

**PLANNING BOARD  
TOWN AND VILLAGE OF ARCADE  
17 Church Street, Arcade, New York 14009  
Village Office      585 492-1111  
Town Office        585 492-4685**

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At a meeting of the Planning Board of the Town and Village of Arcade held on Wednesday, March 14, 2012 at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York:

**MEMBERS PRESENT:** Don Suttell, Rich Kosmerl, Paul Bijhouwer and Aaron Felber

**MEMBERS ABSENT:** Andy Schnitzler

**OTHERS PRESENT:** Doug Ronan

The meeting was called to order at 7:05 P.M. by Chairman Paul Bijhouwer

**APPROVAL OF MINUTES:**

**MOTION** by Rich Kosmerl, seconded by Don Suttell and carried three yes votes to one abstention, to accept the minutes of the meeting of December 14, 2011. Aaron Felber abstained as he was not present at that meeting.

**THE ZONING BOARD OF APPEALS REQUESTS RECOMMENDATION AND COMMENT ON APPLICATION FOR USE VARIANCE, PERMIT NO. 2129-UV, SUBMITTED BY GARY BOORMAN, REQUESTING RE-USE OF AN UPSTAIRS APARTMENT LOCATED AT 372 WEST MAIN STREET, WHICH IS NOT A LISTED PERMITTED USE IN A NEIGHBORHOOD COMMERCIAL DISTRICT AND IS A NON-CONFORMING USE WHICH SHALL NOT BE EXPANDED:**

The Chairman read the application, minutes from the ZBA meeting of February 20, 2012 (see Attachment A) and the recommendation and comments from the Wyoming County Planning Board (WCPB) (see Attachment B).

In discussion:

1. It was questioned if there is a minimum square footage for apartments required in the State or County building codes, and if so, does the proposed re-use of the apartment meet those codes.
2. Mr. Boorman bought the property with all good intentions, not realizing the zoning restrictions. It was questioned whether the realtor was forth coming with that

information.

3. A Special Use Permit cannot be issued.
4. The State has ruled in the past that buying a property without knowing the zoning requirements is not considered a hardship. However, the Planning Board stated that if he cannot live in the downstairs and rent the upstairs, he will be in financial distress in his retirement.
5. The hardship is unique to his situation. He is the only residential owner with an apartment to rent as opposed to the others with apartments to rent that are businesses in this area.
6. The intent in the past when this area was changed to a Neighborhood Commercial district was that the then Motorola business would be purchasing the rest of the residential properties in the area. This did not happen and the intent is no longer the case. None of the properties between Prospect Street and what is now Prestolite are marketable at this time. Anyone that has the money to do something with a property in this location should be encouraged to do so.
7. It was noted that the Village is need of more apartments. This was shown in the study done for the Northridge complexes. There are approximately 3000 individuals working within the Village and only approximately 2000 residences.
8. It would be better if the Village of Arcade modified the zoning to an R3B District, thus allowing the existing uses (current upstairs apartments above businesses) all to become conforming.

**MOTION** by Rich Kosmerl, seconded by Paul Bijhouwer and unanimously carried, to recommend to the Arcade Village Board of Trustees that they consider modifying the area between Prospect Street and Prestolite on the south side of Route 39 from the current Neighborhood Commercial zone to an R3B zoning district, thus allowing the existing uses all to become conforming. The Secretary was directed to forward this to the Village Board.

**MOTION** by Paul Bijhouwer, seconded by Aaron Felber and unanimously carried, to recommend approval to the ZBA of Use Variance Application 2129-UV, submitted by Gary Boorman, with the above comments. Further, to notify the ZBA of the Planning Board's recommendation to the Arcade Village Board of Trustees to modify the zoning in this area.

**REVIEW OF SIGN REGULATIONS IN THE REVISED VILLAGE ZONING LAW RECENTLY APPROVED BY THE VILLAGE BOARD OF TRUSTEES AND NEW YORK STATE:**

Since the Planning Board did not have the opportunity to review additional changes regarding signs made to the revised Village Zoning Law before its approval, they did so at this time.

In review, the following comments were made:

1. Page 32, No. 6 – Regarding, “Signs must be constructed of wood, or a wood simulation

material” the Planning Board feels the restriction is unnecessary. There are many composite materials that are esthetically pleasing and it is already stated in the law that signs should enhance the architectural elements of a building.

2. Page 48, No. 2 A - The Board feels there is not sufficient context regarding the term “alterations”. The Board suggests adding, “Alterations to the size of the sign that increase it by more than 20% require a new sign permit.” It was also noted that there are formatting issues on this page as well as typos in the sentence “Alternations include modifications to size of more...” It should read “**Alterations** include modifications to size **of** more”.
3. Page 50, 3D. Advertising Signs – The wording implies signs be mounted on a building but does not state it. Is it intended to allow free standing signs? There is nothing in the language to prevent them.
4. Page 52 – The chart shows a **negative** 24 sq. feet for maximum sign area in the R3B district.

In addition:

1. Formatting errors were found in the Table of Contents, specifically on pages iii and iv.
2. The words “Draft A” should be removed from the top left-hand corner of the Table of Contents pages.
3. Pages 11 through 13 – The heading **Special Permit** needs to be dropped down and numbered 80. All further numbers need to be changed.
4. In light of the formatting and typographical errors found in this brief review, it is recommended that the entire document be proof-read for additional discrepancies.

**MOTION** by Paul Bijhouwer, seconded by Don Suttell and unanimously carried, instructing the Secretary to forward a letter to the Village of Arcade Board of Trustees with the above comments regarding the Revised Village Zoning document for consideration.

**REVIEW OF LETTER RECEIVED FROM THE TOWN OF SARDINIA PLANNING BOARD REGARDING COMMENTS ABOUT THE PROPOSED TRI-COUNTY BUSINESS PARK DGEIS THAT THE ARCADE PLANNING BOARD FORWARDED TO THEM IN LETTERS DATED FEBRUARY 15, 2007 AND DECEMBER 14, 2011:**

In review and discussion:

The Board referred to Section 617.10 (e) of NY State SEQRLaw which states,

“In connection with projects that are to be developed in phases or stages, agencies should address not only the site specific impacts of the individual project under consideration, but also, in more general or conceptual terms, the cumulative impacts on the environment and the existing natural resource base of subsequent phases of a larger project or series of projects that may be developed in the future. In these cases, this part of

the generic EIS must discuss the important elements and constraints present in the natural and cultural environment that may bear on the conditions of an agency decision on the immediate project.”

Keeping this in mind:

1. The whole point of SEQR on the full build out is to look at the total scope of the project and to make it easier on individual site plans which would not have to go through the SEQR process. According to SEQR Section 617.10 (d) (1), “No further SEQR compliance is required if a subsequent proposed action will be carried out in conformance with the conditions and thresholds established for actions in the generic EIS or its findings statement.” Only an amended SEQR would need to be completed if a subsequent proposed action was not adequately addressed in the generic EIS or was outside the bounds of it.
2. The traffic study prepared by SRF Associates addresses “full build out and full development” or purports to. In the full build scenario only 1,283,000 sq. feet. Is addressed. That is in conflict with the main body of the report which shows 1.8 million sq. feet. Therefore, the traffic study needs to be updated to include the actual full build scenario of 1.8 million sq. feet. The question of whether full build out will ever be done is moot for the purposes of this study unless the Sardinia Planning Board wishes to scale back the proposal.
3. A number of other comments made also neglect to address the full build out scenario. Specifically, responses to Comment #1 of our letter dated February 15, 2007 and Comments #7 and #8 in our letter dated December 15, 2011, also avoid completing an EIS to the full scope of the stated project which is contrary to the requirements of NY State SEQR. Segmentation is not allowed. The intent of SEQR is to fully address the cumulative impacts of the full development and not to address things as they come along.
4. Alternately, the DGEIS could be updated as per Section 617.10 (c). The Sardinia Planning Board could address the current deficiencies by specifically identifying thresholds and update mitigation factors.

Our conclusion is that the DGEIS still does not completely address potential issues to the scope that they themselves have defined for this project.

**MOTION** by Rich Kosmerl, seconded by Paul Bijhouwer and unanimously carried to have the Secretary forward a letter to the Sardinia Planning Board with the above comments.

**ADJOURNMENT:**

There being no further business brought before the Board, the meeting adjourned at 9:21 P.M. upon **motion** by Paul Bijhouwer, seconded by Don Suttell and unanimously carried. The next regular meeting of the Planning Board of the Town and Village of Arcade is scheduled for Wednesday, April 11, 2012 at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York.

Respectfully submitted,

Holly L. Almeter  
Secretary

From the ZBA Minutes of Feb. 20, 2012

**APPLICATION FOR USE VARIANCE, PERMIT NO. 2129-UV, SUBMITTED BY GARY BOORMAN, REQUESTING RE-USE OF AN UPSTAIRS APARTMENT LOCATED AT 372 WEST MAIN STREET, WHICH IS NOT A LISTED PERMITTED USE IN AN N/C DISTRICT AND IS A NON-CONFORMING USE WHICH SHALL NOT BE EXPANDED:**

The Chairman explained the variance process, read the application and the Criteria for Use Variance form (see Attachment A).

In discussion:

1. The Board asked the applicant for further explanation of items No. 3 and 4 on the Criteria for Use Variance form. The applicant provided additional information on the form.
2. The applicant stated that there are other homes in the area with upstairs apartments. The ZEO clarified that the south side of West Main Street in this area, where this property is located, is a Neighborhood Commercial District that does not allow single family homes or apartments unless grandfathered. The north side of West Main Street in this area is classified as an RB3 zoning district allowing for mixed residential and commercial use.
3. The property was vacant for quite some time before the applicant purchased it in May of 2010 and there was no pre-existing apartment in use prior to purchase. The Chairman stated that if a property has not been in use for a certain period of time it is as if it never existed. The ZEO stated that the time limit for such is one year.
4. The applicant stated that the property survey shows the upstairs apartment. However, the separate electric meter for the upstairs has been removed and converted to run off the main house service. The applicant also stated that the hole for the second meter is still in place, there is parking for the apartment, access to the apartment is still existing so there will be no exterior work needed that would change the character of the neighborhood, and all rooms are still in place, i.e. bathroom, kitchen.
5. The Checklist was completed (see Attachment B).
6. SEQR was determined to be a Type II Action, Section (c) 9.
7. This property is located on a State highway and must be forwarded to the Wyo. Co. Planning Board for recommendation and comment. A Public Hearing will need to be held and a recommendation and comment sought from the Arcade Planning Board.

**MOTION** by Lee Ameis, seconded by Paul Sanders and unanimously carried to accept as complete with the additions to questions No. 3 and 4 on the Criteria for Use Variance Form, Application for Use Variance, Permit No. 2129-UV, submitted by Gary Boorman, requesting re-use of an upstairs apartment located at 372 West Main Street. Further, the Secretary was directed to forward the application to the Arcade Planning Board and Wyo. Co. Planning Board for recommendation and comment and to publish a Public Hearing to be held on Monday, March 19, 2012 at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York.

**Wyoming County Planning Board  
REFERRAL RESPONSE FORM**

For referrals as required in accordance with NYS General Municipal Law Article 12B, Section 239-l and m

**Location of Proposed Action:** 372 West Main Street, Village of Arcade

**Applicant:** G. Boorman

**Type of Proposed Action** (separate form completed for each action): Reuse former apt upstairs

- Area Variance  Use Variance  Site Plan  Special Use Permit  Other:  
 New Zoning Ordinance/Local Law  New/Amend Comprehensive Plan  Amend Zoning Text/Map

**WCPB Recommendation on this Action**

The WCPB took the following action at their meeting on March 5, 2012 with respect to this referral:

- Approval  Modification  Disapproval w/comments  None; No Quorum  
 No recommendation; proposed action has no significant negative county-wide or inter-community impacts

**Comments:** The proposed action is the reuse of a non-conforming former upstairs apartment.

1. The Village and Applicant are commended for submitting a Site Plan Checklist.
2. There appear to be no significant county-wide negative impacts related to this proposed project.
3. An Area Variance is being sought for this project to re-establish an upstairs apartment in a zone where residential uses are not listed as a permitted use.
4. The current residential use is a legal non-conforming use. However, the zoning code does not allow single family or multi-family residential uses in the N/C District.
5. As currently proposed, the use variance would permanently allow an upstairs residential rental use above a non-conforming residential use downstairs. If the existing non-conforming use were discontinued for a period of greater than six months it would be legally required to cease and the building be converted to an allowed use.

Therefore, it is strongly recommended:

1. The Village consider granting a Use Variance on the entire residential use of the property to bring the whole property into conformance with the zoning code; or preferably,
2. Consider granting a "Special Use Permit with Conditions" so that the rental apartment use would end when the downstairs unit's use changes. Thereby permitting consistent uses on the property in the short term and maintaining the integrity of the Zoning District in the long term.
3. If approved in either instance, the Applicant must conform to all appropriate County and local building codes, inspections and permits.

**Site Plan**

1. Site Plan drawings including the name and address of applicant and person responsible for preparation of drawing has been included. The drawings have a north arrow, scale and date.
2. The boundaries of the property and the location of adjoining residential uses are shown.
3. Although existing, the location and adequacy of sewage disposal connections have not been shown on the site plan.
4. Although existing, the location and adequacy of public water connections have not been shown on the site plan.
5. The location of a fire lane has been provided. No fire hydrants are shown on the site plan.
6. A record of application for and approval status of all necessary permits from county agencies or officials must be provided by the Applicant.
7. Maps and aerial identifying adjacent parcels and land usages have been provided.
8. The Village as Lead Agency has provided State Environmental Quality Review Act (SEQR) documentation.