pine Point neighborhood. She described taking the picture from a point where she had walked into the neighborhood and she could not see "Duffy's" from that point. She added if Duffy's building couldn't be seen then the deck couldn't overlook the Pine Point neighborhood. She described the 4<sup>th</sup> picture as a blow up taken 75 - 90 times closer than a normal picture would be. She submitted this picture to demonstrate that a picture submitted by Mrs. Courtney was taken to zoom into the property at Duffy's. Linda also submitted a picture taken from the Courtney driveway to demonstrate the "actual" distance.
- Linda described the last picture as an answer to a previous comment that the building wasn't going to be "structurally together". Linda mentioned she thought the comment was previously made by Margy. Margy responded that she didn't see how the construction of the entire deck was in keeping with the historical design of the building; the deck was added and the historical lines and characteristics of the building were not taken into consideration when the deck was originally built. She added that architecturally the deck doesn't match the building.
- At this point Linda asked how the roof lines of the Boardwalk are considered structurally suitable. She added that the Board "can't" tell one person something is OK and another that something is not OK; the deck at the Boardwalk (their new deck) that is right next door to these neighbors yet there was no complaint.
- Robert asked if there was something that could be done to incorporate the top and bottom of the building. Rich Lancett indicated "structurally" there wasn't much he could do. Linda suggested painting the posts white.

**LAKE GEORGE VILLAGE  
JUNE 11, 2008  
SPECIAL PLANNING BOARD MEETING  
MINUTES  
VILLAGE ADMINISTRATION BUILDING – OLD POST ROAD**

- The discussion turned to items which were brought up at the previous Planning Board meeting which Linda had indicated she would consider, such as moving the railing of the deck in one foot. Linda indicated her previous suggestions were no longer up for consideration.
- A discussion ensued regarding the length of time it has taken to seek approval of this deck and that public input has been allowed twice.
- Linda addressed the letters which were submitted from the public. She pointed out that one person wants plexi-glass and another doesn't. Linda added she doesn't want plexi-glass or wood and that she was not going to cover up the view.
- A discussion ensued regarding the noise issue between Linda and the Board. Robert, indicated the general theme in letters from the public seems to be the issue of noise and that structurally the deck meets the code and can be built. Robert asked Attny. Schachner if a "no" vote can be based on the noise ordinance. Mark Schachner advised the Board he didn't think the Board could vote no based on the Village's noise ordinance but that they should look at the Site Plan review criteria and if there is subjective criteria, such as consistency with neighborhood character and/or impact on surrounding neighborhoods that criteria can be considered. He added the only way he felt noise could be factored in as a deciding issue would be if the Board felt (in this case all 3 sitting members) that noise was a relevant consideration in any of the aspects of the criteria, such as the items he just mentioned, for Site Plan review. He explained to the Board that the noise ordinance is a separate stand alone local law and "this" Board does not have the authority to enforce the noise ordinance and it is enforced by the Code Officer and Peace Officers. The Board cannot vote "no" based on the noise ordinance but the Board can take noise into account during their Site Plan review if the Site Plan review criteria allows for it and at this point Mark indicated he would like to review the criteria as stated in the Village code. Robert asked for clarification because a major part of this project has already been approved. Mark advised that what has already been approved has been approved and this deck can be looked at as a single entity.
- Robert asked Linda for the exact size of the deck and the response was 9' 6" x 14'. Robert stated in his opinion he felt adding another 10 – 15 people on this deck would not affect the noise issue if a noise issue already exists.
- Addressing the historical/architectural issue of the building, Robert pointed out that much work has been done to this building over the years and he doubts anything is left of historical value. He added that he would like to see something uniform underneath the deck; try to tie it into the rest of the building. Mickey Duffy mentioned there has always been lattice work underneath but it had to be removed in order to do electrical work. Dan Garay suggested boxing in the 4 x 6s so they will blend into the rest of the building. Rich Lancett indicated there are plans to "pretty the place up" but right now they are in the building phase.
- Linda, turning the discussion back to noise indicated the past weekend was Americade and they did not have any problems and she wasn't aware if the neighbors had problems. She added they "man" the corner of the deck (all night) on the east and block it off so people cannot go down the stairs on the east side. She added the band plays on the other side.
- Robert asked Linda if she would reconsider closing the proposed deck at 10:30 PM as previously discussed. Linda indicated she would but ultimately the decision rests with Mickey.
- Margy asked if the building is sold would the conditions "run with" the building and the sale of the building. Atty. Schachner addressed this question by advising the Board if the application is approved with expressed conditions as part of the approval then the approval/conditions run with the land.
- At this point Robert advised the public that this meeting was not a Public Hearing and he would not hear comments from the public. A discussion ensued about public input.

**LAKE GEORGE VILLAGE  
JUNE 11, 2008  
SPECIAL PLANNING BOARD MEETING  
MINUTES  
VILLAGE ADMINISTRATION BUILDING – OLD POST ROAD**

- Dan Garay brought up the possibility of adding a partition on the north side of the proposed deck. This topic was discussed at the previous meeting.
- A discussion ensued regarding the location of the chain link fence and the property line. Linda indicated the chain link fence is currently located on the Boardwalk's property. Pointing to a picture, Linda indicated the property line is located to the west of the chain link fence and closer to the building. Robert asked how much space is between the building and the property line. Linda indicated approximately 3 feet and the fence is about 3 feet from the property line. Robert asked for Doug's input. Doug indicated he had not measured the line(s) and added there is a zero side yard setback for properties in the Commercial Mixed Use zone.
- Margy indicated she felt the neighbor's negative comments and the comments regarding the general "party atmosphere" are valid. She added vandalism, drunken behavior and rowdiness are common at all hours of the night in the Village because of tavern owners/patrons and it affects the quality of life in the neighborhoods. She felt adding another deck adds to the problem for the neighborhood.
- In response to Margy's comments Linda pointed out there is no exit to the back parking lot from this deck area.
- Robert interjected by asking Linda if the deck were to be approved would she agree to have the Planning Board look at it in a year to review any issues that may have been raised and Linda agreed.
- Margy indicated she felt the members of the Planning Board have a responsibility to help create a balance between the residents and the residents right to quiet enjoyment of life and "the interests of you" (Duffy's Tavern). A discussion ensued regarding Linda's rights as a business owner and the requirement that she comply with zoning vs. compatibility with the residents.
- The discussion turned to having a Public Hearing and Linda pointed out that was voted on at the last meeting and denied and therefore, the topic could not be voted on again. Attny. Schachner pointed out the applicant's assertion was not correct; the Board did not take any final action on whether or not to have a public hearing because the only motion made was a motion to have a public hearing and that motion failed to achieve 3 votes either for or against the motion. Mark added another motion could be made tonight for a public hearing however, the 3 vote rule is still in effect. Linda asked what would happen if 3 votes were not achieved. Mark explained that any action requires 3 votes. The Planning Board is made up of 5 members and 3 votes are required as a majority vote. Mark further explained the previous vote ended in no action.
- Robert stated he felt the deck should be approved and conditions should be made to make reference to compliance with the noise ordinance. He asked Linda to consider closing the deck at 10:30 PM and asked her to agree that in one year the Board will review this deck again and if there have been any problems then the Board can take action. Linda agreed, however, stipulated an issue cannot be "just from hearsay" from the neighbors. If there is a complaint she wants it brought to someone's attention so it's written somewhere and it's not just hearsay. Robert agreed that a complaint must be recorded.
- Robert began to make a motion to approve the deck providing it is closed at 10:30 PM and in one year the Board will review the deck in order to determine if there have been any excessive problems, any noise issues...at this point Robert looked to Attny. Schachner for guidance regarding referring to problems and noise. Mark asked for clarification from Robert asking if he was making a motion for a temporary one year approval or is the motion for approval and relooking at "it" in one year. Mark pointed out conditions that are subjective are difficult to enforce. As an example, Mark pointed out that terms such as "excessive noise" are subjective and different people may have different ideas of what might be excessive noise. Margy asked Mark about the standards the Village has set regarding noise. Mark agreed the Village noise

**LAKE GEORGE VILLAGE  
JUNE 11, 2008  
SPECIAL PLANNING BOARD MEETING  
MINUTES  
VILLAGE ADMINISTRATION BUILDING – OLD POST ROAD**

ordinance has set standards of what is excessive and what is not. Mark added a condition can be tied to the Village noise ordinance or to violations of the Village noise ordinance and this would be much more enforceable.

- Robert asked if he could make the motion so this application could be looked at in one year. Mark advised that he could add that to his motion; the Board is allowed to issue approvals that have time limitations. Mark added a motion can contain language such as, if there are any violations of the Village noise ordinance then the approval expires. He added another example would be to say something like if there are any violations of the Village noise ordinance then the Planning Board will reconsider the Site Plan application.
- A discussion ensued about installing a wall which will extend at the building's north side from the alcove's (where the deck will be located) northern wall. This suggestion was made at the previous Planning Board meeting. Robert mentioned that at the beginning of this meeting he heard Linda say the conditions previously agreed to at the previous Planning Board meeting were off the table. Mark urged the Board, if a motion is made for approval it should include every element they feel is important with regard to the approval.

**MOTION:** Robert Mastrantoni made a motion to approve the deck as submitted for construction with the applicant's (Linda Duffy) consent to the following conditions:

- This deck will be closed by 10:30 PM.
- A 3' wide x 8' high solid wall will be built on the north side of the deck. It will extend beyond the alcove (where the deck is to be located) and will block the alley.
- Any excessive noise based on the noise ordinance will require the applicant to come back before the Board.
- At this point Mark asked for clarification of excessive noise and Robert agreed he meant violations. Asking if he understood correctly, Mark referenced the motion as...if there is ever a violation of the Village noise ordinance then the Board reconsiders its Site Plan review. Doug interjected he viewed this as problematic because the discussion is about a small portion of a larger deck and it would be difficult to determine "that deck" is causing the noise problem. Doug added it would be very difficult for him to determine if the noise was coming from the majority of the deck or coming from "that little section". Doug pointed out the noise ordinance is always in place and should always be complied with.
- An additional discussion ensued regarding construction of a wall on the northern side of the deck and the aesthetic appearance of the deck, its footings and the location of the deck against a window.
- At this point Robert made reference to the motion he had on the table. Margy asked to add a condition for one year approval and Robert agreed. Linda asked what would happen after one year and Robert explained if everything was fine there would be no issue with the deck. Attny. Schachner explained what Robert has proposed is not a one year approval; a one year approval expires after one year. Robert indicated he did not want to have a one year approval which would expire in a year. Robert asked about indicating a certain number of violations. Robert said he didn't feel it was necessary to have Linda return in a year if everything went fine. Margy felt because the deck is so controversial a one year review is necessary to determine if the deck actually caused the problem that everyone is concerned about. Robert added any issues would only have to be in the section that was being reviewed tonight/approved now. Robert now asked Linda if she was willing to return to the Board if there is a problem and Linda agreed she would be willing to return if there is a problem. Mark interjected pointing out to the Board that a motion which states if there are problems the applicant has to return to the Board is too ambiguous and

**LAKE GEORGE VILLAGE  
JUNE 11, 2008  
SPECIAL PLANNING BOARD MEETING  
MINUTES  
VILLAGE ADMINISTRATION BUILDING – OLD POST ROAD**

not enforceable. Mark added the conditions should be specific, if the Board wanted to say something such as documented violations of the noise ordinance that would be enforceable. He pointed out that it may be difficult to label violations of the noise ordinance to a particular portion of the deck; it might be difficult to pin down exactly where the violation is originating.

- Mark explained a one year approval means the applicant must return with an application and go through the review process again and at that time the Board could decide to have a Public Hearing. A one year approval expires after one year.
- Margy asked Robert why he was opposed to a Public Hearing. Robert explained that the majority of the deck has already been approved and the Board didn't go to a Public Hearing then. He also pointed out there is always noise in Lake George, the noise is everywhere. He mentioned his feeling is the Village and the Village Board has to make the decision to enforce the laws. The Planning Board is only a recommending Board. Linda is before the Board to build a deck.
- Margy pointed out the existing deck as it currently sits has the noise going in the opposite direction of the neighborhood but with this new deck proposal...Linda interjected it would be the same, there is no music on that side of the building; the music is on Canada St. The deck when in the alcove will have a wall and the noise won't go to the neighboring area.

**MOTION:** Robert Mastrantoni made a motion to approve the 9' 6" x 14' deck on Duffy's with the applicant's (Linda Duffy) consent to the following conditions:

- The deck will be closed by 10:30 PM.
- A 3' x 8' high wall will be added to extend on the north side of the deck.
- Compliance with the noise ordinance.

**2<sup>ND</sup>:** Dan Garay

Robert Mastrantoni	Dan Courtney	Patricia Dow	Dan Garay	Margy Mannix
Aye	Recused	Recused	Aye	No

- At this point Margy added if there was a one year approval she would consider approving the deck. A discussion ensued regarding exactly what a one year contingency would mean.
- Linda pointed out she doesn't have a problem with a one year contingency but she will if problems are considered based on hearsay.
- Attny. Schachner explained how a one year approval should work. The approval expires after one year. If the applicant (either the same or a new owner) wants to continue the use of the deck then the owner of the property or the operator would have to come before the Planning Board and seek approval. Mark also counseled the Board saying they should not simply state "one year approval" but to actually pick a date.
- Robert asked what the process should be for the applicant to return. Attny. Schachner advised the process is that the applicant comes back before the Planning Board, new plans would not have to be submitted because the deck has already been constructed for use. New plans would be required if the construction of the deck was going to change in some way. Linda agreed to a one year approval asking how she would approach the Board. The Board agreed what the Board would hear a year from now would be based on the issues that arise throughout the year regarding the deck. The Board added "if there are no violations" and stated again this means no noise violations which Linda took exception to. Doug added, he thought the Board would have to determine after the one year what the situation is and what happened during the year and then make a determination based on what has happened during the one year. Mark interjected, "as to require a new approval or not". Robert interjected if there are violations the Board will have to look at this approval.

**APPROVED – 7/16/08**

**LAKE GEORGE VILLAGE  
JUNE 11, 2008  
SPECIAL PLANNING BOARD MEETING  
MINUTES  
VILLAGE ADMINISTRATION BUILDING – OLD POST ROAD**

- Margy asked that the Board consider the safety factor of the deck and the parking lot. Robert indicated he didn't believe the Board needed to address this now, much of the issue is Code (county?) enforcement and Linda added the top of the railing will be angled so no one will be able to sit on it or place objects on it.
- At this point Robert made reference to his motion and included an expiration date of the approval as June 11, 2009

**MOTION:** Robert Mastrantoni made a motion to approve the 9' 6" x 14' deck; the applicant's (Linda Duffy) consent to the following conditions:

- The deck will be closed by 10:30 PM.
- A 3' x 8" high wall will be added to extend on the north side of the deck.
- Compliance with noise ordinance.
- This approval will expire on June 11, 2009.

**2<sup>ND</sup>:** Dan Garay

Robert Mastrantoni	Dan Courtney	Patricia Dow	Dan Garay	Margy Mannix
Aye	Recused	Recused	Aye	Aye

Robert Mastrantoni indicated there was no other business this evening.

**MOTION:** Margy Mannix made a motion to adjourn the meeting

**2<sup>ND</sup>:** Dan Garay

Robert Mastrantoni	Dan Courtney	Patricia Dow	Dan Garay	Margy Mannix
Aye	Recused	Recused	Aye	Aye

Respectfully submitted.

Carol Sullivan  
June 18, 2008,