

Village of Canastota  
Planning Board Minutes

November 5, 2008

MEMBERS PRESENT: Vic J. Kopnitsky, Donald Forth, Joseph DiGiorgio and Mary Krause

MEMBERS ABSENT: Terry Curtis

OTHERS PRESENT: Albert Dohn and Gregory Catarious

Chairman Kopnitsky called the meeting to order at 7:30 p.m.

**OLD BUSINESS**

Chairman Kopnitsky reviewed with the Board the application of Mac-Clark Restaurants for interior renovations to the drive-thru and customer service areas of the McDonald's Restaurant on Route 13 in the Village. The applicants stated that the renovations are necessary for a new product line. Construction is scheduled to begin this Sunday evening. Chairman Kopnitsky reported we have previously determined the proposal to be an unlisted activity for which a negative declaration had been issued. We have previously referred the application to the Madison County Planning Department for review. The GML Recommendation Report from the County was received this afternoon. The matter has been returned for local determination as the MCPB determined that no adverse County or intermunicipal impact would result from the proposed alterations as shown on the submitted plans dated September 29, 2008. The Board reviewed the details of the proposal with the representatives of the applicant.

Motion by Vic J. Kopnitsky, seconded by Donald Forth, to approve the site plan dated September 29, 2008, without any conditions. Motion carried: Ayes: VJK, DF, MK, JD. Nays: None.

**NEW BUSINESS**

1. Chairman Kopnitsky reported that the Board received a request for a recommendation from the ZBA regarding an area variance to reduce the size of the parking spaces from 22 to 20 feet for property currently owned by JD Rosehart, LLC and located next to NAPA on Route 5 in the Village. Colonial Finance Group is seeking to purchase the property and to operate a motor vehicle sales/service establishment. Chairman Kopnitsky read aloud a letter that was received from the Code Enforcement Officer concerning the required Special Use Permit. It has been determined by the CEO that a Special Use Permit to sell used cars was previously issued to this property on November 25, 1997, and, therefore, need not be addressed with the new purchaser, Colonial Finance Group. There are proposed parking spaces depicted in the drawing in front of and adjacent to the building and on the south side of the property adjacent to Route 5. The variance is sought because design criteria for a parking layout indicates there is not enough distance between the parking spaces in front of and adjacent to the building and on the south side of the property adjacent to Route 5 for cars to turn in and out of the spaces.

The Chairman and the Board reviewed §230-74 under which the Planning Board, as part of site plan review, has the authority to vary the number of parking spaces based upon the information

presented but does not have the authority to vary the size of the parking space. Under §230-6, Definitions, a parking space is to be 9 feet wide by 22 feet long and is to be used for the temporary location of one licensed motor vehicle. The application shows sales area along the south boundary in the spaces adjacent to the Route 5 right-of-way. Cars offered for sale are not licensed. Thus, spaces for cars offered for sale are not parked in parking spaces as defined in §230-6. Thus, the question to the applicant and for the ZBA to consider is does the applicant need the variance for the spaces adjacent to and in front of the building if the cars for sale are located in the front? In other words, the sales spaces do not count as parking spaces and are not parking spaces if that is where the sales inventory is to be displayed.

Motion by Vic J. Kopnitsky, seconded by Mary Krause, to make the following recommendation to the ZBA: Assuming that we are all operating on the principle that if the ZBA does not have to grant a variance, it shouldn't, if the operation of this site is conditioned such that the parking spaces on the south side of the lot are all used for inventory and only for inventory, those spaces are not parking spaces within the meaning of the Village ordinance; therefore, the question to the applicant is do they still need a variance from the 22 foot depth for the spaces adjacent to the building, and if so, why? The ZBA is referred to the definition of parking space on Page 23007 of the Village Code Book under §230-6. Motion carried: Ayes: VJK, DF, MK, JD. Nays: None.

2. Chairman Kopnitsky reported another referral from the ZBA for an interpretation of "babysitting" under the definition of Home Occupation as set forth in §230-6 of the Village Codes in conjunction with an application for a Special Use Permit. The applicant is Elder Haven LLC which seeks a Special Use Permit to operate an adult day care facility as a home occupation at property located in an R-2 zone at 309 South Peterboro Street in the Village. The question is whether the applicant should be applying for a special use permit or for a use variance.

§230-38 Permitted uses in an R-2 District and §230-39 Special permit uses were reviewed against the application. The definition of Home Occupation under §230-6, Definitions, was also reviewed. The principal use of the premises must be as a dwelling. No outside employees are allowed. The use cannot change the essential use of the premises and the use must be secondary to the use as a dwelling.

First, there is an obvious difference between baby sitting and adult care; in an emergency, a baby or small child can be carried to safety. Submitted in conjunction with the application of Elder Haven, LLC, are a brochure, business plan and a flyer put out by Elder Haven LLC. The brochure states, "ElderHaven staff are carefully selected individuals." There are representations that the staff are licensed and certified. There is a representation that the staff will be hired by the Director. Thus, there are several indications from the applicant's submission that it will have staff. There appears to be no indication of any limitation on the number of adults intended to be cared for in the facility. We have a building code definition from the CEO that an adult care facility "provides accommodations for less than 24 hours for more than five unrelated adults and provides supervision and personal care services" and must be classified an I-4 Group. So the question of capacity implicates issues for construction and life safety as an I-4 Group under the applicable section of the Building and Fire Prevention Code of New York State. The ElderHaven Business Plan indicates that the address for the individuals is 9114 Kawana Bay, Canastota, New York. Among the duties of Margaret Kolodzie, she will be the director of the business and is responsible for hiring staff – an indication that there will be other than family members providing care. This also raises issues related to the basic definition of Home Occupation as the applicant is a business entity which is neither the owner of the property nor an

entity which can live in a dwelling. There is also an issue as to whether any individual is using the premises as a dwelling. The NYSOFA Social Adult Day Care Regulations were also submitted by the applicant. §6654.20, under staffing on Page 7, states, “the program shall have an adequate number of qualified staff, which may include volunteers, to perform all of the functions prescribed in this Part and to ensure the health, safety, and welfare of participants and that the program shall have at least two staff, one of whom shall be a paid staff person, with the participants during the program day.” We also have a letter from Attorney Peter M. Finocchiaro, the attorney who is representing Michael and Margaret Kolodzie, but does not mention any representation of the applicant, ElderHaven LLC. The attorney asserts that ElderHaven will provide non-medical care “or in other words baby-sit senior citizens.” The attorney asserts that the “Due Process Clause of the United States Constitution” is implicated but there is no explanation.

Motion by Vic J. Kopnitsky, seconded by Joseph DiGiorgio, that this Board recommend that the definition of babysitting under Home Occupation does not include the proposed activities of the applicant and, in any event, if the application was construed as an application for a use variance, that the restrictive and extremely difficult evidentiary requirements required under the Village Law have not even been approached by the applicant and, therefore, the request and the application for a Special Use Permit should be denied on the grounds: 1) the applicant is an LLC and therefore cannot reside in the dwelling; 2) Mr. and Mrs. Kolodzie appear to reside elsewhere in accordance with the papers they submitted so, therefore, this is not an accessory use to the primary use as a dwelling; 3) the papers submitted by the applicant indicate at various places and in numerous ways that there will be outside staff and the State regulations require such outside staff and, therefore, this is not a “Home Occupation” under the 230-6, Definitions; 4) it appears that the proposed use is primary not secondary and, therefore, does not fall within the definition of “Home Occupation”; and, finally 5) given the Adult Care regulations provided by the applicant, it appears that the intended use is more in the order of a temporary convalescent home, which is one of the enumerated exceptions in the definition of “Home Occupation”. Motion carried: Ayes: VJK, DF, MK, JD. Nays: None.

Motion by Donald Forth, seconded by Mary Krause, to adjourn at 8:10 p.m. Motion carried. Ayes: VJK, DF, MK, JD. Nays: none

Respectfully submitted,

Catherine E. Williams  
Clerk/Treasurer