

Board of Trustees
Planning Board
Village of Tarrytown
Joint Meeting
Monday, January 28, 2019
6:30 p.m.

PRESENT: Mayor Fixell presiding; Trustees: Butler, Brown and McGovern. Planning Board – Chairman Friedlander presiding, Planning Board Members Tedesco, Aukland, Raiselis, Birgy and Lawrence. Village staff included Village Administrator Richard Slingerland, Village Engineer Donato Pennella, Village Attorney Kathy Zalis, Secretary to Planning and Zoning Liz Meszaros, Planning Consultant Bob Galvin.

ABSENT: Trustees Hoyt, Rinaldi and Zollo.

The meeting was convened at 6:30 p.m.

On the motion of Trustee McGovern, seconded by Trustee Brown, with all in favor, the Boards convened into Executive Session for Advice of Counsel, at approximately 6:33 p.m.

Upon completion of Executive Session and Advice of Counsel, on the motion of Trustee Brown, seconded by Trustee McGovern, with all in favor, the Boards agreed to finish Executive Session and return to open session at approximately 6:58 p.m.

PUBLIC HEARING: Hudson Harbor River House II LLC, 45 Hudson View Way, Proposal to amend the SEQRA Findings to permit an additional 7.61 foot increase to the approved 42-foot height of the roof to legalize/approve the constructed bulkheads for accessing the rooftops/deck area for each of the four units (Unit #s 310, 311, 312 and 313).

Presentation by applicant's attorney Daniel Pennessi, and builder/project director at Hudson Harbor Steve Antonucci. Mr. Pennessi noted that the approved height of the building's flat roof is 42-feet, with different components of the building allowed to be 45—feet 5 inches. He said that we're here because there has been constructed for four units stairwell bulkheads to access the roof deck, at a height of 49.61 feet. He then said that Mr. Antonucci would explain how the bulkheads were constructed.

Mr. Antonucci said that when they looked at the exterior staircases, going up approximately 12-feet up to the roof, they perceived them as unsafe during snow and ice conditions, and that after speaking with Lesard, the architects, they came up with a code that allows them to build bulkheads on the top of the deck. He noted the bulkheads include framing, sprinkler heads and other materials to achieve the 7.61 additional height above the roof deck. Trustee Brown asked Mr. Antonucci to re-state his comment to be clear, and he explained that the architect had found a section of the code that they believed allowed them to build bulkheads on top of the roof deck. He again commented they felt it was unsafe to walk up 12-feet, around an outside spiral staircase. Trustee Butler asked Mr. Antonucci to reference the section of code he was referring to, and asked if that section of code was

brought to the attention of the Building Inspector. Trustee McGovern mentioned the code section is Chapter 305-48. Mr. Pennessi commented that the section provides that the stair and elevator bulkheads that are less than 10% of the roof area and less than 5% of the bulk area of the buildings may exceed the normal height limit by prevailing design standards, but in no case, by more than ten feet (10'). Trustee Butler asked if it is only in reference to the elevator and stair bulkheads. Mr. Pennessi confirmed that it is.

Mr. Pennessi noted that the applicant was present to seek an amendment to the findings statement and the site plan, because these changes did affect it. He noted that they had three, or maybe four options, saying that the first is to allow the bulkheads to remain as constructed, the second could be to explore an alternative where the bulkheads are removed and replaced with something else, at great cost and the third was that the applicant could try to augment them with glass, if that is of interest to the Boards. He also noted that it is worth looking at the other buildings in Hudson Harbor. He commented that the Lookout buildings to the south are 52-feet high, and the Cooney building is approved for 45-feet high, directly to the east of the Lighthouse Building. He circulated some drawings. The Boards noted they already had the drawings. The first page is a rendering with changes proposed to the bulkheads to add glass. The second elevation showed nearby buildings – to the north is 52 feet, and the Cooney building, directly east to the Lighthouse, at 45 feet. He noted that Tappan Zee Constructors is still in the Cooney building for another year to year and a half, after which they would be developing that building per their approved plans. Planning Board member Joan Raiselis noted that the Cooney building could be built to a height of 45 feet, and Mr. Pennessi agreed. He again pointed out the nearby building heights, including the difference to the River House, with its constructed height of 49 feet.

Mr. Pennessi asked to update both Boards on the status of 21 Wildey Street at this time, and Planning Board Member Joan Raiselis noted that it was not really pertinent at this point and asked to stay on topic. There was no disagreement among the rest of the board members present, and the discussion about Hudson Harbor Lighthouse continued.

Discussion continued about the drawings, as well as confirming the constructed height of the Lighthouse buildings with the bulkheads at 49.6 feet. Planning Board member Paul Birgy commented that there is a difference between something that is designed to be 49 feet tall, as compared to adding something on top of a structure that was not approved or planned. He commented it's the expression "sticking something on" and saying it's fine, with which he disagreed. Ms. Raiselis also commented about the difference between railings, which are transparent, and the transparency of the railings make the building seem to be 42 feet, and then adding a solid structure above the 42-foot mark, which changes the look of the building, because underneath the railing, it's transparent. Mr. Pennessi commented there are a couple of towers on top of the building at 45 feet in elevation. Ms. Raiselis commented that the issues should not be confused, and the issue is that the building with the add-on structures was built taller than what was approved. She pointed out that the tower is an architectural element at the front façade of the building, and said that in relation to the bulkheads, now you're going to add seven feet of opaque concrete, shingle or metal structure – opaque – above the 42 feet, rather than the transparent space under the railing that's taller than the 42 feet, and it significantly changes the look. Steve

Antonucci commented that it's only four and a half feet, but Ms. Raiselis noted that it's seven feet above the roof line. Planning Board member David Aukland commented that he agreed with everything that Ms. Raiselis had stated, and he's really uncomfortable with the scattered look of the bulkheads that have been plunked down on top of the building. In addition, from a design standpoint it's incoherent, and there is a degree of visual "noise".

Trustee Brown asked whether it was correct that the stairs on the side were considered to be safe during the planning and site plan process, and that everything was examined during that time and was considered to be safe. Planning Board Member Raiselis commented that we have a licensed architect, and the Village Engineer as the Village's code master reviewing this, and it goes through the whole procedure to make sure that it is as it should be, and she did not understand how this change was made. Village Engineer Pennella clarified that he had reviewed the original plans and that the proposed exterior stairs were to be on terraces and face the interior "quadrant or pool area." He said that while the spiral, metal stairs were code compliant, the applicant had perceived them to possibly be unsafe during the winter time because they could accumulate snow and ice. Mr. Pennella went on to say that the developer converted those original stairs to stairs that were interior to the unit.

Trustee Butler asked Mr. Pennella if the whole purpose to move these courtyard stairs inside was because of the weather, and Mr. Pennella confirmed that it was. Trustee Butler asked if they would have been prohibited from enclosing the spiral stairs on the quadrant side of the building, and if it was a design decision. Mr. Pennella noted that even if they had decided to enclose the spiral staircases, or the revised stairs in their current location, to enclose them they would have had some kind of bulkhead on the roof to enclose them. Trustee Butler commented that to enclose the spiral stairs would have minimized the structure and would have been a smaller structure, approximately three foot three (inches) or forty two inch spiral stair, to enclose a spiral staircase, and could have been done as a glass structure. Mayor Fixell asked if they were a safety feature or a required means of egress, and Mr. Pennella confirmed that they were not, and that if there were no rooftop staircases, the plans would have been fine pursuant to code. Trustee Brown commented that since at the time of the project's original planning and design phase we knew we have winter, this was not an unknown issue then. Mayor Fixell commented that the safety feature is somewhat of a red herring, because the rooftop decks would rarely if ever be accessed during snow and ice conditions.

In response to Trustee Butler's comment, Mr. Pennella noted that there are other alternatives. The solid panel could have been enclosed with glass. Mr. Birgy noted that they could have installed a three-inch or four-inch high hatch above the roof. Mr. Pennella confirmed it also could have been a skylight-style hatch with a three-inch curb around it, but to make that change would still have required approval by the Boards. He also confirmed that these are "convenience stairs" for roof access. Planning Consultant Bob Galvin commented that there are still changes that could be made that could meet their requirements. Mr. Pennella said that's correct, they could remove the bulkhead on the exterior, and replace them with some kind of sliding hatch doors.

Ms. Raiselis asked Mr. Pennessi to further explain his comment that they have four options. One to allow the bulkheads to remain, two to remove and replace, three to augment, and four you did not say. Mr. Pennessi commented on behalf of Mr. Cotter, who was away and out of the country at the time these changes occurred, that since they had other exterior improvements, such as to the pocket parks and to the RiverWalk, and perhaps there was something we could work out – and this was kind of on the fly – that he would have to talk to his client to see if there was anything that could be done to the RiverWalk to make it better, in order to preserve what has been constructed already, but he would first have to talk to his client.

Trustee Butler asked if this change to move the stairs from exterior to interior stairs had first been approved by the Building Department. Mr. Pennessi stated that the changes were a field change. Mr. Antonucci commented that they had been speaking with Lesard as the architects. Trustee Butler commented that they (Lesard) have no jurisdiction in this matter.

Planning Board member Ron Tedesco commented that all of this should not have happened, because the procedure is that the applicant should have come forward to the Planning Board and the Board of Trustees. He commented that this action violates the approvals and the SEQRA findings that had previously been reviewed and approved by them both. The site plan was violated and the Architectural Review Board approval was also violated. If the applicant had come to the Planning Board, we would have reviewed this, and we would have gotten the Architectural Review Board input on this before we had approved anything on the bulkhead. So in general, in order to consider the augmentation process with the bulkheads, we have to study it, to go with the amendment. Planning Board Member Joan Raiselis asked Mr. Tedesco if he was talking about an SEIS. Mr. Tedesco confirmed that is what he is referring to. And they should review impacts such as noise and the visual impacts on the viewshed, and we would explore augmentation processes such as you have presented. Ms. Raiselis agreed that it should go through a review process, provide an opportunity for public input, noted that we had originally gone through a SEQRA process and findings that had a lot of opportunity for public input and that there was a need to provide that opportunity again.

Trustee Brown also noted that the violation is of height, which is of particular interest to the community. She said the input from the community was to keep the height to a minimum, this is not only a change, but a change that bypasses the public. She further stated that we would have provided the public the opportunity to be involved in the process again, for instance if they had proposed something to be built at fifty feet high. Mr. Pennessi commented that they (the applicants) are present this evening for this reason. Ms. Brown said that it's after you built it. Mr. Pennessi noted that they had hoped to receive approval for this. Ms. Raiselis noted that there has to be an investigation of what all the possibilities are. "You haven't presented another simulated photo of what it could be if it was done differently, and all those things have to be investigated." Mayor Fixell noted that it has to be looked at from other vantage points, not from only one vantage point. Mr. Auckland noted that the SEIS would achieve that. Mr. Tedesco noted that tonight's participation is small because we are not in the public process on this matter, and with advance notice, there would be better public participation within the SEIS.

Mayor Fixell asked if the Boards would like to hear from the public. Mr. Pennessi asked if the Boards would like to hear about the Wildey Street update. Members of both Boards noted not at this time. A question was asked if this was tied to the 21 Wildey street issue, and Village Attorney Kathy Zalantis commented that at this time it is a distraction. The Board members said they would hear an update on Wildey Street after. Mayor Fixell and Planning Board Chairman Friedlander asked if there was anyone from the public who was present to speak on the application. No one came forward.

Mayor Fixell asked Chairman Friedlander if anyone on his Board wanted to make a recommendation. Mr. Tedesco made a motion as co-lead agency, and in accordance with SEQRA regulations section 617.9 A. 7., based upon changes in the project, and based upon changes to the circumstances related to the project, that the applicant submit a Supplemental Environmental Impact Statement (SEIS) that looks at visual impacts, noise and other related impacts. This should study the height changes from the approved forty two feet to the new height related to the constructed bulkheads that are 7.61 feet above the 42 feet approved height. Mayor Fixell asked for the same motion, as co-lead agency, and in accordance with SEQRA regulations section 617.9 A. 7., based upon changes in the project, and based upon changes to the circumstances related to the project, that the applicant submit a Supplemental Environmental Impact Statement (SEIS) that looks at visual impacts, height, noise and other related impacts. This should study the height changes from the approved forty two feet to the new height related to the constructed bulkheads that are 7.61 feet above the 42 feet approved height. Trustee McGovern moved, and Trustee Butler seconded. Upon asking for a vote, Trustees McGovern and Butler voted yes, and Trustee Brown voted no. Since there were only four Board of Trustees members present, the vote did not proceed further. Village Attorney Zalantis asked if there was another motion. Trustee Brown moved that we keep the plans as drawn, commenting that there were years and years of public hearings on this, that she felt it was egregious how the changes were made, and that people were so attentive to the height of the buildings. She noted it's not just the bulkheads, they changed the location of the stairs. She noted that it was not appropriate for these changes to take place without going through the process.

Village Attorney Zalantis asked for a confirmation of the motion to consider amending the SEQRA findings, and Trustee Brown confirmed that. Trustee Butler seconded. Trustee Brown commented that maybe the vote needs to take place when more Board members are present. Mr. Pennessi asked if the Boards could adjourn tonight's meeting, and pick up again at the Board's next meeting, at which point hopefully we have enough Board members. Mr. Galvin commented that it would be necessary to schedule a new meeting, at which they would also have to do scoping with both Boards (under SEQRA) and "you're talking about two months". Village Attorney Zalantis commented that it could just be done at the next meeting. Mr. Friedlander also asked if we had to go through scoping, and Mrs. Zalantis noted that scoping is optional for an SEIS. Mayor Fixell asked if we could adjourn the meeting until the next meeting. Trustee Butler noted that there is an active motion on the floor, which Administrator Slingerland confirmed. Upon a vote related to the motion, Trustee McGovern voted no, after which Mayor Fixell asked if "that's a no" in order to confirm that Trustee McGovern had said no. Trustee McGovern signaled her agreement

and Mayor Fixell said, “So it’s settled” and Trustee McGovern said, “So it’s split”. Mayor Fixell asked for a vote to continue the public hearing, and Trustee Butler moved, and Trustee McGovern seconded, and all four Board of Trustees members voted in favor of continuing the public hearing. Mayor Fixell advised the Planning Board that it’s in their hands. Mr. Pennessi asked what the vote on the prior motion was, and Mayor Fixell noted that with the “no” vote of Trustee McGovern, since there were only four Board of Trustee members present, that it was voted down, that he had confirmed her vote as a “no” vote, and therefore there were no other votes by any other Board members.

After discussion, it was noted that the next Board of Trustee meeting scheduled is Monday, February 4, 2019, at 8 p.m. and Mayor Fixell noted that we could start earlier. Trustee Brown noted that she would be out of town. Mr. Pennessi asked if they could proceed under SEQRA on a work session on the potential alternatives with the Planning Board. Administrator Slingerland commented that since it’s a co-lead agency, we need both Boards to act in the same direction in order to proceed with anything, and although the Planning Board had voted yes, the Board of Trustees would also have to vote yes to proceed. Village Attorney Zalantis noted that the Board could have a vote to reconsider, with more Board members present. There was some discussion about attendance at the Monday night meeting, and Mr. Birgy commented he was not sure he could attend Monday’s meeting, and also noted that the Planning Board had already voted unanimously by five votes in favor. The concern was if there was any change to the resolution on the floor, then the Planning Board would have to re-vote. After discussion about quorum, it was confirmed that Sally Lawrence would be able to attend and vote if Mr. Birgy could not, since she is the alternate Planning Board member. After discussion, it was confirmed that the meeting would be adjourned to Monday, February 4th at 7 p.m.

On the motion of Planning Board member Tedesco, seconded by Planning Board member Aukland, the Planning Board voted by five in favor, none opposed, to adjourn to Monday, February 4, 2019 at 7 p.m.

On the motion of Trustee McGovern, seconded by Trustee Brown, the Board of Trustees voted four in favor, none opposed, to adjourn to Monday, February 4, 2019 at 7 p.m.

The meeting ended at approximately 7:31 p.m.

Respectfully submitted,

Richard Slingerland
Village Administrator