

Beacon City Planning Board
October 11, 2011

A Planning Board meeting was held on Tuesday, October 11, 2011 in the classroom located in the lower level of the Municipal Center. The meeting commenced at 7:00 p.m. with Chairman Jay Sheers, Members Spring Attaway, Rick Muscat and Naomi Sachs; and Alternate Members Hank Dutch and James Korn in attendance. Member Randall Williams joined the meeting at 8:15 p.m. Also in attendance were Building Inspector Tim Dexter, City Engineer Art Tully, City Planner David Stolman, and City Attorney Nick Ward-Willis. Members John Gunn and Elizabeth Strianese were excused. Mr. Sheers announced the date of the next Planning Board meeting must be changed because it falls on Election Day, Tuesday, November 8th, and City offices are closed. After polling members for availability, the meeting was rescheduled and will be held on Wednesday, November 9, 2011.

Mr. Sheers called for corrections/additions or a motion to approve the minutes of the September 13, 2011 meeting. Ms. Sachs made a motion to approve the minutes as presented, seconded by Ms. Attaway. All voted in favor. Motion carried.

ITEM NO. 1 CONTINUE SITE PLAN REVIEW ON APPLICATION FOR SPECIAL USE PERMIT, BEACON THEATER, FOR THEATER OFFICES, RETAIL SPACE, BAR USE, DANCE INSTRUCTION AND COLLEGE EDUCATION, SUBMITTED BY 4TH WALL THEATRICAL PRODUCTIONS, INC., 445 MAIN STREET

Mr. Sheers explained this is a continuation of Beacon Theater's site plan review related to their application for a Special Use Permit. He reported the City Council has asked the Planning Board to act as Lead Agency in the SEQRA review process. Ms. Attaway made a motion to acknowledge the Planning Board as Lead Agency for environmental review, seconded by Mr. Muscat. All voted in favor. Motion carried. Mr. Sheers explained the City Council is the only other involved agency which allows the board to proceed with making a determination. Prior to the meeting, Mr. Stolman circulated a memorandum outlining review of the Environmental Assessment Form and a draft Negative Declaration for consideration. If a Negative Declaration is made, the City Council will consider the Special Use Permit at an upcoming meeting and if granted, the applicant will return to the Planning Board for final site plan review.

Mr. Dutch reiterated his concern that the formula currently used to determine parking requirements is somewhat flawed. Mr. Stolman advised members the Planning Board is an administrative board that must process applications in accordance with laws that currently exist.

Mr. Korn asked if the proposed storefronts and second floor area were considered in the original parking requirement. Mr. Stolman explained proposed uses were included in the parking calculation, and compared to regulations that existed in 1964 for the entire structure and its use at the time. The auditorium space remains unchanged and the new parking calculation is not more than 25% greater than that of the original requirement.

Mr. Stolman explained parking calculations provided by the applicant have been reviewed for compliance to standards established in the City's zoning law. Computations are based on specific uses and parking spaces are based on floor area. In this case, use of the auditorium was already permitted and there will be no need for additional approval unless a change of use is proposed for that space. Mr. Stolman explained the applicant is before the Planning Board due to proposed retail, bar and educational uses.

Ms. Attaway made a motion to approve the Negative Declaration under SEQRA as drafted, seconded by Ms. Sachs. All voted in favor with the exception of Mr. Dutch who voted against the motion. Motion carried; 5-1.

Mr. Stolman reported the City Council will be taking the marquee design into consideration as part of the Special Use Permit application. He advised members to wait for the Council's disposition before discussing the matter further. Mr. Stolman suggested the applicant install plywood and a coat of paint under the marquee so the inner framing and parts are not visible.

Mr. Tully reported his office is in the process of evaluating the I and I Study, and any violations discovered must be mediated by the applicant. Mr. Stolman explained the Negative Declaration mandates corrective measures for any illegal connections into the sanitary sewer system that may exist. This will be discussed further during final site plan review.

ITEM NO. 2 CONTINUE REVIEW OF APPLICATIONS FOR SUBDIVISION AND SITE PLAN APPROVAL, 3-LOTS, 4-16 HANNA LANE, SUBMITTED BY SCULPTURE BEACON, LLC

Aryeh Siegel explained site plans for this subdivision have been revised according to comments received from City consultants. The walkway will remain in its current location and the pipe that extends into the path will be moved. Mr. Siegel said the surveyor, Glennon Watson, just returned from vacation and will be working on revisions to the Subdivision plat accordingly. He will also be providing easement information for review by the City Attorney. Mr. Stolman and Mr. Tully's remaining comments focus on the subdivision plan. Additionally, Mr. Sheers advised the applicant that Mr. Dexter asked for placement of concrete monuments or physical markers on site to make it easier to identify property lines. Further review will take place when the Subdivision Plat is submitted.

ITEM NO. 3 CONTINUE SITE PLAN REVIEW ON APPLICATION FOR SPECIAL USE PERMIT, 6 ARTIST LIVE/WORK UNITS, BUILDING #9, 39 FRONT STREET, SUBMITTED BY FISHKILL CREEK DEVELOPMENT COMPANY, INC.

Mr. Sheers reported the City Council granted a Special Use Permit for this project and site plan review continues. Mr. Stolman asked if Front Street had been patched and paved as previously discussed. Mr. Siegel explained a meeting took place on site with his client, John Russo, and the owner of the private street. At that meeting, the owner of the private road was in agreement with the plan for improvements, however changed his

mind after Mr. Russo left. Mr. Siegel reported his client is now pursuing a lawsuit because although he has an easement to use the road, he has no right to perform maintenance. City Attorney Nick Ward-Willis felt language could be drafted as a condition of approval to address the situation. Mr. Tully raised the concern that road improvements were a condition of a previously approved site plan and have not yet been completed. A copy of the easement documents will be submitted for review. City Attorney Nick Ward-Willis suggested conditioning the approval on submission of written proof that the applicant does not have the cooperation of the owner, has no right to maintain the access road, and is currently pursuing litigation. Mr. Tully was concerned the road could fall into a state of disrepair, and use of the road is increasing. City Attorney Nick Ward-Willis explained the City has no jurisdiction to command the owner of the private road to make improvements, although court action could be pursued. Mr. Dexter was concerned over lengthy litigation considering the Special Use Permit expires in six months if a building permit is not obtained. Mr. Stolman said if site plan approval is granted with conditions as outlined by the City Attorney, a building permit could be issued as long as litigation commences within six months. Mr. Tully expressed concern about granting site plan approval considering the applicant's lawsuit may not be successful. Unfortunately the situation has existed for many years can be resolved, however concerns for the condition of the private street is not one of emergency access because the road is clearly passable.

Ms. Attaway asked if residents of Artist Live/Work spaces are required to be artists. Mr. Stolman explained there are several provisions in the law and an artist must reside in the unit. Once Artist Live/Work spaces are approved and established, enforcement is the Building Department's responsibility and concerns of non-compliance would be directed to them. Mr. Dexter explained people other than artists, including children, can also reside in the dwelling, and units are inspected every two years for compliance. Some type of evidence must be visible that artist work taking place during that inspection. Residents of these spaces can write a portion of taxes off as business expenses however the Assessor should be consulted as to whether municipal tax benefits exist.

There were no further comments and Ms. Attaway made a motion to grant site plan approval, subject to the conditions outlined by the City Attorney, seconded by Mr. Dutch. All voted in favor. Motion carried.

ITEM NO. 4 CONTINUE SITE PLAN REVIEW ON APPLICATION FOR SPECIAL USE PERMIT, MOCA BEACON ARTIST COMMUNITY - TO INCORPORATE 19 RESIDENTIAL UNITS WITH EXISTING MIXED USE, 211 FISHKILL AVENUE (FORMER BEACON HIGH SCHOOL), SUBMITTED BY 211 FISHKILL AVENUE, LLC

Mr. Dutch was recused from this item due to a conflict of interest. Mr. Sheers explained the Planning Board has become Lead Agency in the SEQRA review process and a draft of the Negative Declaration was circulated prior to the meeting. Mr. Korn asked if it included the requirement for a Neighborhood Advisory Board as previously discussed. The applicant's attorney, Jennifer VanTuyl introduced a neighbor of the

advisory group was in attendance, and submitted a letter from the group for review. She explained the proposal for a neighborhood advisory group is in their project description, and is something the applicant agreed to do although not required as mitigation. Ms. VanTuyl read the following letter:

The Neighborhood Advisory Group is exclusively composed of people who live within the two block parking area of MOCA Beacon. The purpose of the group, according to those of us who organized it, is to address issues of parking on the residential streets as these issues arise and to insure easy avenues of two-way communication with the owners of MOCA Beacon and their neighbors on the adjacent streets.

The "Neighborhood Advisory Group", also possibly referred to as NAG, in no manner, shape, or form constitutes an advisory board, or any other formal entity. The name itself was chosen to create the acronym NAG, and has no legal, political, or any other significance or standing.

We are pleased that the owners of MOCA Beacon have been so cooperative and we look forward to working with them to resolve whatever parking or traffic issues arise in the future.

Mr. Sheers felt the applicant's offer to encourage and recognize a neighborhood group was a private matter, not a mitigation issue required in a Negative Declaration. Mr. Korn contended the applicant offered to make the Neighborhood Advisory Board a condition of approval for the Special Use Permit and felt it should be included in the Negative Declaration.

Ms. VanTuyl reported her client agreed to work with the neighbors whether imposed as a condition or not. She said they had not intended to form a "board" but agreed to work together as a neighborhood group. Mr. Stolman said the City Council may have input on this, and similar to the Beacon Theater marquee, recommended the board wait for their disposition on the matter. Mr. Stolman said the Negative Declaration was complete with respect to environmental issues; and a parking variance was granted by the Zoning Board of Appeals therefore determined no significant adverse environmental impact would be created with respect to parking.

Mr. Korn reported a neighbor asked the City Council to include formation of an advisory board as a condition of the Special Use Permit. Mr. Sheers advised him that the City Council's hearing will continue at which time neighbors will be offered another opportunity to speak. Mr. Korn asked that parking be revisited at some point after the project begins to make certain problems don't arise; he believed other adverse affects with regard to traffic may arise as additional uses are implemented. City Attorney Nick Ward-Willis said the Zoning Board of Appeals' determination with respect to parking is binding on this board and explained the proposed Negative Declaration was drafted after an extensive review of the application. Mr. Sheers explained the City has mechanisms in place to deal with changes in traffic, i.e. making a street one-way, change parking, etc. He reminded members that this was a very active high school for many decades.

There were no further comments and Ms. Sachs made a motion to approve the Negative Declaration under SEQRA as drafted, seconded by Ms. Attaway. All voted in favor with the exception of Mr. Korn who voted against the motion. Motion carried; 5-1. Site plan review will continue if and when a Special Use Permit is granted.

Architectural Review

7 Craig House Lane - Certificate of Appropriateness; submitted by Tioronda, LLC

Mr. Dutch returned as a voting member. Jennifer VanTuyl explained her client's are seeking approval for the demolition of two buildings (the Craft House and Carriage House) on property most recently known as the Craig House. The site is located in the most southerly portion of Beacon and was part of the Town of Fishkill before being annexed into the City. The original "Tioronda Estate" is famous for its large house, great lawn, landscaping, and as the site of one of three original Sargent Weeping Hemlocks. After the estate ceased operation, the property was used as Craig House Hospital which closed sometime in 2005. Approximately six months ago, the City enacted a law requiring registration of vacant buildings and intended to encourage owners to assess viability of their buildings. Ms. VanTuyl reported this application is a result of a notice received from the Building Department to take action and secure buildings on their site. Ordinarily building demolition would solely be handled by the Building Department however this entire property lies in the Historical Overlay District which requires a Certificate of Appropriateness before any changes, additions, or demolitions can take place. Ms. VanTuyl reported Hartgen Archeological Associates, Inc., specifically Senior Architectural Historian Walter Wheeler, was contacted to analyze the condition of these buildings. Mr. Wheeler is very competent in the field of architectural history, has consulted with several municipalities, and has authored major publications on architectural history. He evaluated the two structures slated for removal to make a determination, under standards of the City Code, as to whether a Certificate of Appropriateness could lawfully be issued. A letter summarizing his findings was circulated to members prior to the meeting for review.

Ms. VanTuyl presented photographs of the Craft House building which is somewhat noticeable from Grandview Avenue but not visible from Route 9D. It is not historic in nature and has no architectural significance. On the other hand, the Carriage House, located in the central portion of the property behind the main house, is an original brick structure. The exterior of the structure may initially appear fine, but the interior structure has almost entirely collapsed into the basement. The consultant inspected the Carriage House and concluded that although it is an attractive building, removal would not have a significant adverse impact on historic resources due to its advanced level of deterioration.

Ms. Attaway asked how long the applicant owned the property, with concern that the structure may have been intentionally neglected and left to deteriorate. Ms. VanTuyl said her clients purchased the property sometime in 2003 or 2004, and the Carriage House had been abandoned a long time prior to that. She reported an application to subdivide the property and keep all buildings was submitted however when the economy tanked in 2007, those plans were completely abandoned. Since then the property has

been actively marketed to colleges, group study organizations, etc., with no success. Mr. Dexter explained the fees associated with registration of vacant buildings has gotten the attention of owners in general, but this particular property has code enforcement action dealing with maintaining a structurally unsafe building, i.e. leaky roof, broken windows, etc. When the owner initially looked into saving the Carriage House, repair costs were ten times higher to demolish the building. Mr. Dexter explained these costs were only to secure and make the buildings structurally sound, and did not include restoration. He reported other buildings cited on the property have been taken care of and appropriately secured. The proposed demolition includes filling in the foundations and restoring the land.

Mr. Dutch believed the Dutchess County Historic Society should be involved because they would have local staff to appropriately evaluate the building. Ms. VanTuyl explained the architectural historian they contacted performed his evaluation under standards set forth in the City Code, and determined issuance of a Certificate of Appropriateness to demolish the building was warranted. Mr. Dutch took pictures of the site and felt the Carriage House should be considered a significant historical treasure. Ms. VanTuyl felt the architectural historian, who is an expert in historical values as well as structural soundness of buildings, verified the building demolition meets standards set forth in the code. Additionally, due to the advanced stage of decay, removal of the building will not have a significant adverse impact on historic resources.

Ms. Sachs, although sympathetic to enforcement issues and cost prohibitive repair fees, had concern that other buildings on this property could be taken down one by one. Ms. VanTuyl explained her client is not happy that demolition is needed, however reported there are no plans to take other buildings down. Ultimately, before any other buildings are taken down, new applications would need to be submitted and evaluated by the Planning Board. Mr. Williams joined the meeting at 8:15 p.m.

Mr. Korn asked when the Carriage House was constructed and felt the board should have had an opportunity to see it before making a determination. Ms. VanTuyl reported the building was constructed sometime in the 1850's, and likely designed by the same architect. After the Carriage House use ceased, the Craig House Hospital used it for general storage, and unfortunately at this point the interior structure has completely collapsed into the basement. Mr. Korn believed the building could be propped up in some manner so it could be rehabilitated in the future. Mr. Dexter explained code enforcement action requires them to either repair or remove the building. At this time the roof needs to be completely removed and approximately 75% of it reframed, the mid-level floor needs 100% restoration, brick needs re-pointing, and the gutters and chimneys need replacing. Mr. Dexter reported his department has issued approximately 15 similar orders to buildings city-wide since the spring, six of which have already been demolished because they did not need Planning Board approval. This particular property had code enforcement action placed on eight buildings and these are the only two where restoration is not practical.

Ms. Attaway supported saving as many historical structures as possible, however felt the advanced state of disrepair would require 75% of new construction. She feared actual restoration efforts would take away its historical substance. Ms. Attaway felt responsible to consider liability for the City due to the potential for personal injury to those who may break into the building.

Mr. Muscat, who is in the building profession, felt even temporary repairs would be a big job, and that minimal mitigation measures would be a large waste of money.

Mr. Williams joined the meeting and asked if the building's foundation was compromised and Ms. VanTuyl summarized information discussed prior to his arrival. She said a professional consultant determined the building to be valuable, however due to its advanced state of deterioration demolition would not have a significant adverse impact under definitions provided in City Code. Ms. VanTuyl understood demolition is not a popular action but referred to the City's Historic Preservation law which allows the issuance of a Certificate of Appropriateness for the demolition of a historic building under certain criteria. She explained the law talks about whether the building is currently contributing to valuable historic resources, and whether demolition would have a significant adverse impact on historic resources. The letter issued by the architectural historian indicates the historical value has been lost due to the structure's state of disintegration.

Mr. Dutch asked if it would be possible to seal up the building like HUD has done in Newburgh. He explained that solution would be less costly and provide an opportunity to restore the building at some point in the future. Mr. Dexter explained work needed to make the building structurally sound would be expensive. Mr. Dutch said he was involved with many boat restoration projects where it doesn't matter how much material is replaced, as long as original construction techniques are used. Ms. Sachs explained building restoration, unlike boats, must adhere to certain criteria to qualify for the National Registry of Historic Places.

Ms. VanTuyl explained the issue under consideration is whether a Certificate of Appropriateness can be issued for building demolition. If the application is denied, the owner has the right to bring an appeal before the Zoning Board of Appeals which is where the monetary aspect of hardship would be discussed. Ms. VanTuyl understood everyone's sentiments to save the building, however an architectural historian has issued a professional opinion otherwise. She read Mr. Wheeler's summation, "For the reasons stated above, I conclude that it is appropriate that a Negative Declaration be issued under SEQR, and that a Certificate of Appropriateness be issued to authorize the demolition of both of the above structures." Mr. Korn asked if alternatives such as waiting six months, or surrounding it with a fence, etc., could be considered. Mr. Dexter reported fencing is not an option, and in six months time, they will be in court to address the violations.

City Attorney Nick Ward-Willis explained if the board finds the applicant has not met the criteria to allow the demolition, and an appeal is unsuccessful, the matter would go before the court system. He advised the board that they could hire an expert to

evaluate information presented by the applicant. Mr. Williams toured the site a year ago and although he did not want to see the building demolished, felt letting it simply fall down would be worse. In light of guidelines that must be followed, he believed the Planning Board must accept and act on the professional opinion presented. City Attorney Nick Ward-Willis explained the expert's opinion could be contested only if information in the report appeared to be incredible.

After considering the information presented, Ms. Attaway made a motion to grant a Negative Declaration under SEQRA for the demolition of the Craft House, seconded by Ms. Sachs. All voted in favor. Motion carried. Ms. Attaway made a motion to issue a Certificate of Appropriateness for the demolition of the Craft House, seconded by Mr. Williams. All voted in favor. Motion carried.

Mr. Dutch made a motion to table consideration of a Negative Declaration with regard to the Carriage House to allow further review and discussion, seconded by Mr. Korn. Mr. Dutch felt an opinion should be obtained from the Dutchess County Historical Society. Ms. Sachs was concerned the issue would become more complicated as more people are brought in, and that additional opinions would not benefit the City of Beacon or the applicant and waste a great deal of time and money. Ms. Attaway expressed concerns for liability, health, and for the inability to restore the building in a historical fashion therefore felt it should be demolished. Mr. Muscat agreed with Ms. Attaway, and noted if the City fails to enforce the law they could be faced with an even greater liability. Mr. Williams felt an indefinite blanket for further research would not be beneficial unless specific items need to be reviewed. He was of the opinion that the board should abide by the regulations and prepare to take action. Mr. Sheers felt there would always be another opinion and ultimately the Planning Board must make a decision. He pointed out the building cannot be seen from the road and the historical value of the property relates to the buildings and landscaping that are visible from the street. Considering the motion made by Mr. Dutch to table the matter for further review, Mr. Dutch and Mr. Korn voted in favor of the motion; Mr. Sheers, Ms. Attaway, Mr. Williams, and Ms. Sachs voted against the motion. Motion defeated; 2-5.

After considering information presented, Ms. Attaway made a motion to grant a Negative Declaration under SEQRA for the demolition of the Carriage House, seconded by Mr. Muscat. Mr. Korn asked if the Negative Declaration meant it would be safe to take the building down. Ms. VanTuyl explained it is a statement based on findings of an expert that removal of the building will not have a negative impact on historical resources. On roll call Mr. Sheers, Ms. Attaway, Mr. Muscat, Mr. Williams, and Ms. Sachs voted in favor of the motion; Mr. Korn and Mr. Dutch voted against the motion. Motion carried; 5-2.

Ms. Attaway made a motion to issue a Certificate of Appropriateness for the demolition of the Carriage House, seconded by Ms. Sachs. On roll call Mr. Sheers, Ms. Attaway, Mr. Muscat, Mr. Williams, and Ms. Sachs voted in favor of the motion; Mr. Korn and Mr. Dutch voted against the motion. Motion carried; 5-2.

Mr. Williams asked the applicant to document the building's demolition so the City has a historical record of the Carriage House. Ms. VanTuyl thanked the board and agreed to provide documentation of the demolition as requested. Mr. Korn asked if demolitions like this could be prevented in the future because he feared the old school house would be lost as well. Mr. Dexter reported the biggest enemy of old buildings is weather and vandalism, and these enforcement actions can prevent this from happening again.

There was no further business and Ms. Attaway made a motion to close the meeting, seconded by Mr. Williams. All voted in favor. Motion carried. The meeting adjourned at 8:45 p.m.