

## VILLAGE OF CAPE VINCENT PLANNING BOARD

July 16, 2013

The regular meeting of the Village of Cape Vincent Planning Board was held on July 16, 2013, in the Conference Room of the Village Offices. The meeting conducted by the Chair, Jeffrey Herpel, opened at 7:02 p.m. with the Pledge of Allegiance.

Board Members: Edgar Barr  
Jeffrey Brooks  
Richard Hodge  
Jeffrey Herpel, Chair  
Willard Kirchgessner

Others: Perry Golden, Zoning Enforcement Officer  
Kathleen Pierce, Planning Board Secretary

There were 14 visitors.

### Old Business:

- **Approval of the Minutes**

Board members reviewed the minutes of the meeting of June 18, 2013. Mr. Kirchgessner made a motion to accept the minutes as written; seconded by Mr. Herpel and carried; all voting aye (5-0).

### Public Hearings:

The public hearing for a site plan review concerning the application of George Mingle opened at 7:06 p.m. Mr. Mingle requested to erect a six-foot fence on the southern end of his property at 314 South Esselstyne Street, (Tax Map #49.25-1-79) as per Article 5, Section 5.12, Fences, of the Village Zoning Law. The chair reviewed the application with board members and read a letter from the applicant who could not be in attendance at the meeting. He then asked for any comments from the public. Jacquelyn Aznoe, neighbor, expressed concern over a six-foot fence extending out to the sidewalk. Ms. Aznoe felt it was a safety issue for the school children walking past her house and cars backing out of her driveway and not being able to see over a six-foot fence. Mr. Aznoe said it would block his view of the downtown area. Robert Cardarelli inquired as to the size of the fence. Board members had a short discussion on the size and length of the proposed fence and that the fence could be tapered to four feet near the edge of the village sidewalk. By tapering the fence, this would address the safety issue/concern. Mr. Herpel made a motion to approve the installation of a six-foot fence tapered to four feet at the last ten feet of the property bordering Esselstyne Street in order to maintain a line of site for autos backing onto Esselstyne Street from the abutting property. Mr. Hodge seconded the motion and carried; all voting aye (5-0). The hearing closed at 7:17 p.m.

The public hearing for a site plan review on Jacquelyn D. Aznoe's application opened at 7:17 p.m. Ms. Aznoe requested to operate a home occupation (Jackie's Tax Service) in her home at 355 South Esselstyne Street (Tax Map #49.25-1-78), as per Article 7, Section 7.9, Home Occupations, of the Village Zoning Law. Board members had no comment on the application. The Chair read a letter from George Mingle, a neighbor, expressing his concern over parking for the business. Chair Herpel then opened the floor for public comments. Liz Brennan asked if the Superintendent of Schools for the school district had been contacted. She was told all neighbors abutting the property and across the street were notified. (Ms. Aznoe's property abuts the Cape Vincent Elementary School.) The Chair reviewed, along with board members, Section 5.4, Parking, and Section 6.6, General Site Plan Review Criteria, of the Village Zoning Law as it relates to parking and the responsibility of a business owner to provide parking for their business. The Board asked Ms. Aznoe to present a drawing of a parking plan at their

August 20, 2013, meeting. The site plan review remains open and the public hearing closed at 7:32 p.m.

The public hearing for Charles Porto's (Breakers Restaurant) site plan review opened at 7:32 p.m. Mr. Porto submitted paperwork to erect an 8' x 10' accessory structure on his property at 194 E. Broadway (Tax Map #39.81-2-14). The Chair informed Mr. Porto that no decision could be made at the meeting as he has not had a response from the Jefferson County Planning Department regarding their review of his application. The Chair gave an overview of the proposed project for those in attendance and explained that Mr. Porto was denied a permit to operate an outside bar on his property without first going through a site plan review. Mr. Herpel indicated that the issue at hand is noise and referred to Section 6.6, paragraph I. of the Zoning Law. He shared that there were no written comments received before the meeting from neighboring properties that had been notified of the public hearing. He opened the floor for public comment on the proposed accessory structure (outside bar) that was to be built.

*Robert Cardarelli, resident*, said that the noise could be abated with landscaping. He indicated his support for the commercial venture.

There was discussion on commercial zoning and the fact that the Village's Zoning Law has no guidelines for commercial/ residential neighborhoods and does not address noise levels. The discussion included objectionable noise levels and how it is measured.

*Gayle Brooks* shared that all the original agreements presented when Breakers was going to open have not been met. She was adamant that she did not want an outside bar as she is concerned with the noise, litter, and behavior that she has experienced from previous outdoor activities at Breakers.

Board member Brooks shared that there is a restaurant in Sackets Harbor that has an outdoor bar in a courtyard setting with outside music. If Breakers were to have outdoor entertainment, he indicated that by strategically placing the speakers, the sound would be minimal. He would like to see the business and neighborhood work together on this issue. He cited other restaurants in the Cape that have an outside patio and an outside deck for dining.

*Ed Eves, resident*, supports the new structure and creative plans Mr. Porto has for the bar and dining. He shared that noise was hard to measure and perhaps a limit could be put on noise.

*Liz Brennan, Village Trustee*, shared that Mr. Porto has a great product (restaurant) and asked what the rationale was for an outdoor bar. She shared that the karaoke event, in particular, created a lot of noise and could be heard several blocks away. She had talked with Mrs. Porto about landscaping and acoustical panels for the sound. She does not want residents subjected to noise and hopes that a reasonable solution can be found.

*Rick Schmitt, resident*, said that Breakers has made a great addition to the Village and inquired as to what is the difference between an inside and outside bar as patrons can carry their drinks outside. He indicated it was hard to believe that the noise bothered neighbors. He suggested a quiet time.

*Lucy Miller, neighboring property owner*, indicated she has had no problem at all with litter from the restaurant. She shared that she has been from the beginning very supportive of Breakers and still refers people to Breakers for good dining. She did express her displeasure with the event that took place on Memorial Day weekend at Breakers. The music was very loud and she did report it to the Portos. Ms. Miller is not in favor of having a bar outside because of the noise it would generate from 4 p.m. to 10:30 p.m.

*Sharon Williams, neighbor*, read a prepared statement to board members. Ms. Williams originally was delighted to hear of a new business in town. In the last six to eight months, excessive noise has come from the restaurant/bar. Ms. Williams stated that she would have supported a special permit for serving alcoholic beverages and live music outdoors but only on certain occasions. She now is requesting that the board deny the request for an outside bar to serve alcohol because of what she and her neighbors have experienced in the past several months..."loud music, loud use of profanity, and loud drunken behavior..." She went on to say she cannot sit in her garden or inside her home even with the windows closed and enjoy her property because of the level of noise caused by Breakers. She did acknowledge that in the past several weeks, there has been an attempt to be quieter and feels this is a result of keeping activities inside the restaurant. She feels it is possible to be a good neighbor if the activities are kept inside.

Perry Golden, ZEO for the Village, wanted to clarify for the audience that the permit for the accessory structure was denied because it was a new use that was not listed in the original application. This new use needed a site plan review before a permit could be issued.

*Brandt Miller, neighboring property owner*, spoke on the July 4 activity at the restaurant with its loud noise and a fight.

*Charles Porto, applicant*, thanked the public for the good comments. He shared his vision for his commercial property and told the board that he has a permit for an outside bar. There is no plan to have music outside in the 8'x10' shed. He would like to have people come to Cape Vincent to have a relaxing dinner and possibly some entertainment on occasion. His plan, when money permits, is to have a patio area with pavers to allow patrons who smoke, have a dog, or just want to sit outside to have a meal and/or a drink.

*Robert Cardarelli, resident*, said this was commercial property and some noise will be made and, again, stated that if the noise can be abated, it should be done.

*Eric Derouin, employee of Breakers and resident*, spoke and said that he would like to see live music performed while patrons wait for dinner and enjoy the outdoors. He said the restaurant was "licensed for live and recorded music."

Perry Golden made it clear that with or without a village noise ordinance, the police do have a legal right to speak to the owner where the noise is coming from or to shut down the establishment.

*Charles Marino, resident*, told the audience that he was one of six military families living in Cape Vincent and that he really enjoys living in the Cape. He lives in an apartment building on Broadway and listens to noise, music, and arguments coming from boats docked at the marina close to where he lives at all hours of the night. He shared that he would like to have music entertainment brought into the community in the type of setting that Mr. Porto is proposing. He also stated that he was the spokesperson for the other military families living in the Cape. *Gayle Brooks* said that the original business plan presented when Breakers was opening did not include an outside bar and she is against one now.

*Liz Brennan* asked if meals were served on the deck and if the meals could include an alcoholic beverage. She asked Mr. Porto why he feels it is necessary to have another bar outside.

Mr. Porto responded that in order to grow, they need to change. He again stated that having a bar outside would bring customers with dogs, smokers, and those just wanting to enjoy the outdoors while eating. He also said that the bar inside often gets busy and during those times he could open the outside bar. He wants to "grow this business."

Board member Hodge asked Mr. Porto if he was going to apply for a year-round permit.

*Rick Schmitt* referring to one of the occasions where excessive noise was heard said that the disc jockey made the noise and not the patrons at the outside bar.

*Lucy Miller* said she went over, after the Memorial Day weekend activity, to Breakers the next day to complain about the noise. She is against an outside bar and suggested building on an addition to the main building.

*Brandt Miller* said that the owners are good people and it is a good establishment, but he would like them to keep the noise inside and to respect the neighboring property owners' rights.

Mr. Porto asked the board to realize that he bought a commercial piece of property, and he wants to grow his business with the end result--bringing people into Cape Vincent.

Board member Hodge said he reviewed the original site plan review application and indicated that not all areas of that application have been met. He also shared that this would be the first outdoor bar in the village.

At this point in the meeting, Mr. Herpel declared the public hearing closed at 9:02 p.m. At the August board meeting, the board will review the recommendation(s), if any, from Jefferson County Planning Board and make a decision on Mr. Portos' application.

**New Business:**

Liz Brennan, on behalf of Linda Bush presented a request to the board to grant approval of a lot-line shift on the front of the property (River frontage) at 481 W. Broadway Street (Tax Map #49.24-1-41.231) to property at 523 W. Broadway Street (Tax Map #49.24-1-41.232). Mr. Hodge made a motion to approve the lot-line shift; seconded by Mr. Herpel and carried. All voting aye (5-0). Ms. Bush will be notified of the documents that must be filed with the Jefferson County Clerk and the Town Clerk to register the change. The documents required to be filed for the lot-line shift to be effective are: a) the deed must be changed to reflect the addition to Tax Map #49.24-1-41.232, and b) a new survey map, exclusive of the lot-line shift between the two properties. The applicant is responsible for any filing fees with the County and/or the Town.

**Next Meeting:** The next meeting will be Tuesday, August 20, 2013, at 7 p.m.

**Adjournment:** At 9:05 p.m., with no other business, Mr. Herpel made a motion to adjourn the meeting. Mr. Barr seconded and carried; all voting aye.

Respectfully submitted,

Kathleen M. Pierce  
Secretary