

TOWN OF DRYDEN
PLANNING BOARD MEETING
January 14, 2020

Present: John Kiefer, Chair, Craig Anderson, Tony Salerno, Daniel Bussmann,
Joe Wilson, David Weinstein, Alice Green (alternate), Simon St Laurent (alternate)

Absent: Tom Hatfield

Staff: Ray Burger, Planning Director

Liaisons: Dan Lamb (Town Board)

Chair John Kiefer opened the meeting at 6:00 p.m. Alice Green was granted voting privileges in the absence of Tom Hatfield.

J Kiefer reported that in their bi-weekly phone call with the comp plan consultant he and Ray Burger were advised by Sam Gordon that they have not received an overwhelming number of names for stakeholders. He encouraged people to send their lists. It is expected they will end up with a large list and that will be narrowed down. There was a brief discussion of how people may be chosen for the focus group and what the criteria may be.

Proposed Amendment to Zoning Law

Ray Burger said the waiver provision first came into play in the Zoning Ordinance of 1968 when the first comp plan was done. The comp plan revision in 2005 resulted in proposed amendments. It went through a lot of years of development and there were a lot of amendments in the next six years. In 2011 a zoning law was introduced that reflected the 2005 comp plan. The town board adopted the waiver provision in February of 2009; it was then section 5 of the zoning ordinance. It was brought forward as section 900G of the current zoning law. The zoning law was first introduced in 2011 to reflect the 2005 comp plan and in that law was an area and bulk table (Article 6) that included hamlet area and bulk requirements, so the Section 900G waiver that contains a reference to Article 6 applied town wide and to the hamlet. In 2012 the Varna Community Development Plan was adopted and at the same time Article 7 of the Zoning Law was inserted into the Zoning Law. There were some domino effects to the Zoning Law changing definitions and referencing back to Article 7. But Section 900 stayed as referring to Article 6. In incorporating Article 7 there was special mention of the PUD tool applying to Varna. The waiver of 900G was not specified to apply to Varna. Neither was the Conservation Subdivision tool specified to apply to Varna. In subsequent years we've made an amendment to the Zoning Law to make the Conservation Subdivision apply to the hamlet districts. We have had occasion to take tools that affect the area and bulk and change them to apply to Varna specifically.

R Burger said he cannot find where the 900G provision has been used since it first appeared in 2009.

D Weinstein moved the resolution that was previously shared with Planning Board members. It was seconded by J Wilson.

Comments during discussion:

- This is a form of spot zoning.
- You can say not to do it in Varna; it shouldn't be allowed in the whole town.
- The current law on the books is wrong, as well as this proposal, and is a form of spot zoning.
- There are two boards doing same process of site plan review.
- The waiver provision is a bad thing in the zoning law, as is the amendment.
- The current law allows spot zoning because of 900G.
- The waiver provision has never been used; there is no reason to keep it on the books.
- This provision appears to apply to subdivision.
- The Planning Board doesn't have power to change bulk requirements because it is doing a subdivision.
- State department has been contacted about this.

D Weinstein summarized his conversation with Christopher Eastman, NYS Local Government Specialist, who said that though the Town Board can technically do this, he agreed it might not be in the best interests of the community. He referenced Town Law §274-a(5) and said however, the authors of the statute did not contemplate that local officials would use it to give the Town Board or Planning Board the authority to provide relief from dimensional requirements in zoning. He agreed that that kind of relief is the responsibility of the Zoning Board of Appeals. "Zoning by project" is intended for planned unit developments. The trend in planning has been away from what he called design on the fly zoning, which is more for urban areas and not best for areas not experiencing a great deal of growth.

Language was added to the proposed resolution that Section 900(G) be eliminated from current zoning law. J Wilson said the proposed amendment is more narrow, but he agrees 900(G) is bad practice. T Salerno said if 900(G) is bad for Varna, he thinks it is also bad for the town.

J Wilson said it came up so close behind Varna and Trinitas, and Trinitas being told that their proposal violated the bulk and set back requirements, that it is germane that this will have a differential impact on Varna. He can live with either version of the resolution.

A straw poll of the board members revealed all members are in favor of striking 900(G).

J Wilson prepared some suggested 'whereases' to be added to the proposed resolution. He said the 2005 plan, which was vetted by hundreds of people, prescribes that the hamlets be treated differently and lays out particular goals, the most outstanding of which is probably that the character of the community of the hamlets not change or change very slowly. The obvious effect of enacting the waiver and applying it to Varna, gives the Town Board the opportunity to essentially set aside everything in the comprehensive plan that says (1) treat the hamlets differently, (2) make sure that their character doesn't change and then goes through another three and a half pages of specifics on the kind of development that should occur in the hamlets, and is very specific about saying that apartment units and units like Trinitas are to be confined to twenty units in a particular development. The thrust of the amendment, the linkage of the waiver to Varna, and the addition of the language in 701 to the extent practicable gives the town the power to abrogate the entire scheme of hamlet development laid out in

2005. The people of the hamlet of Varna are on the brink of being abrogated by a vote of three folks in 2011.

C Anderson said he thinks the board is overthinking it. This is spot zoning and for that reason, it will not pass muster and if the Town Board were to use it, they would find an Article 78 against them. It isn't necessary to dig into the comp plan and where everything will go.

The board discussed revisions to the resolution as proposed.

What is the Town Board's position and rationale for this amendment?

D Lamb said the first the Town Board got news about this issue was in response to a request for agenda items in December. This came forward from the town attorney in consultation with R Burger. The attorney looked at what was on the books and this history and made her best objective resolution of the previous Town Board's intent. She saw this as an omission, an error that needed to be fixed. It seemed administrative and what the previous board intended. He said he does appreciate the conversation that has ensued since. Whether the Town Board tables this or passes the Planning Board recommendation, it would have the same impact on any pending project in Varna. He has concerns about changing the laws while there is a pending project and the legal liability for the town. He doesn't want to create any exposure for the town by changing it and wants to be sure we are on solid ground if we do that. If the proposed amendment is tabled, it will achieve many of the same objectives for now. When the project in Varna is resolved one way or the other, we can go back and fix it when there isn't something bearing down on it.

T Salerno said the Planning Board has proposals for changing the Varna tables because of inconsistency with the current zoning law and the Varna plan. If that passed now, it would be difficult to apply to a pending project because you are changing the rules in the middle of the game.

J Skaley said it is not clear. Case law goes both ways. It depends on what is significant and defining that is a different issue.

D Lamb said he agrees that getting rid of 900(G) should be an ultimate goal at the appropriate time. The zoning law can be fixed when there isn't something big bearing down on it.

A Green said she doesn't know significance of not having an approved application from Trinitas. R Burger said a sketch plan was approved and we are awaiting a full site plan application that would be called complete.

D Weinstein read the resolution as it was amended:

Resolution #1 (2020) - Opposing the Amendment to Extend the Town Board's Authority to Grant Waivers of Area and Bulk and Lot Requirements Pertaining to the Dimensions of a Lot to Varna Zoning Districts and Recommending the Elimination of section 900 G of the Dryden Zoning Law

WHEREAS a proposed amendment, entitled "TOWN OF DRYDEN LOCAL LAW No. ___ OF 2020 A LOCAL LAW TO AMEND DRYDEN ZONING LAW SECTIONS 900, 909 AND 701" is being considered by the town board to extend the town board's authority to waive or modify the area and bulk requirements

pertaining to the dimensions of a Lot, set forth in Article VI, to the Varna zoning districts in Article VII, and

WHEREAS this amendment has been moved forward without consultation with either the Planning Board or the Zoning Board of Appeals, and

WHEREAS the Zoning Board of Appeals is granted the authority over all zoning districts of the town to apply consistent criteria to decision-making, and

WHEREAS this amendment would create 2 different non-equivalent Site Plan Reviews, depending on which Board is doing the review:

(1) an applicant applying for a Special Use Permit would have Site Plan Review through the Town Board, which can grant a waiver if this amendment is approved, while

(2) an application that needs approval from the Planning Board has that board conduct Site Plan Review, and no such waiver power is available from the Planning Board, and

WHEREAS this amendment would therefore create two paths to site plan review, which could result in different findings depending upon which board is reviewing the application. The applicant and the community must be certain that the result of the Site Plan Review would be the same regardless of the body doing the review, and

WHEREAS before granting a variance, the Zoning Board of Appeals is required to meet three conditions, among which is a requirement to show that the use to be authorized by the variance will not alter the essential character of the locality, and

WHEREAS through this amendment the town board would have to show only that it considered “the utilization of techniques designed to enhance”, among other things, the town character, thus softening the protection of this character, and

WHEREAS the checks and balances offered in this amendment and in Section 900 G of the Dryden Zoning Law allow for spot zoning, a violation of NY State Law, and are not sufficient to protect local landowners or to ensure zoning regulations are consistently applied throughout the town, and

WHEREAS, the effect of the proposed amendment and Section 900 G of the Town could enable the town board to make decisions that would abrogate the specific provisions in the Town’s Comprehensive Plan,

THEREFORE,

BE IT RESOLVED that the Planning Board opposes the adoption of this afore described amendment.

BE IT RESOLVED that the Planning Board recommends that Section 900 G of the current Zoning Law of Dryden should be eliminated from the Dryden Zoning Law.

Moved – D Weinstein

Second – J Wilson

All in favor

C Anderson asked that members look at Subdivision Law Section 1003 – waiver requirements. S St Laurent said in reviewing the minutes, he thinks that is the direct inheritor of what happened in February 2009.

There being no further business, the meeting was adjourned at 7:00 p.m.

Respectfully submitted,

Bambi L. Avery