

Town of Ballston  
Zoning Board of Appeals

**TOWN OF BALLSTON  
ZONING BOARD OF APPEALS**

**Regular Monthly Meeting: May 6, 2015**

**ATTENDEES:** Marilyn Bell, Vice Chair  
Ellen Brown  
Robin Kane  
Stephen Merchant  
Daniel Mertzluft  
Timothy Long, 1<sup>st</sup> Alternate  
Peter Reilly, Attorney  
Thomas Johnson, Building Inspector  
Members of the General Public

Vice Chair Bell called the May 6, 2015 meeting at 7:30 p.m. and led the Pledge of Allegiance.

Vice Chair Bell asked for corrections to the March 4, 2015 minutes.

**MOTION:** Mr. Russell made a motion to accept the March 4, 2015 minutes as submitted. Ms. Brown seconded the motion. All board members voted in favor. **CARRIED.**

Vice Chair Bell welcomed Timothy Long, 1<sup>st</sup> alternate.

Vice Chair Bell stated there is one old case and Mr. Long was not here for the original session and will not be able to vote.

**OLD BUSINESS:**

**Appeal of David Stern and Smart Growth Ballston from a decision letter issued by the Building Inspector, Thomas Johnson, dated July 23, 2014 and November 17, 2014 ruling that the Rossi Commercial Business Planned Unit Development District (Local Law No. 3-2011) had not expired as substantial progress had commenced and continued without undue interruption after construction commenced pursuant to Section 7 of Local law No. 3-2011.**

Mr. Reilly stated a public hearing was held on March 4, 2015 and all that is in front of the board is a resolution to make a determination on the appeal.

Mr. Reilly read the resolution:

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**WHEREAS**, Smart Growth Ballston (“SGB”) and David Stern (“Stern”) (collectively, the “Appellants”), by Amended Notice of Appeal dated December 15, 2014, have appealed to the Town of Ballston Zoning Board of Appeals (“ZBA”) from letter decisions issued by the Town of Ballston Building Inspector, Thomas Johnson (“Johnson”) dated July 23, 2014 and November 17, 2014, determining that the Rossi Commercial Business Planned Unit Development District (L.L. No. 3-2011) had not expired because substantial progress had commenced and continued without undue interruption after construction commenced pursuant to the requirements of Section 7 of Local Law No. 3-2011; and

**WHEREAS**, pursuant to such application, the ZBA has reviewed the following: (1) the Appellant’s Amended Notice of Appeal dated December 15, 2014 and its attachments; (2) letter dated March 2, 2015 from Harter, Secrest & Emery LLP, Leslie M. Mauro, Esq., of Counsel, on behalf of Walmart Stores, Inc. to the Chairman of the ZBA, Michael Lesniak (“Lesniak”); (3) letter dated March 4, 2015 from Young/Sommer LLC, Jeffrey S. Baker, Esq., of Counsel, on behalf of the Appellants, to the ZBA and its attachments; and (4) letter dated March 4, 2015 from Frank S. Rossi, II, Esq., on behalf of Frank Rossi and Rose Marie Rossi, to Lesniak; and

**WHEREAS**, the ZBA has also reviewed the applicable provisions of the Zoning Ordinance of the Town of Ballston, as amended by Local Law 3-2013, as well as the applicable provisions of Town of Ballston Local Law 3-2011 establishing the Rossi Commercial Business Planned Development District, adopted May 31, 2011; and

**WHEREAS**, the ZBA heard and considered the testimony of Jeffrey S. Baker, Esq., Leslie M. Mauro, Esq., Frank Rossi, II, Esq., Ben Baskin and Allen Cox at its March 4, 2015 meeting; and

**WHEREAS**, upon due consideration and deliberation by the ZBA;

**NOW, THEREFORE**, be it

**RESOLVED**, that the ZBA makes the following findings:

1. The Appeal filed herein, disputes two distinct and separate issues determined by Johnson. First, was the determination that significant or substantial progress had been demonstrated within 24 months of the passage of Local Law 3-2011, as required by Section 7 thereof, correct? By letter dated July 23, 2014, to Jeffrey S. Baker, Esq., Johnson stated that such requirement had been met. However, such letter simply refers to, and reiterates, Johnson’s determination of such issue contained in Johnson’s letter of September 11, 2012 to Frank Rossi, II (“Rossi”).

2. Town Law Section 267-a (5) (b) requires an appeal of an administrative decision to be taken within sixty days from its filing. Although the Appellant’s may not have received the requisite notice to commence such sixty day appeal period on September 11, 2012 as it was

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contained in Johnson's letter to Rossi, the ZBA finds and determines the Appellants became aware of such decision no later than June 24, 2014 as the Appellants were in attendance at the Ballston Town Board meeting held on such date at which time the Appellants stated their disagreement with Johnson's September 11, 2011 decision.

3. In accordance with the requirements of a Town Law Section 267-a (5) (b) an appeal of such decision had to have been taken by August 18, 2014. As the instant appeal was filed on December 17, 2014, the ZBA finds that portion of the Appellant's Amended Notice of Appeal to be time-barred.

4. The Board further finds that even if timely challenged, Johnson's September 11, 2011 determination was proper as substantial progress within 24 months of the passage of Local Law 3-2011 was evidenced by the Town of Ballston's Building Department's receipt of a Stormwater Pollution Prevention Plan, acceptance for the clearing of certain non-jurisdictional wetlands, the performance of significant wetland-clearing work, inspected by Town of Ballston Stormwater Management Officer, Les Bonesteel, and the installation of certain sanitary sewer infrastructure.

5. The second issue raised in the Amended Notice of Appeal is whether substantial progress continued to be made without undue interruption after construction commenced. In his letter of November 17, 2014 to Jeffrey S. Baker, Esq. Johnson had determined that it had.

6. The ZBA hereby finds that such determination was correct. Such substantial progress is evidenced by the clearing and filling of non-jurisdictional wetlands (February-April 2012), sanitary sewer connection/installation (May-June 2012), negotiations between project sponsors and local entities concerning parking impacts (June-September 2012), the creation of a wetland mitigation area (June-October 2012), performance of a topographic field survey (September 2012), performance of a Phase I Environmental Site Assessment (October-November 2012), application to the Town of Ballston Planning Board for preliminary subdivision approval (March-November 2013), negotiation and execution of an agreement with Christ Church of Ballston Spa concerning parking and traffic mitigation (June-July 2013), preparation of a Phase II Environmental Site Assessment and supplement thereto (June-November 2013), performance of a subsurface geophysical investigation (August 2013), field testing/analysis of soil (December 2013 - April 2014), preparation of conceptual site plan application materials (April-July 2014), field staking for a proposed building (May 2014), testing of an existing water main (June 2014), and the project sponsors' participation in numerous public meetings at which the Rossi PUDD was discussed, including a Town Planning Board meeting on October 29 2014, and a public hearing before the Planning Board on November 20, 2014.

**BE IT FURTHER RESOLVED**, that based on the above findings and upon the review of the evidence in the record and all comments received during the public hearing, the ZBA hereby affirms the determinations challenged by the Appellants in the Amended Notice of Appeal filed December 17, 2014.

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Ms. Bell stated members of the board have received this resolution prior to the meeting and asked if there were other discussion topics and questions from the members of the board. No comments or questions.

Motion by: Ms. Kane made a motion to uphold the resolution as drafted by Mr. Reilly as read during the May 6, 2015 meeting with input from the Zoning Board.

Seconded by: Mr. Russell seconded the motion.

Vote as Follows:	Chairman Michael Lesniak	Absent
	Vice-Chairman Marilyn Bell	Yes
	Ellen Brown	Yes
	Robin Kane	Yes
	Daniel Russell	Yes
	Stephen Merchant	Yes
	Daniel Mertzlufft	Yes

Vice Chair Bell stated the resolution as presented has been approved.

Ms. Mauro thanked the board, Thomas Johnson, Building Inspector and Peter Reilly, Esq.

Frank Rossi, II, Esq. thanked the board, Thomas Johnson, Building Inspector and Peter Reilly, Esq.

**NEW BUSINESS:**

**Consideration of proposed changes to Chapter 138, Public Notification process for Planning Board and ZBA actions, pursuant to §138.-96, Code of the Town of Ballston.**

Vice Chair Bell stated there is no New York State Town Law for notification in advance of adjoining property owners when an application comes before the Zoning or Planning Board.

“Up until now it has been the policy of the Town that notification is provided to abutting property owners of any action reviewed by the Planning Board and Zoning Board of Appeals. It is now the desire of the Town Board that notification is provided to all property owners with 500 feet. This includes Special Use Permits.” Ms. Bell stated what will be discontinued, which is currently in effect, is notice shall be given at least 10 days prior to a hearing for a Special Use Permit by certified or registered mail to the owners of the property involved. Ms. Bell stated every landowner within 500 feet of the impacted property will be receiving notification – it will

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not be by certified or registered mail and will be in advance of any action or hearing taken by the Planning Board or Zoning Board of Appeals including Special Use Permit.

Vice Chair Bell read §138-94 C Existing

C. The review board shall set a reasonable time for the public hearing of a request for a special permit and shall give notice in the Town's official newspaper of such hearing at least five days prior to the date of such hearing, and with respect to any applications as herein set forth, notice shall be given at least 10 days prior to such hearing by certified or registered mail to certain officials, persons and owners of properties involved in accordance with requirements of §267 of the Town Law as follows:

- (1) Notification requirements. All owners of property which is contiguous, abutting or adjacent to or which is situated across an established road from the actual or proposed boundary lines of the property which is the subject of the application and to such other property owners as the review board may direct. The applicant shall be required to determine the names and addresses of such owners, and the applicant shall thereupon advise the Town Clerk, who shall notify such persons of the application by certified or registered mail.
- (2) Adjournment of hearing. The review board may, in its discretion, adjourn the hearing for a reasonable period of the purpose of causing such further notice as it deems property to be served upon such other property owners as determined by the review board.

Vice Chair Bell read §138-94 C Proposed

C. The review board shall set a reasonable time for the public hearing of a request for a special permit and shall give notice in the Town's official newspaper of such hearing at least five days prior to the date of such hearing.

- (1) Adjournment of hearing. The review board may, in its discretion, adjourn the hearing for a reasonable period for the purpose of causing such further notice as it deems proper to be served upon such other property owners as determined by the review board.

Vice Chair Bell stated by deleting the existing subsection (1) is going to make the Special Use Permit more consistent with all the other operations going on at this point.

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Vice Chair Bell stated there is no statewide requirement. If the town were to start or continue certified or registered mail, it would cost approximately \$6.00 each. If the town were to start notifying all property owners within 500 feet of the impacted property, this could cost hundreds of dollars per application. The component part in the newspaper will continue in the town's official newspaper as required and will just be simply be a stamped envelope that now goes out to the abutting land owners within 500 feet.

Mr. Merchant stated he is good with the 500 feet, but wants to make sure the notification time limits don't change.

Mr. Russell agrees with Mr. Merchant's comment.

A further discussion was held on application deadline requirements.

Mr. Mertzlufft stated from a logistical standpoint to move the application requirement up by a couple of days.

Vice Chair Bell stated given the chairman is not in attendance, would like to discuss this matter with the chairman.

Mr. Russell asked, "What was the initial driver to establish the requirement of the certified mail or registered mail process. Mr. Johnson said, "It was in the code long before my time and did not know the thought process."

Vice Chair Bell said, "Her sense is the board is in agreement with the removal and strikeouts of the sections. Given that this is a courtesy we are concerned whether there is or is not enough time in the delivery - would like to see five days, but short of backing that up in the actual application receipt process - would be doing a disservice to the applicants. Mr. Long stated there are more people within 500 feet than applicants.

Fred Iannon, 1 Rolling Brook Drive asked who is responsible for identifying the affected property within 500 feet. Mr. Johnson stated the Building Department. Mr. Iannon asked, "The applicant does not have to identify that." Mr. Johnson stated no. Mr. Iannon asked who is responsible for sending out the notifications. Mr. Johnson stated the Building Department. Mr. Iannon asked what newspaper is going to be used. Mr. Johnson stated the Daily Gazette. Mr. Reilly stated that is the official town newspaper. Mr. Iannon asked how often that is published. Mr. Reilly stated daily. Vice Chair Bell stated the actual notice is only once five days prior to the meeting. Mr. Reilly stated that is a New York State Town Law requirement.

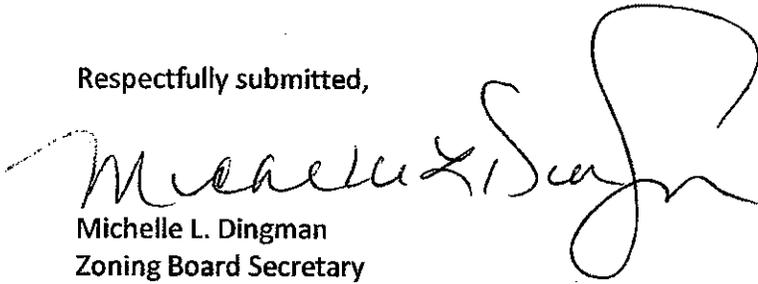
Anne Pierce, 110 Lake Road said, "It sounds like the Building Department needs more time and should give them some more days and after this has gone on for a while and did not meet those days, can shorten it up again."

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Vice Chair Bell stated there is public concern on this matter and will discuss with the Chairman.

**MOTION:** Ms. Kane made a motion to adjourn. Mr. Russell seconded the motion and all present voted in favor. **CARRIED.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michelle L. Dingman". The signature is fluid and cursive, with a large loop at the end of the last name.

Michelle L. Dingman  
Zoning Board Secretary