

**PLANNING BOARD**  
**Town of Kirkwood**  
**70 Crescent Drive**  
**Kirkwood, NY 13795**

**August 12, 2019**  
**Meeting Minutes**

Present: Mike Maciak, Associate Member      Bill Graves, Attorney  
          Dan Wasson, Member                      Chad Moran, Building & Code Inspector  
          Marchie Diffendorf, Chairman

Absent: Jim Bukowski, Member  
          Kevin Balachick, Member  
          Gordie Woolbaugh, Member

Chairman Diffendorf called the meeting to order at 7:00 PM.

**APPROVAL OF MINUTES:**

Motion by Mike Maciak and second by Dan Wasson to approve the minutes of the May 13, 2019 meeting as submitted.

All voted in favor. Motion Carried.

**REQUEST FOR CHANGE IN ZONING – LESTER SIEDEL – 50 FRANCIS STREET – PUD TO B1:**

Chairman Diffendorf explained that this meeting is on a request for rezoning from Lester Siedel, 50 Francis Street, from a PUD to B1. He went to the Town Board and they determined they would send it to the Planning Board. We can make a recommendation to the Town Board to change it or not change it. It is their discretion to override us if they want. They are looking for a recommendation from the Planning Board.

Lester Siedel, the applicant and Ken Ellsworth from Keystone Associates were present. Mr. Ellsworth handed out a map to the board members showing what Mr. Siedel purchased and the second one shows that property with the lot split, divided into two lots. Mr. Ellsworth went on to say it is currently PUD and Les is requesting that you consider rezoning to B1. Both lots meet the B1 zoning setbacks and requirements for the lot size.

Chairman Diffendorf asked if there is currently a house on the property and Mr. Siedel stated yes. Chairman Diffendorf asked what the plans for the house are and Mr. Siedel stated at this time they are going to keep the house because they said we needed the 80 feet, so we purchased the lot between his house and the dentist office, which would give him 103 feet.

Chairman Diffendorf asked if the plans for the storage mall are going to be on the same lot as the one story building, that is a garage, and Mr. Siedel stated it is an office. Chad Moran stated if he goes to the B1 that is going to be the office for the storage units.

Mr. Graves asked if he was looking to rezone the full parcel and Mr. Ellsworth stated both pieces. Mr. Graves asked if they had subdivided already and Mr. Ellsworth stated no. Mr. Siedel stated they haven't closed on the lot yet. They have the agreement from the attorney. They were supposed to close last month. Mr. Ellsworth stated this is their proposed ultimate plan.

Mr. Graves asked if their plan is to rezone one parcel between two PUD parcels to be one and Mr. Ellsworth explained that their plan is to make two complete parcels that are currently PUD to make them B1. Mr. Graves asked both parcels and Mr. Ellsworth stated yes. Mr. Ellsworth stated that both parcels meet the zoning requirements for a B1.

Chairman Diffendorf stated that at the Town Board meeting you stated you may demolish the house and Mr. Siedel stated that is in the future. That is why they want the whole parcel B1. Chairman Diffendorf asked if he wanted to put storage space on that and Mr. Siedel stated yes, down the road if it does good.

Mike Maciak asked how many storage units are going in the first phase and Mr. Siedel stated 20. Chairman Diffendorf asked if there is access from the parking area, not around the back and Mr. Siedel stated on the sides of the storage mall. There was a discussion regarding how people would access the storage units and it was determined there would be doors on both sides of the unit. The units would be 10 X 10, split down the middle with doors on both sides. There would be 10 units on one side and 10 units on the backside. Chairman Diffendorf asked if it would eventually be paved all around it and Mr. Siedel stated yes.

Mike Maciak asked what is the height going to be in the units and Mr. Siedel stated that the standard is 8 feet tall.

Chairman Diffendorf asked Mr. Graves if there are other criteria they have to consider and Mr. Graves stated the first thing the Planning Board should consider is whether this is spot zoning, which is illegal. The standard for whether this is spot zoning is if the proposed rezone would serve the benefit of one property owner and it would be contrary to the Town's adopted comprehensive plan. He went on to say he thinks the Planning Board can only consider the parcel as it is and he doesn't think the Planning Board should consider rezoning two individual parcels that have not been subdivided yet. He would have to check to see if there is Planning Board approval required for a subdivision. Mr. Graves asked Chairman Diffendorf if there was a minimum subdivision and Chairman Diffendorf stated for housing but he doesn't think there is anything for commercial property. With housing you can't subdivide more than 3 lots at a time.

Mike Maciak asked how big is the office area and Mr. Siedel stated 30 X 32.

Mr. Graves went on to say that the Planning Board should not consider some kind of future dimensions of the property, they should consider the property as it exists currently regardless of what the intentions are for that property. Looking at it from that point of view he doesn't believe it is spot zoning. There is ample support in the comprehensive plan to support the idea that this is not spot zoning, it is not contrary to the comprehensive plan. That is one consideration. The other consideration should be that the Planning Board needs to look at all future potential uses of the property if it is rezoned to B1. He understands what they are trying to do here and they have given us some idea and there is a survey map but the Planning Board also has to consider every other one of the uses in the B1 schedule before making its recommendation and assume that each and every one of those uses at some point in time may exist on that property.

Mr. Ellsworth explained that he is in the process of purchasing a piece of property and they want to make sure they are very clear what their intentions are. They would use that piece in order to make two lots where they only have one lot now. Mike Maciak asked if that piece was a right-of-way that he is purchasing. Mr. Siedel stated he didn't think it was a right-of-way. Mr. Graves stated he didn't think they could make a recommendation on rezoning a piece of property that is not yet owned by the applicant. Regarding the other parcel that Mr. Siedel owns the Planning Board can make that determination.

Chairman Diffendorf commented that it would then be spot zoning. Mr. Graves explained that traditionally one of the signs of spot zoning is if you get an island type effect. An example is if you have a large residential mass of lots and you rezone one within that mass to commercial use or B1 or something like that. That is indicative of spot zoning because that would indicate that was done for the benefit of one property owner and it was not done consistent with the comprehensive plan. Mr. Graves read what the NYS Court of Appeals has said about spot zoning. He read that spot zoning is defined as the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners. Spot zoning is the antithesis of planned zoning, if therefore an ordinance is enacted in accordance with the comprehensive zoning plan is not spot zoning even though it singles out and affects but one small plot or creates in the center of a large zone, small areas or districts devoted to different use. The relevant inquiry is not whether the particular zoning under attack consists of areas fixed within larger areas of different use but whether it was accomplished for the benefit of individual owners rather than pursuant to a comprehensive plan for the general welfare of the community. Mr. Graves stated he interprets that to mean that to determine whether it is spot zoning you have to refer back to the comprehensive plan.

Chairman Diffendorf commented that the self-storage mall is in the B1. Mr. Graves stated that the PUD includes business/commercial, residential, automobile salvage. The B1, in his opinion, is stricter on what you can put there. Dan Wasson commented that is what he was thinking, you put more of a limitation on it. Dan added right now we would be voting on 50 Francis. Mr. Graves stated correct, whatever Mr. Siedel currently owns. Mr. Ellsworth asked once that purchase is made they would be back to do the same process with the piece he is purchasing. Mr. Graves explained that would be a Town Board legislative amendment to change the zoning schedule if at some point you acquire that other parcel but it is still zoned PUD and you would like to have it changed to B1, which would have to be another application for rezoning.

There was a discussion regarding the storage mall that is on Colesville Road. The zoning there is PUD and they have storage malls. Mr. Graves explained that the only thing we are considering is an application for a rezone.

Referring to the drawings that Mr. Ellsworth submitted there was a discussion of where the property is located on the drawing and whether the property he is planning on purchasing is a right-of-way.

Chairman Diffendorf stated we can now make a recommendation to the Town to rezone 50 Francis Street or not rezone it. Mike Maciak asked wouldn't the recommendation be to have him purchase the other property so he can do it all in one shot versus doing it twice. Mr. Graves stated he didn't think that was a bad recommendation. You can make your recommendation either way and you can only make a recommendation on rezoning 50 Francis Street because that is what the application was and that is what Mr. Siedel owns. He doesn't think it is a bad idea to wait until the real estate transaction has been completed and Mr. Siedel owns the other piece and then makes an application to rezone and maybe does the subdivision at that point in time. Just because the Planning Board recommends something doesn't mean the Town Board has to do anything. It doesn't mean Mr. Siedel has to ever rezone the parcel. Mike Maciak stated that right now if we rezone this and he came back and tried to rezone the piece he is going to buy that would be more of spot zoning.

Mr. Ellsworth stated if they have a positive recommendation they would feel comfortable waiting until Les purchases the other piece then approach the Town Board for the actual rezoning and do it all at once. They don't want to come back before you again for this small piece.

Chad Moran asked if the property he is purchasing is already B1 or PUD and Mr. Ellsworth stated PUD.

Chairman Diffendorf stated it doesn't make sense to come back until you purchase everything. We have two more board members that may have a different opinion. It would seem like rezone it with the condition that you purchase the other property and it would all be done. Mr. Graves stated be careful on the recommendation. He thinks the Planning Board should look at 50 Francis based on what they considered, the issue of spot zoning and the permitted uses and make its recommendation to the Town Board on 59 Francis. Part of that recommendation is we recommend a rezoning, and it probably makes sense to finish purchasing the other one before a legislative amendment that Mr. Siedel can come back. That is fine, he just doesn't want anyone to think we are imposing a contingency on the recommendation.

Motion by Dan Wasson and second by Mike Maciak to recommend to the Town Board to rezone 50 Francis Street from PUD to B1.

Roll Call Vote:	Mike Maciak	Yes
	Dan Wasson	Yes
	Chairman Diffendorf	Yes

Motion Carried.

Chad Moran commented that next month we are expecting Anderson, Canopy, and Tim Cook, which he may or may not come in. Chairman Diffendorf ask if Cook would need a variance for parking and Chad explained there is parking for 10 cars adjacent to or at the southern side of the building. It is 1.5 acres so 10 cars would fill the entire property. If he utilizes the building to do what he wants he thinks it would be ok but if he put his wagon next to it that would encroach on the parking.

Motion by Mike Maciak and second by Dan Wasson to adjourn the meeting. The meeting was adjourned at 7:27 pm.

Respectfully Submitted,

Mary Kay Sullivan  
Acting Secretary, Kirkwood Planning Board

cc:	Planning Board Members	Dan Griffiths
	Gayle Diffendorf	Scott Snyder
	John Finch, Jr.	Oliver Blaise, III
	Bill Diffendorf	William Graves
	Code Department	