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**PINE PLAINS ZONING BOARD OF APPEALS MINUTES  
TUESDAY, FEBRUARY 24, 2015  
7:00 PM**

**IN ATTENDANCE:** Scott Chase, Chairman  
Carl Baden  
Bruce Pecorella  
Margo Jackson  
Amanda Zick, Alternate

**ABSENT:** Michael O'Neill

**ALSO PRESENT:** Warren Replansky, Town attorney  
Ray Jurkowski, Town engineer  
Drew Weaver, ZEO  
George Keeler, Town Board member  
Rich Brenner, Town Board liaison  
John Forelle, Planning Board Chair  
Michael Stabile, Planning Board member  
Peter Salerno, Planning Board alternate  
Sarah, Jones, Planning Board member  
9 members of the public

Chairman Chase called the meeting to order at 7:00 pm. As the engineer for Primax Properties had not yet arrived, the Board decided to move to the next agenda item.

Motion by Pecorella; second by Jackson to accept January 2015 minutes. All in favor. Motion carried.

It was decided to vote on November 2014 minutes at the next meeting.

**PRIMAX PROPERTIES (DOLLAR GENERAL):** Jeremy Speich, attorney, and Larry Marshall, engineer, were present representing the applicant. This was a preliminary meeting for three proposed area variances for property located on Route 83. Chase stated he would like to have a brief presentation on the project and then the Board would discuss process from there. He stated the first thing the Board would have to deal with is SEQR. Chase stated the Board has received a letter from the Planning Board and from Primax in terms of what they would prefer to do. Speich stated they went to the Planning Board initially and discussed what sort of review would be required. Speich gave a short overview of the project. He stated they are before the ZBA because they need three separate variances. He stated they need one

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regarding the building size, a second as they are seeking to have fewer parking spaces than required and a third as they wish to be further back than the maximum setback. Speich stated the procedural question they have is they need to deal with the initial review under SEQRA and the next step would be a public hearing. Speich apologized to the Board for not being at the last meeting. He stated the Planning Board deemed it to be an unlisted action that generally requires a lesser review. He stated the Planning Board asked for an uncoordinated review meaning that they didn't take jurisdiction of the project and referred to the ZBA as they had a threshold issue to be addressed before they go back to the Planning Board. Speich stated the question is before the ZBA what process they wish to follow. Chase stated in terms of his initial review that one of the procedural deficiencies is that there is a Short EAF and this is adjacent to a Critical Environmental Area so a Long EAF is required. Speich stated they did do a Long EAF for the Planning Board. He stated the engineer reviewed it but did not know if it got to the Planning Board. Chase stated the ZBA needs a copy of the Long EAF. Chase stated he does not see this as a simple project for several reasons. Chase stated this project is in the gateway to the Town that will have a huge visual impact. He stated when Zoning was set up the community stated they wanted small-scale development. He stated they wanted to create a hamlet effect with buildings up close to the road and did not want the parking to be the first thing you see when you drive in to town. Chase stated the applicant has violated one of the major premises of the visual look that they are trying to create in town. Chase stated that the Board cannot grant area variances if, in fact, the applicant can meet the standards and he sees no reason why the building can't be moved up to comply or at least within a few feet of where it should be. He stated a 9000 square foot building is not permitted under Zoning. He stated the applicant could have a 6000 square foot building and could easily make it a two-story building to get the square footage. Chase stated the applicant could meet the requirements if they choose to. Chase stated he feels the applicant does not meet any of the tests for the Board to grant a variance. Chase stated that if the Board goes through the SEQR process one of the important parts is to require alternatives. He stated he believes an alternative site plan can be produced that will meet the requirements of the Zoning Law. Speich stated there are five criteria for an area variance. Chase stated the applicant needs to pass all five and there is no way that could happen. Speich stated they haven't had a public hearing yet. Speich stated they have the ability to present their findings and make a case. He stated there

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certainly would be issues that will be raised and doesn't think they are at a stage where they can't submit an application and be heard at a public hearing. Chase stated they will go through the EAF and he will vote to check many of the impacts as moderate to large and probably get to a Positive Declaration. Chase stated he doesn't think that the applicant wants to go through all that with each Board individually and would think they would want to do a coordinated review and at the end of the day have a project where alternatives are looked at and the aesthetics are looked at. Chase stated he believes there are major engineering issues. He stated the applicant wouldn't be aware because they don't live in the community but the drainage ditch runs all the way to Stissing Lake and along the way on Lake Road and Fabrello Lane. The people on those roads come out of the woodwork every time there is a heavy spring flooding. He stated if the applicant paves the majority of that lot that water needs to go somewhere and it will go downstream to those residents and they will be complaining. He stated he feels the applicant will end up with a significant retention basin. Chase stated that would affect where the property line needs to be. Chase stated this is a complex project. Speich stated this project is an unlisted action. He stated a lot of the issues that Chase is raising would also be addressed by the Planning Board when the site plan is submitted. Speich stated that not all of the issues will be within the ZBA; they will be before the Planning Board later on. Speich stated he feels this project really needs an uncoordinated review. Chase stated he feels they would develop, in a coordinated review, what the store would look like and layout and, working with the Planning Board, come out with a project that fits in with what the Town's Comprehensive Plan envisions and within the confines of the Zoning Law. Chase stated process wise what the ZBA would do first is start with the environmental assessment form. Chase stated that a Short EAF came with the ZBA application package. Replansky stated first a decision would have to be made as to Lead Agency. He stated a lot of issues the ZBA will be dealing with in an environmental review will be issues the Planning Board will have to take into consideration also. Replansky stated the law requires the ZBA to make determination on the variances and the Planning Board has jurisdiction over the site plan review. He stated in order for the ZBA to make a decision they will need a lot of the information that would normally be provided by the applicant as part of the site plan review. Replansky stated it might make sense to opt for a coordinated review. Replansky stated the first decision the Board needs to make is whether or not they are going to be Lead Agency. Chase asked the rest of the Board for their opinion. Jackson stated

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she feels the Planning Board sent it to the ZBA not because they didn't want to be Lead Agency but they wanted a preliminary determination for the justification for the variance requests in order to help the project sponsors not waste a lot of time and money. Jackson stated based on the information submitted and based on the last meeting, there was consensus that the ZBA would not be able to approve the variances. Jackson stated there are existing buildings there but that is not consistent at all with the Comprehensive Plan or with the Zoning. Sarah Jones advised that she chaired the meeting where the determination was made to send the project to the ZBA. She stated they didn't want the applicant to have to spend more money if there was no chance of getting the variances. She stated the Planning Board had no problem taking an active role it was just that there were hurdles in that the applicant needed variances and perhaps the project was not able to go forward. Replansky stated you can't short circuit the ZBA process. He stated the applicant has the right to make its case. Replansky stated that usually the Planning Board would get the application up to speed with traffic studies, visual impact analysis, etc. and then with that information the project could go to the ZBA. Replansky stated if the Planning Board is not acting on the application and referring them to the ZBA, they are in a quandary because in order to make an intelligent decision on the area variance applications they need more than what they have. Replansky stated it might make sense to do a joint meeting to discuss the application to see what they would like submitted. Speich stated there would be a process but they don't need to go through the entire SEQOR for the ZBA, as the questions asked for an area variance are different than what the Planning Board will ask for site plan review. Replansky stated that the ZBA couldn't act on the area variance application until the SEQOR is complete. Larry Marshall stated a Long EAF was previously submitted in late 2014. He stated he is not sure what is lacking in the application packet. Chase stated if there is a Long EAF it needs to get to the ZBA. Chase stated he would like to see an alternative site plan that meets the standards as best they can. Chase stated he would need to know how they are going to deal with the runoff they are going to create. He stated he would like to see how large a retention basin they would need and see it on a site plan. Chase stated the Board needs to help the applicant and tell them what they need. Replansky stated that Jurkowski's letter to the Planning Board went over what would be needed for a complete site plan application and that probably would be a good start. Replansky stated he just did a similar application in another town and the Planning Board declared themselves Lead Agency and went through the entire

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environmental review of that application and then when they made their SEQR determination it went to the ZBA so they could make their determination on the area variance. Replansky stated that he feels this is how the application should proceed. Discussion followed. Larry Marshall stated they will try to provide alternatives but don't want to go through a full site plan for each of the alternatives. He stated they are trying to avoid providing a 3-inch thick binder of information. Chase stated he wants them to tell the Board how they plan to handle the storm water conceptually. Replansky stated that is why he is recommending a joint meeting where both Boards and the consultants can go over all of the materials that are required for site plan to see what the ZBA would want to make their decision. Amanda Zick stated she is new to all of this but she would like to see this progress before the applicant gets too discouraged or the Board says there is no way its going to happen. She stated there should be new business in the town and she would like to see some effort from both the ZBA and Planning Board to make it work within the law. She stated she understands there are issues and doesn't think the Board should bend over backwards and grant variances but thinks that if there is effort on both sides to meet in the middle so we can bring new business into town that would be a good thing. Baden stated he doesn't think anybody has an issue with new business coming in but it is the size of the building and layout. Zick agreed. Baden stated there are many empty buildings that can facilitate new businesses. Zick agreed. She stated she doesn't want to see them walk away or spend a ton of money and have it not work out. Pecorella stated there is a lot of material that the Board is going to need. Jackson stated the size and scale is a concern and doesn't know how much flexibility the applicant has with that but in larger, denser communities that have big box stores that makes sense. She stated that is not the case here. She stated she doesn't know what the line is for the applicant to be able to make a profit and still be able to size down to fit into this community that is small and rural and has a town center which is much more rare than strip malls. Jackson stated if there is a way to have the project fit into the community and find some common ground that makes sense. Jurkowski stated there is a full list within the Zoning law as to site plan requirements and some may or may not be applicable to the ZBA in order to make a decision. Jurkowski asked if Chase would like to get together with him to review the requirements and provide an initial draft outline to distribute to the ZBA members for their input. Chase stated that would be a good idea. Marshall asked as soon as the list is formulated would they please send it along to him so things can be expedited. He asked if there

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would be a joint Planning and Zoning meeting planned. John Forelle, Chairman of the Planning Board, stated he was there as a private citizen. He stated seeing an application that is 50% over what is allowed and is so antithetical to the Comprehensive Plan he can't figure out how they would deal with it. He stated if the ZBA grants the variances then the Planning Board has to deal with it and would do so. (Unintelligible) He stated he would put it on the agenda for the Planning Board and speak with the other members. Baden stated he is having an issue as to why the applicant chose the layout they did. Baden stated if they could get closer to the standard it would help. Replansky stated maybe the ZBA should just declare itself Lead Agency and request the documentation they need. Chase stated he and Jurkowski would work on a list of information that might be helpful to move the process along. Baden stated he is having an issue as to why the applicant chose the layout they did. Baden asked if it was possible to get elevations of the plan. Larry Marshall stated they would work toward that.

Pecorella made a motion to adjourn; second by Baden. All in favor. Motion passed.

Respectfully submitted by:

Nancy E. Proper  
Secretary

Scott Chase  
Chairman