Village of Hamilton
Planning Board
7:00pm
Special Meeting July 11, 2012

APPROVED MINUTES

Present: Chairman Bob McVaugh; Members: Jerry Fuller, Morgan Larson, and Ben Barrett; CEO Paul McGinnis; Trustee Dominick Pangallo.

Public Present: Stacey Snyder; Trustee Sam Cooper; Mayor Margaret Miller; Jonathan Schaller; Trustee Russ Lura; Sally Lura; Sue Barrett; Carolyn & Bill Todd; David Hale; Dave Hollis; Trustee Debbie Kliman; Harvey Kliman; Jane Walsh; Rob Blackmore; Skylar Davenport; Wanda Berry; Regina Sylvestri; Bob Johnson; Pat Stringham; Carrie Blackmore; Matt Whalen.

Chairman McVaugh called the meeting to order at 7:05 p.m.

Museums in the B1 District:
Chairman McVaugh: stated he had emailed a letter to his colleagues on the Board and to the Board of Trustees and submitted a copy for the record. The goal is to move toward a recommendation to the Board of Trustees. Trustee Kliman stated that she felt Chairman McVaugh's letter was well written reasoned and thought out. Chairman McVaugh stated that more than half of the non-residential property in the Village supports museum use. Secondly, he stated that there is a qualitated difference between the role that institutions play in use issues and businesses play. He added the B1 is the only district that is almost exclusively business and that introducing an institutional factor is a net loss for the B1. He went on to add that any time you change zoning you limit uses. He does not see the need to change the law as it stands.

Harvey Kliman: stated he feels the zoning should not change and supports Chairman McVaugh's position. He agrees with the Board that spot zoning opens up the Village to all sorts of challenges. You can't give away the business district without changing the character of the Village.

Member Ben Barrett: stated he supports not having a museum in the B1. The B1 is not that large of a district. The opportunity for this project is offered in all other zones.

Member Jerry Fuller: stated he has studied the businesses in the downtown. He studied the Master Plan and it supports services and retail in the downtown. We need to keep supporting that plan. We already have zoning for museums.

Member Morgan Larson: if museums are allowed in the B1, we still need to change use number 45. He would not recommend a performing art center in the B1. He agrees with most of the arguments against change. There are appropriate zones already that are better. A museum in general is not something that is wanted in the B1. He would not

recommend allowing museums in the B1. He questioned whether the project should be considered in a different way.

Wanda Berry: stated there needs to be a change to the current zoning to allow for museums in the B1 and asked what will it take to make this happen. She feels this would be advantageous to the downtown.

David Hale: believes that putting a museum near the Village Green would impact the residential district much more than at the Parry's site and feels a museum downtown will attract more people to the downtown.

Mayor Margaret Miller: stated museums are not what they were 20 years ago. The BT has very limited parking as well.

Bob Johnson: questioned why there is a discussion if this is not allowed. The Board stated that the Trustees came to the Planning Board to get a recommendation on changing the B1 to allow museums.

Regina Sylvestri: inaudible. Chairman McVaugh stated museum by definition is institutional and educational.

The Planning Board supports the value of bringing a museum to the community, but does not believe it justifiable to extend museum use from the (BT, B2, B5 as well as Institutional) zones where it is already allowed and recommends not changing the zoning in the B1 to allow museums. The current zoning parking issue would be reliant on the judgment of the Planning Board. The Planning Board urges the Trustees, when considering museums, to initiate a process in which parking standards are considered in depth Chairman McVaugh referenced 174.60 and 174.62.

The Planning Board does not support the alteration of Village code to allow museums as a use in the B1 district. Motion by Chairman McVaugh, seconded by Member Barrett and unanimously carried.

(Letter from Chairman McVaugh that he requested be included in the minutes)
Tuesday, July 10, 2012

To: Colleagues on the Village Planning Board
From: Bob McVaugh, Village Planning Board

Re: Should the B1 be opened to Museums?

I have thought at some length about the zoning issue before us, reflecting on the points raised at our last meetings and on many additional conversations. As a result I take this opportunity to share some regrettably long-winded thoughts with you before our meeting. So as to not appear to be circumventing the process, I will have this letter entered into the record of the deliberations, though I will also beg

your permission that I may do so in a slightly edited form. It is currently rough and I want to get it to you.

Let me start with the fundamental but crucial observation that Public and Private Museum use is currently permitted (with Special Permit or by right) in a significant portion of the Village (Business Transitional, Business 2, Institutional I, and Institutional 2). I attach a map in which the permitted areas are greyed in, while the B1 is red. So the question is not whether Museums are a supported use within the Village. They unquestionably are supported rather vigorously. The question is whether the percentage of the village open to museum use should be expanded further and specifically should it be expanded to include the B1.

From all research I have done, Museums are understood to be essentially an educational use (see the attached set of definitions from the American Association of Museums.) So if we support the expansion of the region of the village open to Museum development we are encouraging the expansion of tax-exempt property in the village. The Master Plan explicitly notes the unusually high percentage of tax-exempt properties within the community and promotes new "tax-generating businesses." Extending museum use to the B1 explicitly encourages the growth of tax-exempt uses and the consequent incremental redistribution of village costs to tax-paying properties. Such an action should be recommended only under the pressure of compelling justifications.

If we are to change the law we should consider carefully (1) what the logic may exist within the current differentiated support of museum use within various business zones; and (2) what arguments may be marshaled in support of the change.

How do we understand the current limitation of Museums to specific business zones?

Most fundamentally, a museum operates as an institution rather than a business or service. Like a church, a library, a school, etc. a museum anticipates a pattern of public interaction that is distinct from that of many, if not most, business/commercial uses. We might get a sense of this if we acknowledge, for example, a potential sense of incongruity of a bar or a laundromat operating next door to a museum or comparable institution. Proximity restrictions on drive-in services and sexually oriented businesses codify the most dramatic of such incongruities, but without question, there are expectations associated with institutions (as a use type) that can be in subtle but insistent conflict with the commercial exploitation of neighboring businesses and services.

There are also certain spatial and density characteristics common to institutional uses that may differ from commercial ventures, particularly commercial ventures that are pedestrian based and dependent on density business density.

There are uses and impacts associated with museums (and many institutions) that influence their zoning. The most easily comprehended of these is parking. The imposition of parking requirements seem quite reasonable for

institutions, as they tend to involve rhythmic group movement rather than individual or isolated participation characteristic of retail/service. The impact of institutions and businesses on parking are both acute, but they are unlike.

When we look at the Business Transitional District (BT) we see general support for many institutional uses that are not currently permitted in the B1 district: Church, Religious institution, Nonreligious charitable or philanthropic institution, nonreligious public or private education institution, nursery school; adult residential care facility, commercial nursery, club/social recreational center, clinic or diagnostic center, public or private museum, art gallery, performing arts center, studio or similar activity, home garden center, bed and breakfast facility. The support of museums in the BT is in harmony with many of its other uses.

Business 2 currently supports a mix of business and institutional uses (including Museums). This is because the availability of parking and the generally larger frontages and lot sizes, which mitigate neighborly impacts.

That museums are permitted in the Institutional Districts seems unproblematic given the primary educational use of those districts.

On the other hand when we look at the B1 district, we see a district that supports maximally dense commercial, retail, service and residential uses, many of which are not supported in the BT district or the Institutional districts. These include new boardinghouse; home garden center, bank or other monetary institution, retail store, facility for serving alcoholic beverages to the public, furniture or appliance store, wholesale bakery or confectionary, laundromat or dry cleaner, newspaper office, newspaper vending machine, lot for parking or selling five or more vehicles. The B1 is the area in the village where parking issues are most acute, and, because there is little space for on-site parking, also the area in which parking pressures generated by one use have the most direct impact on neighbors and neighborhood.

The zoning law is designed to support community civility and coherent development in part by discouraging neighboring uses that are likely to come into conflict. It is not uncommon for the Board to be made aware of the significant frustration generated by unlike uses in proximity. Businesses and Institutions tend to operate with a different set of priorities, and they tend to possess different levels of community clout. For example, if the food cupboard or a church, or a school were at odds with a neighboring business use, the former would tend to garner more public support even though both sets of uses may be permitted in the district. The asymmetry of public clout can engage processes and perceptions that contribute, incrementally to a loss of vitality for the business. Ironically, institutional uses that are too proximate to commercial uses have the potential of compromising or constraining their individual neighbors' commercial vigor freedom at the same time that they may claim to encourage commerce within the community generally.

Traditionally we have kept the B1 as a district in which business is ascendant and largely free of the interference of institutional pressures. There exists mixture of institutional and commercial uses in the BT and the B2, and Institutional

ascendance in the I2 and B4 (hospital/medical). Which brings us to the question of why it is necessary or advisable to introduce an institutional use into the B1 that could potentially strain the commercial patterns currently supporting that district.

Why make the change?

I have heard several arguments to support the change.

1) Museums will serve as "destination" uses that will support tourist activity in the village and will enhance the quality of life of residents. In expanded form this view could be invoked reasonably to support the suggestion that most future expansion of commercial and service in the downtown will necessarily drift toward the tourist/transient market rather than daily staples for the permanent residents of the village who must now and will in the future secure their daily needs within the vehicular corridor of 12 B (B2 zone and Madison).

2) Colgate/Hamilton Initiative, the advocate of this zoning change, has already purchased much property in the downtown and brought many extremely positive changes to the Village. So why is this so different that it should be discouraged?

3) We must make this change or we will have empty storefronts in town.

4) The change is an inevitable and logical outgrowth of the 2009 Master Plan included support of the "cultural and entertainment vigor associated with a vibrant University."

As to the first argument, it is certainly not essential for a museum to be in the B1 for it to serve a "destination" function in relation to the Village understood as an entirety. If a museum were in one of the currently permitted areas, it will be in the village and very much a part of the Village as destination. Many of BT and B2 properties are literally within 200 yards of the central traffic light. Were the museum to be built on the Colgate campus in a publically accessible space - as is the practice on innumerable college campuses throughout the country - it could also easily serve the same role as a "destination," while supporting Village commerce and identity. Much of the campus is, after all, within the Village. There seems to be little in the "destination" argument that mandates a B1 presence.

Second, virtually all the Colgate/Initiative properties in the B1 (Bookstore, the Barge, the Movie Theater, the Inn, Nicholls and Beal Block, the Main Moon Block, the Swank block.) are dedicated to commercial, service and retail practices that are fully supported by the zoning of the district. The Palace Theater is the only exception, and its current use is a strained compromise reached after extended deliberations that were necessitated by some early failed or problematic uses promoted by the Initiative. The amendment of the law to open the B1 to museums, which are fundamentally institutional and educational in nature, is quite different

from the operation of commercial uses within properties owned by the LLC arm of the University.

Third, the "empty storefront" fear needs to be examined closely. Over the last 20 years, there have been two waves of "empty storefronts." The first was when Jay Metz bought a vast number of properties and aggressively mismanaged them. In time he left town, and the shops filled. The second was when a downstate developer purchased the old Mason's building on Broad Street and drove out long-term tenants by jacking up commercial rentals abruptly. These are specific instances initiated by those from outside the community have little understanding of the local economic dynamics. Through the work of many conscientious property owners, among whom the Hamilton Initiative deserves to stand very tall, few of our storefronts are empty for long.[1] There is turnover of merchants, and for long-term residents the change in the tenor of the merchants encourage slide into a sense of the absence of merchants. The departure of Crowe's may increase nervousness at this moment, but my understanding is that Burt Marshall has purchased the building, and I have little doubt he would only do so if he believed it to be economically viable. There seems little real hard evidence that the B1 does not have vitality within the framework of its current retail and service identity.

The Master Plan, if read as a whole, is definitely mixed on the issue of this proposal. It is neither dramatically pro nor con. It acknowledges the value of cultural/entertainment elements to the commercial base and the life of the Village. At the same time it explicitly warns about the disproportionate burden that tax-exempt uses place on tax paying businesses and residents in the Village. Given that the majority of non-residential properties in the Village currently support museum use, the current zoning law actively promotes museum use. This change in B1 zoning is certainly not necessary for cultural/entertainment support.

Now to a final argument - the developer wants us to make the change. And when, as in this case, the developer is the most powerful local institution this reason carries special clout. To sit on the Planning Board means to witness a parade of developers who present energetic and often seductive ideas for individual properties. As often as not, their presentations are prompted by what they claim are "special opportunities" created by windows of property availability - or in extreme cases the prior purchase of particular properties. It is not uncommon for developer to try to leverage such availability as justification to bend or alter the zoning guidelines to achieve a specific end. Moreover almost any developer worth his or her salt can frame the project in a way to appear very positive. My experience is that most developers do this with full and genuine confidence that the good they associate with their proposal is either self-evidently good for everyone else, or so good in itself, that potential costs incurred by neighbors or tax payers in general should be accepted. As a representative of the entire village I consider it my job to

---

[1] The northern half of the former Ames plaza building can serve as the poster-child of the empty storefront argument. However, again its emptiness is at least as much a product of physical and marketing neglect by a down-state (or out of state) owner as any shortage of merchants interested in joining the village economy.

assess the proposal in a comprehensive and independent light rather than as illuminated by the advocating developer. That is what I hope we each struggle to do tonight.

The zoning law works if we do not consider the desire of the individual developer, whoever that may be, to be, in itself, a compelling reason for a zoning change. Such a change should be recommended only if the case for it is compelling when assessed from as comprehensive a perspective as possible. Zoning driven by a single project can easily devolve into spot zoning, which tends to come back to bite the community in the buttocks. Our job related to this recommendation is to assess the proposal within a comprehensive Village context.

It is no doubt clear from these notes that I will enter our deliberations unconvinced that this proposed zoning revision passes the litmus test of compelling justification. I hope I have explained some of my thinking above, but to recap I make the following points.

- There is a great deal of property within business or institutional districts that currently supports museum use. This change is by no means essential to the introduction and operation of museums in the village.
- By injecting a significant institutional use within the B1 this proposed change could compromise the commercial integrity of the district in subtle ways that may have negative impacts, especially on smaller, independent merchants in the B1 who are critical to the vitality of the community.
- Museums are complex institutions with rich and rhythmic public interfaces. They would almost certainly intensify the parking problem, which merchants in the B1 often cite as one of their greatest challenges. Moreover, intensification of parking problems in the B1 will compound the current concern regarding the increasing dedication of streets in residential neighborhoods to business parking.
- Museums are by definition educational in nature and thus prime for tax-exempt status. There seem to be insufficiently compelling reasons from the perspective of zoning and land use to encourage the expansion of tax-exempt property within a Village with an already disproportionate percentage of tax-exempt land.
- And to repeat myself, this change in the law is certainly not necessary to enable/support the operation of a museum in Hamilton. The current law supports such use in most of the non-residential property within the village.

I look forward to our discussion tomorrow and am fully prepared to alter my view if persuasive points are raised or if my thinking is shown to be unreasonable. Sorry to take so much of you time with this note, but writing this has helped me to sort the issues out. Perhaps reading it will be valuable to you as well.

(From the American Association of Museum Website
(http://www.aam-us.org/aboutmuseums/whatis.cfm/)

What is a Museum?

American museums are infinitely diverse. The AAM *Code of Ethics for Museums* notes that their common denominator is making a "unique contribution to the public by collecting, preserving, and interpreting the things of this world."

The code also acknowledges the variety of sizes and types of museums: "Their numbers include both governmental and private museums of anthropology, art history and natural history, aquariums, arboreta, art centers, botanical gardens, children's museums, historic sites, nature centers, planetariums, science and technology centers, and zoos."

To participate in the AAM Accreditation Program, a museum must:

- Be a legally organized nonprofit institution or part of a nonprofit organization or government entity
- Be essentially educational in nature
- Have a formally stated and approved mission
- Use and interpret objects and/or a site for the public presentation of regularly scheduled programs and exhibits
- Have a formal and appropriate program of documentation, care and use of collections and/or objects
- Carry out the above functions primarily at a physical facility/site
- Have been open to the public for at least two years
- Be open to the public at least 1,000 hours a year
- Have accessioned 80 percent of its permanent collection
- Have at least one paid professional staff with museum knowledge and experience
- Have a full-time director to whom authority is delegated for day-to-day operations
- Have the financial resources sufficient to operate effectively
- Demonstrate it meets the Characteristics of an Accreditable Museum

The International Council of Museums (ICOM) defines a museum as:

- A non-profitmaking, permanent institution in the service of society and of its development, and open to the public, which acquires, conserves, researches, communicates and exhibits, for purposes of study, education and enjoyment, material evidence of people and their environment.

The federal government in the Museum and Library Services Act defined a museum as:

- A public or private nonprofit agency or institution organized on a permanent basis for essentially educational or aesthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis.

The Institute of Museum and Library Services (IMLS) uses the Museum and Library Services Act definition as the basis for its eligibility criteria to receive

federal funds from IMLS:

- Be organized as a public or private nonprofit institution that exists on a permanent basis for essentially educational or aesthetic reasons
- Care for and own or use tangible objects, whether animate or inanimate, and exhibit these objects on a regular basis through facilities that it owns or operates
- Have at least one professional staff member or the full-time equivalent, whether paid or unpaid, whose primary responsibility is the acquisition, care, or exhibition of the public objects owned or used by the museum

Be open and provide museum services to the general public for at least 120 days a year.

Good Nature Brewing: operates at 37 Milford Street. They secured their special permit in June/July of 2011. The reason it is back before the Board is that the business is thriving and has the need to install an outdoor cooling unit (west side of the structure) which is a modification to the special permit. Chairman McVaugh stated that neighbor Stacey Snyder has submitted a complaint regarding sound. Jonathan Schaller questioned if the Code Enforcement Officer felt that this change is needed. The process is that the use is permitted if the materials which are filed are followed, those are binding conditions, the addition of an industrial condenser, to the outside of a building, is a departure from that. Mr. Schaller disagreed. CEO McGinnis stated that he did not feel that was his determination to make. Harvey Kliman felt that accessory apparatus is a normal part of business and is not part of the special permit. Code 174.82(D)3 was referenced. Chairman McVaugh stated that the practice of the Board, and the understanding of the special permits as they have operated in Hamilton for decades, is that what was granted was the permission for the use with the conditions which were submitted. Revising the special permit allows for growth of the business. Carrie Blackmore asked that the noise issue can be mitigated privately. She stated that regarding the special permit issue, she is receiving conflicting information about who is supposed to be making that decision. She went over 174.82 regarding special permit wording in the code book and stated the wording is confusing. Member Larson referenced 174.53D. Trustee Pangallo would like Attorney Jim Stokes to address the wording issue. Ms. Blackmore gave the Board information on proposed sound mitigation regarding the condenser. Chairman McVaugh stated that a drawing is needed, a revised site plan, which includes the property, not just the interior, the location of the condenser, the dimensions of the condenser, Mr. Whalen stated that financing for this mitigation is going to take some time. Jane Walsh requested a copy of the special permit. Bill Todd asked what happens when the neighbors are still not happy. Carolyn Todd addressed the Board with her concern with what she perceived as a lack of professionalism.

The Board thanked Member Ben Barrett for his service to the Board.

The next meeting will be **July 26, 2012,** at 7:00pm, at the Village Courthouse.

There being no further business to come before the Planning Board, Member Barrett made a **motion** to adjourn. The **motion** was seconded by Member Fuller and unanimously carried. The meeting was adjourned at 8:56 p.m.

Respectfully submitted,
Kim Taranto