

**VILLAGE OF COXSACKIE  
PLANNING BOARD MINUTES  
October 20, 2022**

Chairman Robert Van Valkenburg, Jr. called the Planning Board Meeting to order at 6:00 p.m. Present were Planning Board Members: Jarret Lane, Rodney Levine, and Patricia Maxwell. Deidre Meier was absent.

A motion to approve the minutes from the August 18, 2022 Planning Board Meeting was made by Rodney Levine and seconded by Patricia Maxwell. Chairman Van Valkenburg, Jr. voted yes. Rodney Levine voted yes. Patricia Maxwell voted yes. Jarrett Lane abstained. The motion carried.

A motion to approve the minutes from the September 15, 2022 Planning Board Meeting was made by Patricia Maxwell and seconded by Jarrett Lane. Chairman Van Valkenburg, Jr. voted yes. Jarrett Lane voted yes. Patricia Maxwell voted yes. Rodney Levine abstained. The motion carried.

**Correspondence Received**

An emailed letter was received from Beverly Commerford, of Sterling Environmental Engineering, P.C., regarding their responses to public comments on the Empire Riverfront Ventures, LLC project.

An emailed letter was received from Claudia Braymer, of Braymer Law, PLLC, regarding Empire Riverfront Venture's Site Plan Amendment.

An emailed letter was received from Evan Hogan, of New York State Department of Environmental Conservation, regarding the Lead Agency review for the Empire Riverfront Ventures, LLC Site Plan Amendment.

An emailed letter was received from Claudia Braymer, of Braymer Law, PLLC, regarding Empire Riverfront Venture's Site Plan Amendment.

**New Business**

Chairman Van Valkenburg, Jr. stated that the first item of business is the review of the Lot Line Adjustment application received from Anson Tollefson of 29 Elm Street. The applicant has asked the Board to postpone the review since he could not be present at this meeting.

A motion to table the review of the Lot Line Adjustment application received from Anson Tollefson of 29 Elm Street until the next Planning Board meeting was made by Rodney Levine and seconded by Jarrett Lane. Chairman Van Valkenburg, Jr. voted yes. Jarrett Lane voted yes. Rodney Levine voted yes. Patricia Maxwell voted yes. The motion carried.

Chairman Van Valkenburg, Jr. stated the next item of business is the review of the Site Plan application and Special Use Permit application received from Empire Riverfront Ventures, LLC for 22-34, 52, 60 and 66 South River Street.

A motion to enter into Executive Session at 6:02 p.m. for attorney/client privileged conversation was made by Rodney Levine and seconded by Patricia Maxwell. Chairman Van Valkenburg, Jr. voted yes. Jarrett Lane voted yes. Rodney Levine voted yes. Patricia Maxwell voted yes. The motion carried.

A motion to come out of Executive Session at 6:26 p.m. and return to the normal Planning Board Meeting was made by Patricia Maxwell and seconded by Rodney Levine. Chairman Van Valkenburg, Jr. voted yes. Jarrett Lane voted yes. Rodney Levine voted yes. Patricia Maxwell voted yes. The motion carried.

Robert Stout, Village Attorney, stated that he can give an overview of the property line dispute between the property owner of 38 South River Street and Aaron Flach of Empire Riverfront Ventures, LLC. He said that this has been an issue throughout the application, he just wants to make sure that the Board Members are on the same page as to how this is being treated from a legal perspective. The disputed area is referred to on the plans as a "no build area" that represents an 8 foot strip that the applicant's neighbor has asserted ownership of. This Board, to date, has been essentially treating that strip of land as if it is in fact owned by the neighbor to Mr. Flach. The Board has been clear that any approval that it might issue would not give the applicant any rights to build on that strip. The neighbor, through her attorney, has made certain requests to further memorialize that, which include revising the Site Plan to either remove New Amsterdam Fine Arts' building on the Site Plan, or clearly denote on the Site Plan that the building and the 8 foot "no build area" is not part of the Empire Riverfront Ventures, LLC's project. He thinks that that request is entirely consistent with how the Board has been treating it. So, it would be appropriate for the Board to include a condition upon approval indicating that the applicant should include a note on the plan that the building owned by New Amsterdam Fine Arts, and the adjacent strip that's in dispute, is simply not the subject of the action by the Board. The neighboring property owner also indicated that dust is an issue at the site. He said that he would just like to point out to the Board that the applicant will be required to comply with the State's general permit for construction for stormwater discharges. As part of the erosion and sediment controls that are required in connection with that general permit, there will be a requirement on the applicant to minimize dust. The requirement states that on areas of exposed soil, the applicant shall minimize dust through the appropriate application of water, or other dust suppression techniques, to control the generation of pollutants that could be discharged from the site. There is also a requirement in the Village Code § 155-30G that states, "...no emission of fly ash, dust, fumes, vapors, gases and other forms of any pollution shall be permitted which can cause any damage to health, animals, vegetation or other forms of property or which can cause any excessive soiling." He thinks it would be appropriate for this Board to consider highlighting those obligations on the applicant and including that in the condition of any approval that the Board might issue, to further underscore that it is an enforceable condition of the Site Plan approval, in addition to it being a requirement of the underlying Stormwater Permit. He said that he also feels that it is within the Board's authority to affirmatively require the applicant to immediately, or as soon as possible, secure any piles that are on the property, or any exposed soil

that might be creating dust, by either putting a tarp on it, or otherwise implementing another dust control measure. He has spoken to the applicant's attorney about that, and there is no objection to that. So, again, he thinks that that could be a reasonable condition of any approval. The neighboring property owner has also requested that the Village Code requires that there be a 5 foot setback on the edge of the disputed "no build area". So, even if this Board were to assume that the "no build area" is owned by the neighboring property owner, the Code actually does not provide for a 5 foot buffer. It provides for a 5 foot setback. The Code defines a setback to be the distance from the property line to any building on the property. There is no prohibition against having a parking lot up to your property line, there is just a prohibition against putting a building within 5 feet of your property line. Similarly, there was a request that there be a 5 foot perimeter of landscaping to separate the properties. In § 155-48G(2) of the Village Code, it identifies the zoning districts which require this perimeter barrier. The Empire Riverfront Ventures, LLC property, as well as the property next door, is in the Village Center (VC) district. The rear portion of this property is in the Waterfront Development (WD) district. Neither the VC district nor WD district have a requirement to install perimeter landscaping between lots. So, property owners there are not required to buffer their properties from the neighboring parcels. Just to underscore, this Board doesn't have the authority to adjudicate disputes between private property owners. That's on them. Again, he thinks the Board is taking the appropriate conservative action for the purposes of code evaluation, and Site Plan evaluation, in treating the property as if it is owned by the neighboring property owner, and therefore making it clear that no aspect of their decision gives the applicant any right to construct on it.

Chairman Van Valkenburg, Jr. stated that before getting into the Site Plan Amendments, he thinks that the Special Use Permit should be the first thing discussed. He gave an overview of the project stating that Empire Riverfront Ventures, LLC's project is located at 60 South River Street, and the requirements for the Waterfront District establish a setback distance of 50 feet from the mean high water line. Setbacks of less than 50 feet may be authorized by the Planning Board via Special Use Permit. The kitchen addition at the south side of The Wire is setback 46.5 feet from the mean high water line, and the exterior deck constructed at The Wire is setback 30.5 feet from the mean high water line. The previously existing structure was setback approximately 37 feet from the mean high water line. The kitchen and deck installations at a setback of 46.5 feet, and 30.5 feet, respectively, should be authorized by Special Use Permit pursuant to Village Code § 155-75 standards. The application requirements of §155-75(A&B) are satisfied by the updated Site Plan submitted with the application to amend the previously approved Site Plan. He stated that he will go through each of the standards of the Special Use Permit. With respect to standards applicable to all Special Use Permits set forth at §155-75(K), we provide the following: (1) The accessibility of the use to fire, police and other types of emergency vehicles shall be considered. The answer that was given was that the installed deck and kitchen addition do not impede accessibility for emergency responders or vehicles. (2) The location, size and character of the special use must be in harmony with the orderly development of the zoning district and must not be determined to be detrimental to the orderly development of adjacent properties. The response is that the installed deck and kitchen are not detrimental to the orderly development of adjacent properties. (3) Safe, convenient and adequate vehicular and pedestrian access to and from the use through the provision of adequate but not excessive points of ingress and egress which are of sufficient width, properly graded and aligned, provide clear visibility and are not located too near street corners or places of public assembly. The response from Empire

Riverfront Ventures, LLC is that the installed deck and kitchen are not located near street corners or places of public assembly. Vehicular and pedestrian access within the site is maintained if not enhanced. (4) Adequate off-street parking and loading areas which are properly located on the lot so as to provide safe and convenient circulation. The response is that parking exceeds the requirements set forth in §155-36. See the Application for Site Plan Amendment. (5) Locations and heights of buildings shall be such that the special use will not hinder or discourage the appropriate development and use of adjacent land and buildings. The response is that the installed deck and kitchen addition do not hinder or discourage development and use of adjacent lands and buildings. (6) Landscaping and screening of parking, loading and service areas so that such areas are screened all seasons of the year from the view of adjacent lots and streets. The response is that the installed deck and kitchen compliment The Wire and are well screened from the street and adjacent land. (7) Adequacy of stormwater management plans and drainage facilities shall be considered. The response is that the installed deck does not alter stormwater management and drainage. The water readily passes through the decking to the underlying ground surface. The kitchen addition is equipped with roof drains to control stormwater. (8) There will be no emission of noxious odors, gases or smoke. The response is that the deck and kitchen addition will not cause the release of noxious odors, gases or smoke. See the Application for Site Plan Amendment for additional information.

Mary Beth Bianconi, of Delaware Engineering, stated that in regard to parking, the statement made pre-dates some of the changes made to the plan. So, the parking doesn't exceed the requirements of §155-36. What is happening is that there is shared parking, combined parking and banked parking. Between all of those, they achieve the Code requirements. The Planning Board has discretion with respect to the shared parking and banked parking.

Attorney Stout stated that that was detailed in a subsequent submission filing.

Patricia Maxwell asked if the venting on the kitchen goes out the back.

Aaron Flach, owner of Empire Riverfront Ventures, LLC, stated that it goes out the south side towards the parking. It is just warming ovens and not a full service kitchen. It is mostly just to assist caterers on site.

Rodney Levine asked about the parking situation in regard to the property line dispute with New Amsterdam Fine Arts.

Chairman Van Valkenburg, Jr. stated that they would like to focus on the Special Use Permit first, and then they will go through conditions related to the Site Plan.

Attorney Stout stated that this is actually a good segway, because he doesn't think that the Board should approve the Special Use Permit until they have the conversation about what conditions will be applied to both the Special Use Permit and the Site Plan.

Chairman Van Valkenburg, Jr. stated that the owner of 38 South River Street has submitted documentation to the Planning Board that indicates a potential discrepancy in property surveys in this area of South River Street. The Planning Board does not have the authority to adjudicate

private boundary disputes. The Applicant has provided an updated Site Plan outlining the disputed property area and depicting that no construction or use of the disputed property is part of the Amended Site Plan Application. Accordingly, this approval shall in no way be construed to permit any development within the disputed area. The Site Plans shall be revised to clearly denote that the structure at 38 South Street, and the 8 foot "No Build Area", is not part of the Empire Riverfront Ventures, LLC project. Moreover, the Applicant shall immediately secure any construction materials on-site that may generate dust, by placement of tarps or other appropriate dust control measures. He said that one of the other conditions that they talked about is the use of stop blocks in front of parking spots. He said that he thinks that that is probably a good idea. It will provide a margin of safety for vehicles and will prevent them from going onto the other property.

Rodney Levine asked Aaron Flach if he has been in communication with Karen Gunderson regarding the property line dispute.

Aaron Flach stated that the understanding that they have is that both himself and Ms. Gunderson will coordinate landscaping plantings on that 8 foot section. He told her that he is happy to work with her on that. He said that he can also put a concrete curb in to prevent any cars from going over the property line. He also told her that she is welcome to park in that parking lot anytime she wants. Her vehicle wouldn't be towed or anything like that. He feels like he is being pretty reasonable.

Attorney Stout stated that he wouldn't feel comfortable if this Board acted to compel Empire Riverfront Ventures, LLC to do anything with respect to the disputed parcel, because somebody else is claiming that they own that property. This Board shouldn't be in a position of saying ERV must do something on that parcel. That being said, it sounds like there is a willingness and conversation going on between the parties, and he thinks that it would be within this Board's authority to say that to the extent the neighboring property owner requests buffering to be planted in that 8 foot "no build area", then ERV shall cooperate with them to install mutually agreeable screening, provided that the neighboring property owner consents to it. That way, it is entirely at the discretion of the neighboring property owner, but at the same time this Board is saying that if the neighboring property owner requests it, then ERV shall do it.

Rodney Levine stated that his stance is that this has been a very drawn out process, and at this point he would just like to have smooth sailing on to the finish line. So, anything that the Board can do to just make it so that everyone is happy at the end of this, he'll be 100% for. He asked Aaron Flach to communicate with Ms. Gunderson and let her know what is going on as much as he can. He thinks that putting some curb stops in will definitely help the situation.

Chairman Van Valkenburg, Jr. read aloud a Zoom comment received from Claudia Braymer, of Braymer Law, PLLC, stating that the landscaping should be on the applicant's property. Not in the "No Build" area. There should be space between the "No Build" area and the parking lot. There is no discussion with the applicant happening at this time. We do not have an agreement. He stated that that being said, he thinks that the Board has discussed the issue of the "no build" area and the buffer at great length.

Attorney Stout stated he thinks that the neighbors made their position clear. As he said, he doesn't think that this Board could, or should, compel Empire Riverfront Ventures, LLC to do anything on property that may be owned by somebody else, until that person requests it. In that aspect of this, he thinks that with this property dispute this Board does not have jurisdiction to consider it. As far as the Village Code requirement goes, as he mentioned earlier, there is no code requirement for there to be a 5 foot buffer zone between properties.

Chairman Van Valkenburg, Jr. stated that that is his understanding of the code as well, and he agrees with that. He thinks that the Board is pretty clear on what the code says regarding "no build" areas and structures.

Patricia Maxwell stated that it just bears repeating that this is because they are both in the Village Center district, and the district is not included in the requirement to have a 5 foot buffer. Therefore, it does not apply to this situation.

Mary Beth Bianconi stated that the portion of the Village Code regarding perimeter landscaping applies specifically to a number of different zoning districts. Neither of the districts that this project is located in have that requirement. So, there is no perimeter landscape buffer requirement for these two zoning districts. Therefore, there isn't one for this project. That is in accordance with the Village's landscape code.

Rodney Levine asked if the only thing that the Board can recommend is some curb stops to prevent vehicles from going over the property line.

Chairman Van Valkenburg, Jr. stated that he feels that curb stops are appropriate to prevent vehicles from going over the property line and should be installed in a manner to prevent that. He said that the Board can quantify that in their wording of any approvals. He said that he can go through some of the other conditions that the Board is considering. One of the conditions would be submission of a set of conformed Site Plans, consistent with the Application materials, and which include reference to all conditions imposed by the Village of Cossackie Zoning Board of Appeals in its grant of an Area Variance on October 3, 2022 and by the Planning Board in this Conditional Approval as of this date. One of the other conditions under consideration is only Dark Sky compliant, down-lit, internally focused low-level lighting without flashing, colored, strobe or other lighting effects shall be installed, pursuant to the Lighting Plan provided by the Applicant. Another condition is the Planning Board acknowledges receipt of an executed lease for parking on the adjacent parcel to the south and that the lease, which has a five-year term, also provides that it shall "stay in effect until good faith purchase and sale agreement is reached." The lease goes on to provide that "Michael Ferro agrees to give Aaron Flach "Right of First Refusal" for purchase of property." In addition to this lease, and prior to obtaining a Certificate of Occupancy, the Applicant shall either obtain title to the property that is the subject of the lease, or provide the Planning Board an executed easement, in form and substance satisfactory to the Planning Board and Village Attorney, which provides that the leased property shall be used as parking for the Project in perpetuity.

Attorney Stout stated that he just needs to make one modification to that, and that is that § 155-61(C), in terms of discussing what a reasonable condition is that this Board can apply, says that

those conditions must be satisfied prior to the issuance of Building Permits, as opposed to Certificates of Occupancy. So, that should just be tweaked to say that the applicant has to do this before the issuance of a Building Permit as opposed to a CO.

Alex Betke, Attorney on behalf of Empire Riverfront Ventures, LLC, asked if he can just have clarification on that part, because they have submitted to the Board a copy of the 5 year lease. He feels, in looking at the code, that this could provide the Board the ability to allow them more time to receive that, while still issuing the Building Permits. He said that they do have a fully signed 5 year lease, with an option in there that allows for not only the Right to First Refusal, but also gives them the time to negotiate out the purchase and sale agreement. He thinks that the conditions can be granted by this Board that recognize that they do have a 5 year lease. They have 93 parking spots, and he tends to think that most of the events there probably would not have too many cars parking in that lot to begin with. They have 120-130 parking spots that can be utilized on the main parcel. The relief they would be seeking from that would be to say that they have the 5 year lease on file.

Chairman Van Valkenburg, Jr. asked Mr. Betke what if after the 5 year lease it is decided that the property owner doesn't want to sell it, or he doesn't want to renew the lease. He asked if there is anything in that agreement that stipulates what happens.

Attorney Stout stated that he thinks what Mr. Betke is saying is that with the way the code is written, the application can appear unduly harsh. They are not disputing the fact that this Board needs comfort that this parking will be there in perpetuity. So, that can be accomplished in a couple of ways. The lease is a 5 year bridge. They need not to purchase the property outright in order to have that right in perpetuity, but an easement granting for the benefit of the Empire Riverfront Ventures, LLC that a parcel that lasts in perpetuity to allow them to park there forever, regardless of who owns that property, would get the Board to that same level of comfort. The issue that Mr. Betke is raising seems to be one of timing. To say that this Board needs assurances that parking will be there in perpetuity prior to issuing a Building Permit, as opposed to saying the Board has assurance prior to issuing a Certificate of Occupancy, is the sanction that's being dropped. If the Board is saying that you need that evidence before issuing a CO, then that means that they can't do anything there until they establish that they can park on the land next door. They cannot occupy the space until they've done that. What the code says is that, to the extent that the Board is conditioning a Site Plan, "...and conditions must be met prior to the issuance of Zoning Permits...", which are not defined under the code, "...or Building Permits by the Building Inspector/Code Enforcement Officer." So, it is just pushing up in time when the applicant has to establish that they have this condition, which is the parking is set in perpetuity.

Aaron Flach stated that there is a purchase option in the lease, as well as a "Right of First Refusal", and they are working on that negotiation. However, he needs to be able to operate and get going on that front at this point, while he negotiates that with the current owner.

Chairman Van Valkenburg, Jr. stated that he understands that. He asked Attorney Stout what guarantee does the Board have without the prospect of withholding either a Building Permit, or CO, or anything, that this is going to be followed through. He said that he just needed surety, basically.

Joan Tailleux stated that it can be designed so that if at some point they lose that parking, then the occupancy would have to be decreased.

Mary Beth Bianconi stated that there are 87 parking spaces affected out of the total 218 parking spaces. The only question she has is whether or not that includes the 30 banked parking spaces.

Aaron Flach stated that that doesn't include the 30 banked parking spaces.

Mary Beth Bianconi stated that that means that is 40% of the parking that is on the adjacent parcel.

Alex Betke asked if it can be made so that they have to come back within a year. They have the 5 year lease, and they would have to come back before this Board and have proof within a year, or they would have to further amend.

Chairman Van Valkenburg, Jr. stated that he would have to defer to the attorney.

Attorney Stout stated that he would like to talk about it privately with the Board. There are some legal issues associated with it that he would just like to go through.

Veronica Foley stated that it was said that the code states that they do have to have the conditions met before a Building Permit is issued. She asked if Empire Riverfront Ventures, LLC is asking for the conditions to be met only before a Certificate of Occupancy is issued, would there need to be some type of change to the code language.

Attorney Stout stated that the Planning Board cannot change what the code says. That is why the Board is trying to work in the confines of the code.

A motion to enter into Executive Session at 6:56 p.m. for attorney/client privileged conversation was made by Jarrett Lane and seconded by Rodney Levine. Chairman Van Valkenburg, Jr. voted yes. Jarrett Lane voted yes. Rodney Levine voted yes. Patricia Maxwell voted yes. The motion carried.

A motion to come out of Executive Session at 7:00 p.m. and return to the normal Planning Board Meeting was made by Rodney Levine and seconded by Patricia Maxwell. Chairman Van Valkenburg, Jr. voted yes. Jarrett Lane voted yes. Rodney Levine voted yes. Patricia Maxwell voted yes. The motion carried.

Attorney Stout stated that he believes that the language of the code is clear that states, "...upon approval of the Board of said Site Plan any such conditions must be met prior to the issuance of Zoning Permits or Building Permits by the Building Inspector/Code Enforcement Officer." So, to the extent that this Board isn't applying any condition, be it the easement, or the ownership of the parcel for parking, this needs to be treated as any other condition would be and the Code requires it to be prior to the issuance of the Building Permit.

Aaron Flach asked if the Board can make the condition so that he has that worked out within a



certain time frame of operating, because there is a possibility that they may not need all of that parking in the future.

Attorney Stout stated that then Mr. Flach would come back to amend the Site Plan and do away with that requirement. That's how you would deal with that. But as of now, if the plan is to park 87 cars there, and that is inherent in what they are asking the Board for now, then the Board needs to know that they have the legal right to do that for so long as they are going to operate the property in this fashion.

Alex Betke stated that they do have the legal right to do it for the next 5 years, and he doesn't see why they need a condition as a part of this. It is certainly a stipulation that they can have on the record that it is for 5 years, and they have a full option, and a full "Right of First Refusal" if the property owner tries to sell it without them.

Attorney Stout stated that that doesn't compel Mr. Betke's client to purchase the property, it just gives them the "Right of First Refusal" before being sold to someone else. It doesn't give them a right to use this property for this purpose beyond the 5 year period.

Aaron Flach stated that the purchase option is to be done prior to the expiration of the lease. That is written right into the lease.

Attorney Stout stated that the Board isn't saying that ERV needs to own the property. The ownership can be an entirely separate issue. The lease isn't in perpetuity.

Chairman Van Valkenburg, Jr. asked if there is wording in the lease that the sale must be completed before the termination of the lease.

Aaron Flach stated that the lease states that the sale must happen before the expiration of the lease.

Attorney Stout stated that that is not what it says in the lease.

Chairman Van Valkenburg, Jr. stated that if that is what the lease stated then that would satisfy the Board.

Attorney Stout stated that if there is language like that in the lease, then the Board can talk about other things and certainly consider it, but he didn't see wording like that in the lease.

Chairman Van Valkenburg, Jr. stated that certainly language like that would satisfy the Planning Board, but when he saw the document there wasn't language like that included.

Sandy Mathes asked if the Planning Board could have a condition where after 5 years if that purchase has not been completed, or there isn't another lease extension, then the capacity to use that extra parking could be mandated to be reduced. The Planning Board stays in control of that process, but Empire Riverfront Ventures, LLC has control of the parking for 5 years. So, at the end of 5 years, if that's not resolved, then they have to come back to the Planning Board and

resolve that one way or the other. Either by extending the lease, or the capacity use has to be decreased to match the parking that is available. He said that he really doesn't understand why this has to happen now, when they have a 5 year lease on parking.

Attorney Stout stated that this isn't a hearing, so he doesn't want to get into a debate on this issue. He doesn't think the Board would want to put itself in a position where there is a potential 5 years down the road that there could be a structure that is partially occupied because 87 parking spots are being taken away from it.

Alex Betke stated that they submitted this lease many months ago, and this is the first time that they are hearing that now the Board wants an easement, and they want it for further out than 5 years, and now the Board is going to condition it so that they cannot get a Building Permit.

Chairman Van Valkenburg, Jr. stated that his position has always been that the Board needs some surety that this is going to be in perpetuity.

Alex Betke stated that they have never had that indicated to them.

Attorney Stout stated that he thinks that this Board should move on to talk about other conditions, because he thinks that these are things that can be dealt with in parallel along with other things that the Board might want.

Chairman Van Valkenburg, Jr. stated that they will move on from that, and the next condition that the Board is considering is compliance with all applicable laws, including without limitation, environmental laws, and receipt of all required permits from other agencies, including, without limitation, an Article 24 permit for construction within the 100 feet of wetlands and coverage under the NYSDEC General Permit for Construction Stormwater Discharges, as well as compliance with the recommendations in the traffic report, and the stipulations in the SHPO letter. The next condition is pursuant to Section 155-48 (B) of the Zoning Code, landscaping required pursuant to an approved site plan shall be installed or bonded for under an agreement approved by the Village Attorney prior to temporary occupancy and installed before the issuance of final certificate of occupancy.

Alex Betke stated that if the issuance of the Certificate of Occupancy is based on the required landscaping, then it violates the Village's own code. He asked how they can do that work without the Building Permit.

Attorney Stout read aloud section 155-48(B)(2) of the Village Code that states, "landscaping required pursuant to an approved site plan shall be installed or bonded for under an agreement...prior to temporary occupancy and installed before the issuance of final certificate of occupancy." This is to make the distinction that the Board would be applying this condition under a Site Plan review, with this being under the landscaping section. There is a distinction

here. The code treats this as a requirement prior to the Temporary Certificate of Occupancy, while other conditions are required prior to the issuance of a Building Permit.

Chairman Van Valkenburg, Jr. asked Mr. Stout to further clarify.

The code contains a requirement relative to landscaping. The applicant has provided a landscaping plan. The code goes on to say that, “landscaping required pursuant to an approved site plan shall be installed or bonded for under an agreement approved by the Village Attorney prior to temporary occupancy and installed before the issuance of final certificate of occupancy.” So, the code has a specific provision with respect to a landscaping plan, and it says that an agreement needs to be in place before a Temporary CO and needs to be installed before the issuance of a final CO. He does want to point out that there is a distinction between how the code handles landscaping agreements, and how the code handles conditions as part of Site Plan approval. If that is something that this Board feels needs to be changed, then the issue can be raised with the Board of Trustees, so that those sections can be harmonized.

Alex Betke asked if this is a condition of the Site Plan approval.

Attorney Stout stated that this is a condition of a landscaping requirement that is spelled out in Section 155-48 of the Village Code. This is not a condition that the Board is imposing, it’s a condition that the code requires. The code says that the applicant needs this agreement in place prior to issuance of a Temporary CO.

Chairman Van Valkenburg, Jr. stated that the next condition is payment of all fees required by the Village Code, including, without limitation, any escrow required for professional fees. The following are the conditions imposed by the ZBA as part of its area variance grant. For consistency, the following conditions should be included in the Planning Board’s determination as well:

- Operating hours are limited to 7 AM to 9 PM Sunday through Thursday; 7 AM to 10 PM Friday and Saturday.
- Outdoor space on the fifth floor is limited to bar and dining use seasonally from May to October; any other use of the space is prohibited.
- Exterior amplified or non-amplified sound is permitted only during operating hours such that patrons may maintain conversational speaking voices (e.g., background music only).
- Exterior amplified and non-amplified sound of any kind is strictly prohibited outside operating hours.

- Amplifiers, speakers, or other acoustic devices, be they exterior or interior, shall be directed inward and not away from the fifth-floor occupied space.
- Fifth-floor Dark Sky compliant, down-lit, internally focused low-level lighting without flashing, colored, strobe or other lighting effects shall be installed.
- Parapet greenery must be maintained throughout the annual growing season.
- All building systems equipment located on the fifth floor shall be situated to reduce visibility from neighboring properties (e.g., behind parapet and/or landscaping) and all such systems shall include measures to minimize sound.

Patricia Maxwell asked if there was anything stating that they cannot work on the easement while they are waiting on their DEC permit.

Attorney Stout stated that they have to go through a process, and there is probably notice of comment as part of the DEC process that takes time. These things can occur concurrently.

Aaron Flach stated that in their lease agreement it states, “the lease will stay in effect until good faith purchase and sale agreement is reached.”

Attorney Stout stated that they see that, but it also provides that it is a 5 year lease.

Alex Betke stated that their intent was that that was supposed to supersede the 5 year term, and that this would be in effect until they achieve a purchase agreement. That was their intent.

Attorney Stout asked Mr. Betke if the Board can get an amendment to the lease that clarifies that. That makes it clear that it stays in place until such time that a sale agreement is reached, or an easement is put in place.

Aaron Flach stated that he could probably get that done.

Chairman Van Valkenburg, Jr. stated that that would certainly make it easy for the Board so long as that is worded that way. He has to defer to Mr. Stout as far as legal guidance is concerned.

Attorney Stout stated that if there is a commitment that the lease stays in place for beyond 5 years, and that before they get to that point, they will enter into an easement or take title to the property, then this Board would have a document that will ensure that Empire Riverfront Ventures, LLC has a right to park on that property in perpetuity. That’s the end game that the Board needs to get to. If there is a mechanism that could make that happen quicker than the others, the Board is open to it. So, the conditions would be one of three things. An amendment to the lease to make clear that it is not 5 years, but rather in effect until purchase sale agreement is

reached, or if they earlier obtain an easement. In either event, evidence is that they have the right to park there so long as they are operating as reflective in the Site Plan. In perpetuity isn't the best way to say it, but so long as they are engaged in the activity that they are seeking to be authorized by this Site Plan Amendment and Special Use Permit.

Alex Betke stated that he still wants to make the argument that he has ruled that the 5 year lease meets the code, and that the Planning Board does have the discretion to issue a condition that they feel could have the applicant come back within that time period, but that doesn't involve the Building Department. The 5 year lease should satisfy for that time period. He thinks that it would satisfy what the Village's code is suggesting.

Attorney Stout stated that as he has said before, he thinks that this Board also has the discretion to say that they don't want to put themselves in a position where there is a chance that the applicant might lose a substantial portion of the parking that they need to operate in the way they are requesting to operate now.

Chairman Van Valkenburg, Jr. stated that this accounts for 40% of the applicant's parking.

Alex Betke stated that he just wishes that it was brought up sooner. He was hoping that this Board could at least see that they have a 5 year commitment, and if the Board, he believes, does have discretion to be able to bring this back within a certain amount of time, and not have it effect the Building Permit.

Mary Beth Bianconi stated that the applicant needs to get their Stormwater Permit and Wetlands Permit.

Andrew Millspaugh, of Sterling Environmental Engineering, stated that they have already submitted for the Stormwater Permit, so they are just waiting on the Wetlands Permit.

Mary Beth Bianconi stated that realistically that could take a couple of months with NYS DEC.

Andrew Millspaugh stated that they are obligated to get comments back within 15 days.

Mary Beth Bianconi stated that then there is a 30 day public notice period.

Andrew Millspaugh stated that it depends on whether they classify it as major or minor.

Mary Beth Bianconi stated that hopefully they will classify it as minor. However, with DEC, there is still some period of time here. She is just being realistic. She said that the applicant sounds very concerned that they are not going to be able to get an amendment to this lease

document. She is just being very frank.

Alex Betke stated that they think they will, but the property owner is currently in Florida.

Mary Beth Bianconi asked if in the next 60 days if they could get a simple amendment to this, that would run a parallel track to the permits.

Sandy Mathes stated that 60 days is a disaster for the project. It's time to move forward.

Mary Beth Bianconi stated that the Wetlands Permit is going to be the longest thing the applicant is dealing with, and that is not the Village, that is the state.

Attorney Stout stated that that is also something that has not been submitted yet. So that needs to happen.

Mary Beth Bianconi stated that the applicant needs to quickly act on that.

Aaron Flach stated that he has an event scheduled in November and asked if there is any way the Board can set the conditions so that he can begin to operate. He thinks that that's reasonable to ask. If the Board can please help him.

Attorney Stout stated that he thinks whether or not they can operate a certain event is a different question from what the conditions are to the approval. So, that can be taken up separately.

Patricia Maxwell asked for clarification on the 15 day requirement from DEC in relation to the permits.

Mary Beth Bianconi stated that this is a Freshwater Wetlands Permit for disturbance within a buffer area. The buffer area, very objectively, is not serving any environmental purpose. It is already previously disturbed. It is not flood attenuation or spectacular habitat. The permit is required, nevertheless. So, the application is submitted, the regional DEC office receives it, they look at the permit application and make sure it's complete, and they have to determine whether it's a major or minor permit. She believes that it is a minor permit and seems straightforward. She said that then DEC has to go through their internal process. Unfortunately, it is not a fast process. It's at least 30 days. Let's just say it's a minimum of 30 days, maybe even 45 days. Because they also need their Stormwater General Permit, they both get issued at the same time. Even if the Stormwater Permit was ready to go, they have to hang onto it until the Wetlands Permit is ready. She thinks the way that this process is going to work is that this Board makes an approval with conditions, and those conditions are going to be really spelled out for the Code Enforcement Officer so that when they apply for a Building Permit everything is clear. One of

those things will end up being that Wetlands Permit and the Stormwater Permit.

Aaron Flach stated that they have a Building Permit now for the existing building that they were given months ago for the Wire Event Center. He asked if the Planning Board can give them the approval such that they can operate the existing building without the kitchen and the deck until those conditions are met.

Attorney Stout stated that the reason the applicant has a Building Permit for that stuff is because none of that is before the Planning Board. That is strictly a Code Enforcement issue. So, he doesn't think that they can put that before the Planning Board because that is already done and approved with respect to its previous use.

Mary Beth Bianconi stated that it is just the amended items.

Rodney Levine stated that the wording in the lease agreement is already pretty close to what the Board needs. In his opinion, even if the owner is in Florida, they can just let him know what is needed.

Patricia Maxwell stated that if they just clarify the lease language then they don't have to get the easement.

Andrew Millspaugh stated that he feels that it is very clear, and he would like to add that back when they got involved in doing the Site Plan Amendment, the appeal of that parcel was that it was already a disturbed gravel lot. There is still greenspace on the applicant's land that is outside of the wetland adjacent area. In addition to the area that they have for banked parking, they could amend the Site Plan to disturb the greenspace area to put parking there.

Attorney Stout asked if they had a level of confidence that it would be the amount of parking that's necessary.

Andrew Millspaugh stated that he is just saying that the reason that they are looking at this other parcel is to preserve that greenspace.

Mary Beth Bianconi stated that nobody is saying that this isn't a good idea at all. They are really relying on counsel for this portion of this.

Andrew Millspaugh stated that they are just asking for the Planning Board who has the discretion, to use it. To write the condition in a way that makes use of the current 5 year lease that's in place. The risk is more on the applicant than on the Planning Board. If that parcel goes away, and Code Enforcement shuts down the way the applicant is proposing to operate, that risk

is more on the applicant than the Planning Board.

Attorney Stout stated that then the condition would be that they either receive an amended lease, easement, purchase agreement, whatever the instrument might be, or alternatively present a plan that utilizes parking off site.

Chairman Van Valkenburg, Jr. stated that he thinks that the Board can look into putting that into the condition.

Alex Betke stated that they would prefer not to use the greenspace.

Andrew Millspaugh stated that he was thinking that the Board could say that the uses associated with that parking become null.

Mary Beth Bianconi stated that it is common parking. If you recall, the only way that this plan works is if they add it all up and say that it is shared by everybody, with the exception of the ones associated with the Dolan Block.

Andrew Millspaugh stated that there were associated spots based on the occupancy of the hotel and based on the event size at the Wire Event Center, in terms of the numbers. So, if the Board took away the Wire Event Center, that is 85 parking spaces.

Mary Beth Bianconi stated that that is incorrect. It is 110 parking spaces for the Wire Event Center. It is 1 spot per every 3 seats, and it is a 300 seat room. Then there are 20 employees, with 1 spot for every 2 employees. So, it works out to 110 spots. It could essentially shut down the Wire Event Center.

Chairman Van Valkenburg, Jr. asked if that is a condition the applicant would be willing to accept. That if the lease agreement isn't executed fully that the Wire Event Center shuts down until they come up with additional parking.

Rodney Levine asked if the applicant is not confident that they will secure an agreement.

Aaron Flach stated that they are confident that they will, they just don't know that they can do it right this minute.

Attorney Stout stated that the condition would be that the Planning Board acknowledges receipt of an executed lease for parking on the adjacent parcel to the south and that the lease, which has a five-year term, also provides that it shall "stay in effect until good faith purchase and sale agreement is reached." The lease goes on to provide that "Michael Ferro agrees to give Aaron



Flach “Right of First Refusal” for purchase of property.” In addition to this lease, the applicant shall either obtain title to the property that is the subject of the lease within the 5 year period provided for in the lease, or provide the Planning Board an executed easement, in form and substance satisfactory to the Planning Board and Village Attorney within that timeframe, which provides that the leased property shall be used as parking for the Project for so long as the activity contemplated within the application continues. If such instrument is not obtained by that point, then applicant shall either seek a Site Plan Amendment to address appropriate parking, or if such amendment is not granted, cease the use of the Wire Event Center.

Chairman Van Valkenburg, Jr. stated that if they do want to renew the lease for another term that is acceptable as well. As long as that parking is usable for them for their operation, that that should be an option.

Veronica Foley asked what happens when the Site Plan Amendment, if needed, is submitted. She asked if the Wire Event Center can continue to operate during that time while it’s under review.

Alex Betke stated that they would not let it get to that point. They would submit prior to the 5 years.

Chairman Van Valkenburg, Jr. stated that they would want to submit that while they still have parking, otherwise it would be shut down, and they would not have use until the Site Plan was amended, and the parking was reinstated.

Attorney Stout stated that so its really that if at any point the right to park in that area no longer exists without their Site Plan Amendment, then the Wire Event Center cannot operate.

Chairman Van Valkenburg, Jr. stated that he feels that that is fair to everybody, and also provides some surety to the Board that there will always be adequate parking.

Mary Beth Bianconi stated that just to clarify, the Wire Event Center is 110 parking spaces with 87 on the adjacent parcel. If for some reason the 87 spaces were not to be usable by the property owner, and the Wire Event Center was to cease operation until there was appropriate parking, they would still be down about 23 parking spaces because of the demand for all of the remaining uses. However, 30 parking spaces are already banked on the site behind the Dolan Block. So, that is actually a net gain of 7 parking spaces for those remaining uses. That is the point that she wanted to make. That gets embodied in the approval because it is part of the traffic study, and the Board is conditioning the plan that has to follow the traffic study.

Rodney Levine asked if Mr. Flach wanted to have another piece of property somewhere nearby and then bus people in from that location if that would also meet the requirement.

Attorney Stout stated that only if at that time they still had a Site Plan Amendment approval to do that.

Chairman Van Valkenburg, Jr. stated that with that being said, he thinks that the Board has finished this robust Site Plan review with these conditions.

Attorney Stout stated that to break it down, this Board's concern is to ensure that adequate parking is provided for so long as the project operates. The mechanism that is set up is that the fully executed lease will provide control for 5 years. It specifically contemplates that there is going to be a good faith negotiation for a purchase and sale agreement. That is embedded in the lease and has already been agreed to between Empire Riverfront Ventures, LLC, and the property owner. This Board is saying that as part of the Site Plan approval there is a continuing obligation. The applicant has to do what the lease says they are going to do. Or, alternatively, there's another path which would be amending the lease, so that it continues on, or obtaining an easement, that does the same. So, there are multiple options for the applicant to choose from that gets the Board the same protection that they are looking for. The safety valve is that if none of that happens for whatever reason, which would be a failure of the obligation that is in the contract, and a failure to achieve the outcome by other means, which would be lease amendment or easement, then the Board is confident that by taking the Wire Event Center offline that there would be adequate parking left onsite, as designed, to accommodate the other uses.

A motion to approve the Site Plan Amendments, with the agreed upon and stated conditions applied, as well as the approval of the Special Use Permit, was made by Jarrett Lane and seconded by Rodney Levine. Chairman Van Valkenburg, Jr. voted yes. Jarrett Lane voted yes. Rodney Levine voted yes. Patricia Maxwell voted yes. The motion carried.

Attorney Stout stated that he will put the language into a document that can be stamped as filed with the Clerk. It can then be provided to the applicant and put on the website. Then it is on the applicant to satisfy the conditions, and once the applicant establishes to the Code Enforcement Officer that the conditions have been satisfied, the Building Permits can be issued.

### **Public Comment Period**

Veronica Foley asked if the Board could elaborate on the condition relating to Building Permit fees.

Attorney Stout stated that that is a standard condition that would be included in all approvals. It is stating that if there is any outstanding fee that is required by the code, such as an escrow fee, Building Permit fee, Site Plan application fee etc., that the Building Permits will not issue until

such time that that condition is satisfied by payment of all of the fees.

Veronica Foley asked if a review has been done to make sure that the correct Building Permit fees were applied.

Attorney Stout stated that that has already been calculated and paid for.

Mayor Mark Evans stated that he wanted to thank the Planning Board, Attorney Stout, and Mary Beth Bianconi for their hard work on this. It has been a 7 month long process and has taken a lot of their time and effort. He wanted to thank them on behalf of the village residents for seeing this process through. He is glad that it is over and happy that Mr. Flach can get the project completed. The community really does appreciate it.

Claudia Braymer, of Braymer Law, PLLC, via Zoom, stated that the landscaping should be on the applicant's property. Not in the "No Build" area. There should be space between the "No Build" area and the parking lot. There is no discussion with the applicant happening at this time. We do not have an agreement.

David Weissman, via Zoom, stated that we can't have cars parked up to the property line. This is not shared property Mr. Flach does not own this property. Empire Riverfront Ventures, LLC needs to have perpetuity for the extra parking spots on the leased land otherwise it's a logistical nightmare. The owner could sell it any point in time. Leading to a major parking issue for the whole community of Cocksackie. We need parking reserved for village residents.

No further public comments were offered.

A motion to adjourn the Planning Board meeting was made by Rodney Levine and seconded by Patricia Maxwell. Chairman Van Valkenburg, Jr. voted yes. Jarrett Lane voted yes. Rodney Levine voted yes. Patricia Maxwell voted yes. The motion carried.

The meeting was adjourned at 7:48 p.m.

Respectfully submitted,

Nikki Berezna  
Clerk

**RESOLUTION OF THE  
VILLAGE OF COXSACKIE PLANNING BOARD**

**October 20, 2022**

**SOUTH RIVER STREET REDEVELOPMENT  
CONDITIONAL APPROVAL FOR SITE PLAN AMENDMENT AND SPECIAL USE  
PERMIT**

**WHEREAS**, pursuant to Section 155-61 of the Village Zoning Code (the “Zoning Code”), the Village of Coxsackie Planning Board (the “Planning Board”) is empowered to grant site plan approval; and

**WHEREAS**, Article XI of the Zoning Code governs the issuance of Special Use Permits by the Planning Board; and

**WHEREAS**, on April 11, 2022, Sterling Environmental Engineering, P.C., on behalf of Empire Riverfront Ventures, LLC (the “Applicant”) submitted to the Planning Board an application for amendment of the existing Site Plan regarding the redevelopment of the east side of South River Street from the Dolan Block to the former State Wire facility, along with an application for a Special Use Permit addressing the addition of a deck and kitchen to a building known as “The Wire” (collectively, the “Application Submission” or “application” for the “Project”); and,

**WHEREAS**, the Application Submission included:

- Application forms for Site Plan Amendment and Special Use Permit;
- a copy of the application for Area Variance for building height related to the partially constructed 5<sup>th</sup> Floor at the Newbury Hotel, which Area Variance application was submitted to the Zoning Board of Appeals on the same date; and
- Supplemental Short Environmental Assessment Form dated April 11, 2022;
- Copy of February 21, 2019 SEQRA Negative Declaration;
- Project narrative;
- Updated Project Drawings Set;
- Parking and Traffic Study by Creighton Manning Engineering, LLP; and

**WHEREAS**, on April 14, 2022, Applicant submitted an updated Lighting Plan to supplement its Application Submission; and

**WHEREAS**, at its April 21, 2022 meeting, the Planning Board adopted a resolution determining the Project to be a Type I Action pursuant to 6 NYCRR Part 617.4; requiring a coordinated review under the State Environmental Quality Review Act (“SEQRA”) and declaring its intent to be lead agency for the review of the Project; and

**WHEREAS**, on April 29<sup>th</sup>, 2022, Applicant submitted a revised Part I of a Full

Environmental Assessment Form (“FEAF”); and

**WHEREAS**, upon its receipt of an updated Part I of the FEAF to address comments from the Planning Board’s technical professionals, the Planning Board circulated a notice of intent to be Lead Agency on May 13, 2022, including a copy of the FEAF to all Interested and Involved Agencies pursuant to SEQRA; and

**WHEREAS**, on June 6<sup>th</sup>, 2022, Applicant submitted a supplement to its Application Submission, which supplement included a copy of a Visual Impact Assessment also provided to the Zoning Board of Appeals as well as other supplemental information; and

**WHEREAS**, on June 10<sup>th</sup>, 2022, Applicant submitted a supplement to its Application Submission, which submission included a response to review memoranda issued by Delaware Engineering on April 20<sup>th</sup> and May 20<sup>th</sup>, 2022, as well as an updated Traffic Study report and comment response letter prepared by Creighton Manning Engineering, LLP; and

**WHEREAS**, at its June 16<sup>th</sup>, 2022 meeting, having received no objection to its serving as SEQRA Lead Agency, the Planning Board declared itself as Lead Agency for a Coordinated Review of the Project; and

**WHEREAS**, on July 14<sup>th</sup>, Applicant submitted a supplement to its Application Submission, which submission included:

- Correspondence related to a property boundary dispute;
- Updated architectural renderings of the Newbury Hotel and additional line of site photographs to supplement the previously provided Visual Impact Assessment;
- Lease Agreement for parking on the adjacent southern parcel;
- A Stormwater Pollution Prevention Plan (“SWPPP”);
- Copy of a partially executed Letter of Resolution with the New York State Office of Parks, Recreation and Historic Preservation to mitigate impacts to historic and cultural resources;

**WHEREAS**, a public hearing was held during a joint meeting of the Planning Board and the Zoning Board of Appeals on August 29<sup>th</sup>, 2022, which public hearing was left open for the submission of written comments through September 7, 2022; and

**WHEREAS**, by letter dated September 14<sup>th</sup>, 2022, Applicant submitted a response to comments received during the public comment period; and

**WHEREAS**, the Planning Board issued a Negative Declaration on February 21, 2019 and Site Plan approval on March 21, 2019 for the proposed redevelopment consisting of the renovation of four historic buildings into residential apartments, commercial spaces, restaurant/event space, and a 40-unit hotel; and the formalization of parking for the Village Center; and,

**WHEREAS**, the Application Submission includes deviations from the previously reviewed and approved project, which deviations are the subject of the Application Submission, as supplemented, and the Planning Board’s SEQRA review, these deviations include:

- Kitchen addition to south side of The Wire.
- Exterior deck on The Wire.
- Completed footprint and total height of The Newbury.
- Enlarged parking area on leased area of Parcel 56.20-2-13.2.
- Electric vehicle charging stations.
- Second story walkway between Spa and The Newbury.
- Overhang between The Newbury and The Wire.

**WHEREAS**, the Applicant has submitted a SWPPP, inclusive of a Sediment and Erosion Control Plan and has filed a Notice of Intent (“NOI”) form with the New York State Department of Environmental Conservation (“NYSDEC”) to obtain coverage under the Stormwater General Permit for Construction Activity; and

**WHEREAS**, the Applicant has applied for a Special Permit with respect to the kitchen and deck additions to The Wire which are located within 50 feet of the mean high-water level of the Hudson River; and

**WHEREAS**, the Applicant has entered into a lease with an option to acquire lands adjacent to the south within Parcel 56.20-2-13.2 for the purpose of increasing the available parking; and

**WHEREAS**, the Applicant has entered into a Letter of Resolution (LOR) with SHPO to effectively mitigate impacts associated with the demolition of the building to facilitate construction of the Newbury Hotel; and

**WHEREAS**, the Applicant submitted a Traffic Study at the request of the Planning Board. Said study prepared by Creighton Manning and dated June 9, 2022 concluded in part that the magnitude of the new vehicle trips generated at the site is less than the NYSDOT and ITE threshold of 100 site generated vehicles on any one intersection approach for needing off-site intersection analysis indicating that detailed intersection analysis is not needed and that the site generated traffic will be accommodated by the existing roadway network; and

**WHEREAS**, the applicant undertook a Visual Assessment at the request of the Zoning Board of Appeals and Planning Board and agreed to modify the Project to include the following measures:

- Fifth-floor Dark Sky compliant, down-lit, internally focused low-level lighting without flashing, colored, strobe or other lighting effects shall be installed.
- Parapet greenery must be maintained year round.
- All building systems equipment located on the fifth-floor shall be situated to reduce visibility from neighboring properties (e.g. behind parapet and/or landscaping) and all such systems shall include measures to minimize sound.

**WHEREAS**, the Applicant has responded to all requests for supplemental information, documents and engineering evaluations to date, including those enumerated in memoranda issued by Delaware Engineering dated March 23, 2022, April 20, 2022, May 20, 2022, June 6, 2022, June 16, 2022 and June 27, 2022; and

**WHEREAS**, the Applicant, following consultation with the Planning Board and Zoning Board of Appeals has further modified its Project to reflect the following limitations:

- Operating hours of the outdoor portion of the restaurant on the fifth floor will be limited to 7:00AM to 9:00PM Sunday through Thursday and 7:00AM through 10:00PM Friday and Saturday;
- Outdoor space on the fifth floor will be limited to bar and dining use seasonally from May to October, any other use of the space is prohibited;
- Exterior amplified or non-amplified sound is permitted only during operating hours such that patrons may maintain conversational speaking voices (e.g. background music only).
- Exterior amplified and non-amplified sound is permitted only during the above referenced operating hours;
- Amplifiers, speakers or other acoustic devices, be they exterior or interior, shall be directed inward and not away from the building;
- Temporary parking signage and/or parking lot attendants will be provided to facilitate parking during large events at The Wire;
- The provisions of the Letter of Resolution will be implemented prior to opening of the Hotel;
- The Applicant will follow the recommendations of the Traffic Study;
- The Applicant is not proposing to alter any land that is the subject of a boundary dispute;

**WHEREAS**, the Applicant submitted a completed Part I of the Full Environmental Assessment Form (FEAF), pursuant to SEQRA, to the Village of Coxsackie Planning Board; and,

**WHEREAS**, the Applicant will be required to receive a Department of Health Temporary Housing Permit for the Hotel; and

**WHEREAS**, following completion of Part II of the FEAF, the Planning Board adopted a SEQRA Determination of Non-Significance and issued a Negative Declaration on September 22, 2022, finding that the Project will not result in any significant adverse impacts on the environment; and

**WHEREAS**, on October 3, 2022, the Village of Coxsackie Zoning Board of Appeals issued a conditional area variance, to allow a maximum building height of 65.23 feet for the portion of the Project known as the Newbury Hotel; and

**NOW, THEREFORE BE IT RESOLVED:** in connection with the mean high water (MHW) Line set backs of less than 50 feet for the kitchen addition on the south side of The Wire (46.5 feet) and the deck constructed at The Wire (30.5 feet), the Planning Board has evaluated the Special Use Permit criteria contained at §155-75, inclusive of the standards applicable to all special permit uses contained at §155-75(K). Based on the following findings, and a review of the Applicant's application and supporting information, including the Applicant's Project plans and the public hearing on the Applicant's Special Use Permit request, the Planning Board hereby conditionally approves the requested Special Use Permit:

- (1) *The accessibility of the use to fire, police and other types of emergency vehicles shall be considered.*

The Planning Board finds that the installed deck and kitchen addition do not impede accessibility for emergency responders or vehicles.

- (2) *The location, size and character of the special use must be in harmony with the orderly development of the zoning district and must not be determined to be detrimental to the orderly development of adjacent properties.*

The Planning Board finds that the installed deck and kitchen are not detrimental to the orderly development of adjacent properties.

- (3) *Safe, convenient and adequate vehicular and pedestrian access to and from the use through the provision of adequate but not excessive points of ingress and egress which are of sufficient width, properly graded and aligned, provide clear visibility and are not located too near street corners or places of public assembly.*

The Planning Board finds that the installed deck and kitchen are not located near street corners or places of public assembly and that vehicular and pedestrian access within the site is maintained if not enhanced.

- (4) *Adequate off-street parking and loading areas which are properly located on the lot so as to provide safe and convenient circulation.*

The Planning Board finds that as set forth in the Application and as conditioned herein, adequate off-street parking and loading areas have been provided, which are properly located on the lot so as to provide safe and convenient circulation.

- (5) *Locations and heights of buildings shall be such that the special use will not hinder or discourage the appropriate development and use of adjacent land and buildings.*

The Planning Board finds that the installed deck and kitchen addition do not hinder or



discourage development and use of adjacent lands and buildings.

- (6) *Landscaping and screening of parking, loading and service areas so that such areas are screened all seasons of the year from the view of adjacent lots and streets.*

The Planning Board finds that the installed deck and kitchen compliment The Wire and are well screened from the street and adjacent land.

- (7) *Adequacy of stormwater management plans and drainage facilities shall be considered.*

The Planning Board finds that the installed deck does not alter stormwater management and drainage. The water readily passes through the decking to the underlying ground surface. The kitchen addition is equipped with roof drains to control stormwater. A SWPPP, inclusive of a Sediment and Erosion Control Plan has been prepared for the Project.

- (8) *There will be no emission of noxious odors, gases or smoke.*

The Planning Board finds that the deck and kitchen addition will not cause the release of noxious odors, gases or smoke; and

**BE IT FURTHER RESOLVED:** the Planning Board has evaluated the Application Submission in light of the Site Plan Approval requirements located within Article X of the Zoning Code, and based upon this review of the Applicant's application and supporting information, including the Applicant's Project plans and the public hearing on the Applicant's Site Plan Amendment request, the Planning Board hereby conditionally approves the requested Site Plan Amendment (the conditionally approved Special Use Permit and conditionally approved Site Plan Amendment being referred to collectively as the "Conditional Approval) subject to the following conditions:

- 1) Submission of a set of conformed Site Plans, consistent with the Application materials, and which include reference to all conditions imposed by the Village of Cossackie Zoning Board of Appeals in its grant of an Area Variance on October 3, 2022 and by the Planning Board in this Conditional Approval; and
- 2) Only Dark Sky compliant, down-lit, internally focused low-level lighting without flashing, colored, strobe or other lighting effects shall be installed, pursuant to the Lighting Plan provided by the Applicant; and
- 3) The Planning Board acknowledges receipt of an executed lease for parking on the adjacent parcel to the south (the "Adjacent Parking") and that the lease, which has a five-year term, provides that it shall "stay in effect until good faith purchase and sale agreement is

reached.” The lease goes on to provide that “Michael Ferro agrees to give Aaron Flach “Right of First Refusal” for purchase of property.” Within the initial five-year term of the lease, the Applicant shall either obtain title to the land constituting the Adjacent Parking, or provide the Planning Board an executed easement, in form and substance satisfactory to the Planning Board and Village Attorney, which easement provides that the Adjacent Parking shall be used as parking for the Project for so long as the activity contemplated within this Conditional Approval continues. Alternatively, the Applicant may, prior to the expiration of the initial term of the lease, provide evidence that the lease has been extended. It shall be a continuing obligation of this Conditional Approval to maintain such lease in effect until such time as an easement or title to the Adjacent Parking is obtained. If, at any point, the lease expires or is earlier terminated, and the then owner of the Project does not have the benefit of an easement or title to the Adjacent Parking, the right to occupy and use the Wire facility shall automatically terminate, unless Applicant or the then current owner of the Project has first obtained a Site Plan amendment addressing the parking capacity of the Project; and

- 4) Compliance with all applicable laws, including without limitation, environmental laws, and receipt of all required permits from other agencies, including, without limitation, an Article 24 permit for construction within 100 feet of wetlands and coverage under the NYSDEC General Permit for Construction Stormwater Discharges. Further, the Applicant shall comply with the stipulations contained in the Letter of Resolution among New York State Office of Parks, Recreation & Historic Preservation and New York State Empire Development Corporation Regarding the Demolition of the Newbury Iron Works – Office/Machine Shop, dated as of July 28<sup>th</sup>, 2022 and shall comply with the recommendations contained in the updated Creighton Manning Traffic and Parking Assessment, dated as of June 9<sup>th</sup>, 2022; and
- 5) The owner of 38 South River Street has submitted documentation to the Planning Board that indicates a potential discrepancy in property surveys in this area of South River Street. The Planning Board does not have the authority to adjudicate private boundary disputes. The Applicant has provided an updated Site Plan outlining the disputed property area and depicting that no construction or use of the disputed property is part of the Amended Site Plan Application. Accordingly, this Conditional Approval shall in no way be construed to permit any development within the disputed area. The Site Plans shall be revised to clearly denote that the structure at 38 South River Street, and the 8 FT No Build Area, is not part of the Project. Moreover, the Applicant shall place and maintain curb blocks at the front of each parking space abutting the portion of the property boundary that is disputed; and
- 6) The Applicant shall control any dust that may emanate from its property. During construction, on areas of exposed soil, the Applicant shall minimize dust through the appropriate application of water or other dust suppression techniques. The Applicant shall immediately secure any construction materials on-site that may generate dust, by placement of tarps or other appropriate dust control measures. Moreover, the Applicant shall comply with all requirements of the Village Code, including, without limitation,

Section 155-30 G of the Zoning Code, which provides: “*Other forms of air pollution. No emission of fly ash, dust, fumes, vapors, gases and other forms of any pollution shall be permitted which can cause any damage to health, animals, vegetation or other forms of property or which can cause any excessive soiling*”; and

- 7) Pursuant to Section 155-48 (B) of the Zoning Code, Landscaping required pursuant to an approved site plan shall be installed or bonded for under an agreement approved by the Village Attorney prior to temporary occupancy and installed before the issuance of final certificate of occupancy; and
- 8) Payment of all fees required by the Village Code, including, without limitation, any escrow required for professional fees; and
- 9) Operating hours of the outdoor portion of the restaurant on the fifth floor are limited to 7 AM to 9 PM Sunday through Thursday; 7 AM to 10 PM Friday and Saturday; and
- 10) Outdoor space on the fifth floor is limited to bar and dining use seasonally from May to October; any other use of the space is prohibited; and
- 11) Exterior amplified or non-amplified sound is permitted only during operating hours such that patrons may maintain conversational speaking voices (e.g. background music only); and
- 12) Exterior amplified and non-amplified sound of any kind is strictly prohibited outside operating hours; and
- 13) Amplifiers, speakers or other acoustic devices, be they exterior or interior, shall be directed inward and not away from the fifth-floor occupied space; and
- 14) Parapet greenery must be maintained year round; and
- 15) All building systems equipment located on the fifth-floor shall be situated to reduce visibility from neighboring properties (e.g. behind parapet and/or landscaping) and all such systems shall include measures to minimize sound; and

**BE IT FURTHER RESOLVED**, that all WHEREAS clauses are incorporated into the approval; and

**BE IT FURTHER RESOLVED**, that this Special Use Permit and Site Plan Amendment approval shall run with the land and shall bind any successor in interest to the Applicant; and

**BE IT FURTHER RESOLVED**, that this resolution shall be filed with the Village of Cossackie Village Clerk within five (5) days of its adoption and a copy sent to the Applicant; and

**BE IT FINALLY RESOLVED**, that this resolution shall become effective immediately

upon its adoption.

Motion By: Jarrett Lane

Seconded By: Rodney Levine

The foregoing resolution was voted upon with all members voting and signing as follows:

Robert Van Valkenburg, Jr.,  
Chairman

Yes

No

Abstain

Absent

Jarrett Lane

Yes

No

Abstain

Absent

Rodney Levine

Yes

No

Abstain

Absent

Patricia Maxwell

Yes

No

Abstain

Absent

Deidre Meier

Yes

No

Abstain

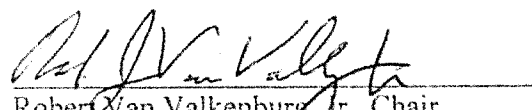
Absent

VOTE IS CERTIFIED BY:

  
Secretary

10/20/2022  
Date

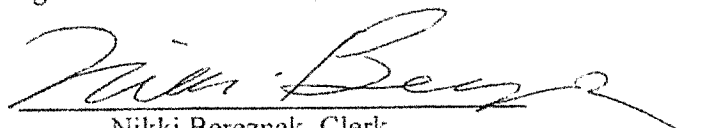
THE RESOLUTION IS HEREBY APPROVED AND ORDERED TO THE RECORD BY:

  
Robert Van Valkenburg, Jr., Chair

10/25/2022  
Date

I, the undersigned Clerk of the Village of Coxsackie do hereby certify that the above is a resolution duly adopted by the Planning Board on October 20, 2022.

SEAL

  
Nikki Berezna, Clerk

Filed in the Office of the Village Clerk, October 25, 2022