

Continued Special Meeting of the Village of Pawling Zoning Board of Appeals Minutes

Meeting Date: February 23, 2022

Present: Michael Keupp, Chairman
Freddy DiVitto, Member
Ann Hardeman, Member
Nicholas Vorolieff, Member

Absent: Tom Zarecki, Member (Recused)

Also Present: Diana Tomassetti, Main Corner Properties
Mike Barnett, Main Corner Properties
Ben Gailey, Jacobowitz and Gubits, LLC
Lauri Taylor, Mayor

On, *Thursday, February 23rd, 2022 at 7:00 PM*, the **Zoning Board of Appeals** met in the meeting room at the Village Hall on 9 Memorial Avenue, Pawling NY. The Meeting was called to order by Mike Keupp, Chairman and began with Roll Call as indicated above and The Pledge of Allegiance.

Applicant: Main Corner Properties
Diana Tomassetti
146 East Main Street Appeal

Village Attorney Jonathan Bardavid referred to two items to be placed on record. One is a January 6th, 2022 affidavit from Ed Larkin and the other is Quarrx Building Products data sheet. Mr. Bardavid reminded the Board that the matter in front of the Board is to hear the appeal of Main Corner Properties of the December 22, 2021 decision by the Building Inspector to issue a Stop Work Order and Revocation of the Building Permit.

Ben Gailey, Applicant's Attorney, stated that the Code Enforcement Officer/Building Inspector was erroneous in his determination to issue the Stop Work Order and Revoke the Building Permit then presented the Board with written documentation of his argument. See attached –*The Enforcement Officer's Determination to Issue The Stop Work Order and Revoke The Building Permit Must Be Reversed* for details.

Chairman Keupp referred to Mr. Ed Larkin of LaBella Associates, Acting Building Official for the Village of Pawling, for comments.

Mr. Larkin explained that there are no new updates since the February 3, 2022 meeting. No data has been presented other than the exact cut sheet of the roof material which is a product that we were aware of and having it on record is helpful. He further stated that at the February 3,

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2022 ZBA meeting, multiple plan sheets were reviewed identifying the deviations from the original Site Plan. Mr. Larkin explained that, as stated previously, the Building Official is responsible for enforcing not only the Building Permit, but also the Approved Site Plan document which is also the basis for issuing both, the Stop Work Order and Revocation of the Building Permit.

Chairman Keupp made a motion to reopen the Public Hearing. Member Vorolieff seconded the motion. All were in favor.

Mr. Rendich commented that he would be really interested to hear the Villages response to the question of authority stating that's the one thing that could potentially be a reason to overturn the Stop Work Order and Revocation of Building Permit. One thing that was mentioned that was new and nice to hear is that the Applicant will appear before the Planning Board at the March 3, 2022 meeting. He further commented, "I think everybody wants this to be a successful project and it just feels like you need to get together on it. There's got to be a solution to this and I look forward to you guys going before the Board and working something out." See attached *Michael Rendich Comment Letter*.

With no other comments, Chairman Keupp made a motion to close the Public Hearing. Member Hardeman seconded the motion. All were in favor.

Chairman Keupp stated that legal issues have been raised on both sides and believes it would benefit the ZBA to have a discussion with Village Council in Executive Session.

Member Vorolieff made a motion to go into Executive Session, Member Hardeman seconded the motion. All were in favor.

Chairman Keupp made a motion to End the Executive Session, Member Hardeman seconded the motion. All were in favor.

Chairman Keupp referred to the Board for discussion.

Member Vorolieff said that he has been reading through statutes, considering the time line of the communication between the builders (Applicant) and Applicant's Attorney Mr. Gailey's appeal. Mr. Vorolieff explained that it's very important generally between Boards and Developers when a project comes across multiple Boards, in this case the Planning and Zoning Boards, the whole package is considered in great detail which includes the drawings that have been submitted and made public. One of the things that was presented to the Boards in numerous meetings by Curt Johnson, the Applicant's representative at the time, was that this structure, which is significantly larger than the old structure that was on that site, was going to

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Incorporate the architectural details from the surrounding areas so that it would blend in with the character of the community. It's clear from the drawings that there has been some deviation to that. According to our Code Enforcement Officer there are about six different deviations. He further explained that when an applicant presents a project before the Board, requesting variances or permissions, they and the Board are entering into an agreement. We agree that your plan is going to go forth as listed, as drawn and as presented. As such, we accept that agreement as being something that's going to work in the community. When that's deviated from, then the agreement that we have changes as well because we're looking at the whole package and we're granting certain things based on the whole package, the submitted materials presented to the Board. Mr. Vorolieff asserted that deviations are significant and his opinion is that the Code Enforcement Officer brought up at least six deviations and does have the authority to issue both, the Stop Work Order and Revocation of the Building Permit.

Chairman Keupp commented that the Applicant's representative at the time, Curt Johnson, brought this up at previous Board meetings many times. The Chair explained he had full confidence in Mr. Johnson because he is familiar with his work for years and trusts him. It was discussed and agreed upon in numerous Planning Board and ZBA meetings that this building was going to blend in with the character of the community and draw on aspects of nearby buildings in Pawling. He stated that this doesn't look like any building in Pawling especially referring to the orange roof and how it looks like a Howard Johnson. It's terrible, it has none of the aspects of the Kane House or of any other building in Pawling except for the brick. The Dutcher House has brick and other buildings have brick yet this is not what the Village signed on for. It is clear what was agreed upon. This doesn't blend in with the community, it doesn't follow the plans and for this reason the Building Inspector had every right to issue the Stop Work Order and Revocation of the Building Permit.

Member Hardeman commented that she agrees with the previous member's comments and states that what's there does not look like what was previously approved by both Boards. Ms. Hardeman asserted that if a Building Inspector can't stop work on something, what is the recourse of a community and what would be the purpose of the Building Inspector.

Member Vorolieff further commented that the building plans really represent what the final project should look like and that's what we have here in front of us. He noted from looking at the timeline information, that there has been early and frequent communication with the builder on this site about when they were veering from the existing plans and by continuing to the work, that they were doing so at their own risk. It's unfortunate that they chose to continue despite these early and frequent communications. These were decisions the builder made on their own at their own risk despite the warnings. I feel that the Village has done their due diligence in adequate and frequent communication and that there is no fault on the Village on this matter.

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Ms. Tomassetti asserted the bricks were not put up without getting the proper approval from the Planning Board. She explained that they couldn't get the bricks that were initially specked out, they were 18 weeks out and got approval from the Planning Board to move along with the bricks. Stating, just for the record, we did not go rogue without any approval from the Planning Board.

Member Vorolieff said you were not supposed have any brick up at the second level and there are areas where you have brick all the way up to the roofline.

Ms. Tomassetti said those are things that are being remediated. Of the six items that the Boards are contesting, five are being fixed.

Member Vorolieff said the reason that we're really here at this point is that the ZBA is acting as a judiciary to determine whether or not our Building Inspector has the Authority based on the statutes to do what he did in the way of Revoking the Permit and issuing a Stop Work Order.

Chairman Keupp restated that this is not what was agreed to in the original plan. It doesn't blend in and we find that the Building Inspector did have the authority.

Mr. Gailey stated that the ZBA is acting as judiciary on this. That's true. It's a legal determination and all of the objections that have been heard tonight relate to aesthetics that the building doesn't comply with the plans approved by the Planning Board. Mr. Gailey further stated none of the sections cited by the Building Inspector have any relation to plans approved by the Planning Board so if the Board is going to act as a legal body then it would have to find that, legally, there was no authority to issue the Stop Work Order or Revoke the Building Permit.

Member Vorolieff said he appreciates Mr. Gailey's position on that; however, disagrees with his argument restating that he believes this veered and that Building Inspector does have that authority. Further stating that, in fact if a building inspector in this Village and any other village in any other town across the country does not have that authority, then there would be no enforcement and no recourse to ensure that what people would consider to be reasonable development that fits in with the existing communities and what the villagers and residences would want. This plan is very specific in its drawings.

Mr. Gailey, said then the Village should add that provision to its Zoning Code.

Mr. Bardavid said if you want to have a legal debate you can look at the building plans which you submitted into the record, five of the six items have not be addressed by you. The items mentioned are clearly indicated on the Building Plans. The plans and the permit plans are clear.

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With no further comments from the Board, Member Vorolieff made a motion to approve the draft as written that the Building Inspector had full authority in the issuance of the Stop Work Order and Revocation of the Building Permit for 146 East Main Street project based on the information that was heard before the Board. Member Hardeman seconded the motion. All members were in Favor.

Adjournment

Member Vorolieff made a motion to adjourn. The motion was seconded by Member Hardeman. All members were in Favor.

Submitted by:



Vivian Nikolatos, Secretary

PB Secretary

From: Rendich, Michael <Michael.Rendich@bhspecialty.com>
Sent: Monday, February 7, 2022 5:04 PM
To: PB Secretary
Cc: Lauri Taylor; Mike Rendich
Subject: RE: Special Meeting of the ZBA - February 3, 2022

Vivian,

I plan to attend the continuation of this meeting on the 23rd but would again like to share some thoughts in writing ahead of that meeting. If I understand correctly, the sole question before the ZBA at this time is whether to uphold or overrule the Building Inspector's revocation of the Applicant's permit for work and issuance of a Stop Work Order.

At the February 3rd meeting, the reasons for the Building's Inspector's orders were made clear, and the Applicant's attorney presented two arguments for why those orders should be overruled as follows:

1. The Building Inspector did not have the authority to issue the orders.
2. The grounds for the orders were not valid.

Addressing the second point first - The Applicant's attorney argued that the composite barrel tile roofing that is being installed on the building complies with the "architectural fiberglass shingles" that are noted and illustrated on the approved drawing. He also produced documentation from a Professional Engineer that agreed with that position. I suppose there is no legal definition for "architectural fiberglass shingles" so that PE can make such a statement with impunity, but I'm certain that any architect, builder, or roofer knows exactly what is meant by that term, and it is not composite barrel tile. Add to this the fact that the applicant made no argument about the other deviations listed by the Code Enforcement Officer (knee wall enclosures of patio areas, et al), they failed to make a case that the grounds for the Building Inspector's orders were not valid.

Regarding the second point, I am not familiar with Section 10-10 of the Village Code that was cited during the meeting and don't know that I'd be able to offer any insight into this legal question anyway. The Applicant's attorney and the ZBA's attorney apparently have differing opinions on this. So unless these differences are resolved by the meeting on February 23rd, there is no case for overruling the Building Inspector's orders based on a lack of authority.

I wonder what is involved and how much time it will take to get a ruling on the question of the Building Inspector's authority. While that may be beside the point for the question that is before the ZBA for this meeting, I would ask the Applicant as well as the Village if they are willing to roll the dice on that outcome. Presumably, we all want this project to be successful with a vibrant new business open in our community. Hopefully the Applicant and the Village can come together on this and resolve issues in a way that is satisfactory for all parties.

Also, I stand by my comments from my January 25th email (below) as well as comments that I made at the February 3rd meeting.

I look forward to the next steps.

Thank you,

Mike Rendich
136 E Main St
347-420-3438

DOUBLE ROMAN

Composite Tile

Overview

Quarrix Double Roman composite tile delivers the same beautiful aesthetic look of traditional clay and concrete tiles but with half the weight and many more benefits. The synthetic composite material can be installed on existing homes and buildings without needing to make structural or roof modifications prior to application making it the perfect solution to remodeling older tile and concrete roofs. Because Quarrix composite tile can be installed in all cold and warm weather climates with no worries of cracking from freeze, frost or hail and its durability overtime delivers valuable savings, Quarrix composite tile is an excellent choice for any new construction project. Manufactured in the USA and backed by a 50-year warranty, Quarrix composite tile provides beauty and long-term superior performance with peace of mind for the life of the roof.



- **Lightweight Design Reduces Installation Costs**

67% less weight than traditional tile or concrete eliminating the need to reinforce roof structures.

- **Lasts for the Life of the Roof**

Backed by a 50-year warranty and Class 4 impact rating, Quarrix tile is extremely durable and will not chip or break from hail or when hit with golf balls. Tiles can be walked on and will not break during the installation process.

- **Approved for All Climates**

Deliver superior performance in all cold and warm weather climates. Tiles will not crack and are not susceptible to the freeze, thaw, mold, mildew, and sealing concerns associated with clay and concrete roofs.

- **Easy & Safe Installation**

Each composite tile weighs only 3.8 lbs and is lightweight, fast and easy to install. Feature interlocking design and are pre-drilled with easy-to-read alignment marks to speed installation. Tiles can be cut, drilled and fastened using standard tile roofing tools. Quarrix composite tile doesn't contain silica or lead for safe cutting and handling.

- **Complete System**

Quarrix created the System Advantage™, a line of high-quality roofing components that combat water drainage and poor air circulation in water shedding tile roofs. This full line of roofing accessories include: Tile Fasteners, Tile Battens, Universal Tile Flashing, Universal Tile Ridge Vent and more.



DESERT
RED

CANYON
EARTH

SADDLE
BROWN

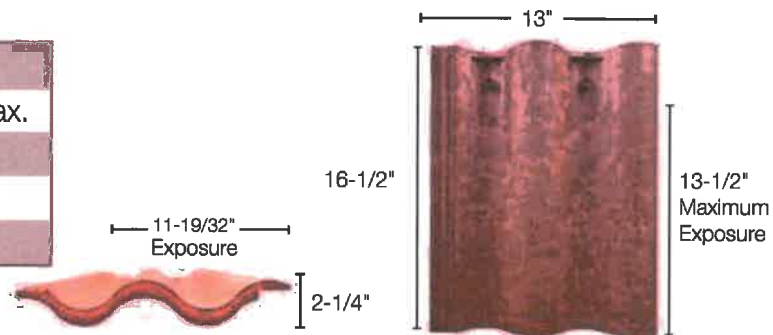
BLACK

GOLDENROD

SAGE

SPECIFICATIONS

Dimensions (overall)	13" x 16-1/2"
Exposure	11-19/32" x 13-1/2" max.
Tiles/Square	92
Weight/Square	303.6 lbs.
Fire Rating	Class C



Part #	Description	Color	Weight/Tile	Weight/Square	Roofing Square
2001BK	Double Roman Field Tile	Black	3.3 lbs	303.6 lbs	92 pieces
2001CE	Double Roman Field Tile	Canyon Earth	3.3 lbs	303.6 lbs	92 pieces
2001DR	Double Roman Field Tile	Desert Red	3.3 lbs	303.6 lbs	92 pieces
2001GR	Double Roman Field Tile	Goldenrod	3.3 lbs	303.6 lbs	92 pieces
2001SB	Double Roman Field Tile	Saddle Brown	3.3 lbs	303.6 lbs	92 pieces
2001SG	Double Roman Field Tile	Sage	3.3 lbs	303.6 lbs	92 pieces
2010BK	Hip/Ridge/Rake Tile	Black	2 lbs		
2010CE	Hip/Ridge/Rake Tile	Canyon Earth	2 lbs		
2010DR	Hip/Ridge/Rake Tile	Desert Red	2 lbs		
2010GR	Hip/Ridge/Rake Tile	Goldenrod	2 lbs		
2010SB	Hip/Ridge/Rake Tile	Saddle Brown	2 lbs		
2010SG	Hip/Ridge/Rake Tile	Sage	2 lbs		
2011BK	Starter Tile	Black	1.9 lbs		
2011CE	Starter Tile	Canyon Earth	1.9 lbs		
2011DR	Starter Tile	Desert Red	1.9 lbs		
2011GR	Starter Tile	Goldenrod	1.9 lbs		
2011SB	Starter Tile	Saddle Brown	1.9 lbs		
2011SG	Starter Tile	Sage	1.9 lbs		
2014SG/BK	Double Roman, Lower Metal Eave Closure	Black			
2014CE	Double Roman, Lower Metal Eave Closure	Canyon Earth			
2014DR	Double Roman, Lower Metal Eave Closure	Desert Red			
2014GR	Double Roman, Lower Metal Eave Closure	Goldenrod			
2014SB	Double Roman, Lower Metal Eave Closure	Saddle Brown			
2015SG/BK	Double Roman, Upper Metal Closure	Black			
2015CE	Double Roman, Upper Metal Closure	Canyon Earth			
2015DR	Double Roman, Upper Metal Closure	Desert Red			
2015GR	Double Roman, Upper Metal Closure	Goldenrod			

CERTIFICATIONS & TESTING

Double Roman Composite Tile was tested for the following ICC-ES per AC-07 Acceptance Criteria for Special Roofing Systems:

ASTM G155 – 2000 Hours – Xenon Weathering

ASTM D638 – Tensile

ASTM D638 – Tensile – Weathered

Wind Resistance

Uplift Bend

Penetration

ASTM E108 – Class C Fire

ASTM D1929 – Ignition Temps

ASTM D1929 – Ignition Temps – Weathered

ASTM D635 – Rate of Burn

ASTM D635 – Rate of Burn – Weathered

ASTM D2843 – Smoke Density

Temperature Cycling

FM 4473 – Ice Hail Impact – Hail impact test for Class 4 Hail

*Not Florida or Miami Dade approved



Hip/Ridge/Rake Tile



Starter Tile



Metal Closures



Universal Tile Ridge Vent



Universal Tile Flashing



Tile Battens



Tile Fasteners

The Code Enforcement Officer's Determination To Issue The Stop Work Order And Revoke The Building Permit Must Be Reversed

1. The stop work order (SWO) refers to §98-65 of the Village Code. This is a very long section in the zoning code called "Site Plan Approval". There is nothing in this section pertaining to a SWO or revocation of a building permit. Therefore, this section provides no authority to issue the SWO or revoke the building permit.

2. The SWO also cites §105.4 of the State Building Code. The State Building Code does not pertain to Planning Board approvals. Section 105.4 is titled "Stop Work Orders" and states in relevant part:

The authority having jurisdiction is authorized to issue a stop work order to halt work that is being performed without a required building permit; work that is being performed after a required building permit has been revoked or suspended or has expired; work that is being conducted in a dangerous or unsafe manner; or work that is contrary to provisions of the Uniform Code, the Energy Code, the approved construction documents, or the terms or conditions (if any) of the building permit.

None of those conditions apply. As set forth in ¶ 3 below, there was no authority to revoke the building permit. The Building Inspector stated at the February 3 hearing that the work was not being conducted in a dangerous or unsafe manner or contrary to the State Uniform Code. As set forth in ¶¶ 4 and 5 below, the work was conducted in accordance with the approved construction documents. Therefore, there is no authority to issue the stop work order pursuant to the State Building Code.

3. The building permit revocation letter cites §10-10 of the Village Code. Chapter 10 is titled "Building Construction." This chapter pertains entirely to building permits – applications, issuance or denial, revocations and stop work orders. This chapter does not pertain to the Planning Board's approval of a project. Chapter 10 contains many references to the building permit "application, plans and specifications", always in reference to the building permit. Accordingly, in §10-10C, which states that the Building Inspector may revoke a building permit "[w]here he finds that work performed under the permit is not being prosecuted in accordance with the provisions of the application, plans or specifications", that refers to the building permit application, plans or specifications. The revocation letter does not cite any violations of the building permit application, plans or specifications. Therefore, §10-10 of the Village Code provides no authority to issue the SWO or revoke the building permit.

4. The building permit plans submitted to the Building Inspector state that the roof will consist of "architectural fiberglass shingles". No color is specified. We submitted a memorandum to the Board at the February 3 hearing from John Mollozzi, P.E., providing analysis and the conclusion that the shingles installed on the roof are architectural fiberglass shingles.

5. The SWO and building permit revocation were issued after the disputed work was complete. Therefore, the SWO and building permit revocation apply only to work that is approved and undisputed. Therefore, there is no basis to issue the SWO or building permit revocation. The Building Inspector's affidavit submitted to the court states that work continued on the project, but does not state that work continued on the disputed work (because that work was already completed).

6. The Building Inspector stated at the February 3 hearing that he issued the SWO as "leverage" to get the applicant to return to the Planning Board concerning the disputed work. The applicant has applied to the Planning Board and submitted modified renderings and is on the Planning Board's next meeting agenda for March 8. Therefore, the SWO and building permit revocation have served their purpose, and should now be annulled.

7. The Building Inspector stated at the February 3 hearing that the disputed work pertains only to aesthetic issues, and that there are no life safety or State Uniform Code violations or issues.

8. Based on the above, the determination to issue a SWO and building permit revocation should be reversed.

Respectfully,

Ben Gailey, Esq.
For Main Corner Properties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
THE VILLAGE OF PAWLING,

Plaintiff,

**AFFIDAVIT OF EDWARD
LARKIN**

-against-

Index No.:

MAIN CORNER PROPERTIES LLC,

Defendant.
-----X

STATE OF NEW YORK)
) : SS.:
COUNTY OF DUTCHESS)

EDWARD LARKIN, PE. being duly sworn deposes and says:

1. I am a Regional Manager of Buildings Engineering for LaBella Associates.
2. In or about February 2021 LaBella, who at the time operated as Chazen, a LaBella Company, was retained by the Village of Pawling (the "Village") to assist the Village in the performance of the duties and responsibilities of Building Inspector.
3. I am responsible for the assistance provided to the Village by LaBella with regards to the above referenced retention. The work was performed either by myself or other employees under my direct supervision.
4. This affidavit is submitted in support of the Village's application for a temporary restraining order and preliminary injunction, against MAIN CORNER PROPERTIES LLC, regarding the property located at 146 East Main Street, Pawling, New York, tax parcel 134001-7056-09-244711, (the "Premises").
5. This affidavit is submitted based upon my personal knowledge and my review of the books and records of the Village.

6. In or about December 2020 the Defendant began construction a new 8,321 square foot, 2 ½ story, 135 seat restaurant¹ with related site plan improvements on the Premises (the “Project”).

7. The Premises are located wholly within the geographic boundaries of the Village and are zoned residential.

8. As part of my duties I am responsible for enforcing the Code of the Village of Pawling (the “Village Code”) as well as the New York State Building Code. With regards to the Project this includes conducting routine inspections as required by law as well as ensuring that the Project is being constructed in accordance with the approved plans and specification and in accordance with all applicable laws, rules and regulations.

9. In or about August 31, 2021, I discovered that a large quantity of brick had been delivered to the Project site. As the approved Architectural Renderings and the Building Plans did not call for the use of any brick on the Project, I informed Michael Barnett, Defendant’s construction manager, that Defendant could not put any brick on the Project unless and until Defendant obtained approval from the Planning Board since related Planning Board approval considered architectural finishes.

10. It is my understanding that the Defendant appeared at the September 14, 2021 Planning Board and requested permission to substitute brick for stone as shown on the approved Architectural Renderings included with the site plan application.

11. It is my further understanding that the Planning Board passed a resolution permitting the Defendant to substitute brick for stone on the approved Architectural Renderings provided that certain conditions were met.

¹ The Defendant initially sought a 200-seat restaurant, however, due to water supply restrictions in the Village subsequently reduced the seat count to 135.

12. On or about September 24, 2021 Defendant began installing brick on the Project.

13. Given that the Planning Board took the position that Defendant had not satisfied the required preconditions to substitute brick for stone I advised the Defendant in writing that the use of brick siding in lieu of stone siding was conditional on approval by the Planning Board and reminded Defendant that the work was not being performed in conformance with the approval. A true and accurate copy of my letter to Defendant, dated September 27, 2021 is annexed to the Verified Complaint as **Exhibit H**.

14. I further advised Defendant that “all brick construction performed to date, as well as any additional brick construction performed prior to approval is at your own risk” and that “[w]ithout approval from the Planning Board, all brick siding will need to be removed prior to issuance of a Certificate of Occupancy for the building.” See Exhibit H.

15. Defendant however continued to place brick siding on the Project.

16. Indeed, while Defendant took the position that the Planning Board had given permission to substitute brick for stone, which is disputed by the Village, Defendant proceeded to place brick on the Project outside the areas set forth in the Amended Architectural Renderings and the approved building plans.

17. Excerpts of the building plans that were submitted and approved as part of the Defendant’s application for a building permit are annexed to the Verified Complaint as Exhibit I. These plans which were part of the approved building permit are consistent with the architectural finishes as set forth on the Architectural Renderings

18. Specifically, Defendant constructed:

- a. Brick siding on the second level stairwell where the approved plans show hardy board siding and white trim to match the remainder of the second level finishes;

- b. Brick knee walls on the first and second floor outdoor dining areas where the approved plans show open and/or metal railings between columns;
- c. Brick exterior finishes at building corners and around architectural glass curtainwall where the approved plans show white trim.

19. In or about early November 2021, Defendant proceeded to begin placing orange terracotta style roofing tiles on the Project. Both the Architectural Renderings and Amended Architectural Renderings show a black flat roof. See Exhibits B² and G. Additionally, the approved building plans identify the roofing material as 30-year asphalt shingles.

20. By letter dated November 10, 2021, Defendant was advised that, in addition to previously documented unapproved changes, the roof color and material was unapproved, and that Defendant needed to submit an application for an amended site plan to the Planning Board to seek approval for all unapproved changes³. Defendant was advised that the construction materials and methods detailed in the letter and previously discussed were unapproved and that “any continuing work is performed at your own risk.” A true and accurate copy of my November 10, 2021 letter to Defendant is annexed to the Verified Complaint as **Exhibit J**.

21. Defendant was further advised that all of the non-approved methods or materials had to be resolved “prior to issuance of your Certificate of Occupancy [and that] [r]esolution must include approval by the Planning Board or removal of the non-compliant materials and infrastructure.” See Exhibit J.

22. As a courtesy, Defendant was advised to appear at the December 14, 2021 Planning Board meeting to see if permission could be obtained for the unapproved changes.

² Unless otherwise indicated references to Exhibits are to those annexed to the Verified Complaint.

³ The letter also documented the brick that has been placed on the second-floor stairwell.

23. Defendant however continued to violate the Village Code and continued to place the non-conforming roofing material on the Project.

24. Additionally, on or about November 23, 2021, Defendant began constructing a solid wall sign on the Premises. Sections 77-3, 77-4 and 77-18 of the Village Code require a permit before a sign can be constructed.

25. Defendant did not obtain a permit for construction of a sign on the Premises. As such, on November 23, 2021, Defendant was personally served with a Stop Work Order notifying it that the sign was being constructed in violation of the Village Code and ordering Defendant to cease and desist from performing work on the sign unless and until a permit for same was obtained.

26. Defendant, in violation of the Stop Work Order, proceeded to partially dismantle the unapproved sign and then proceeded to partially reconstruct the sign and cover it with brick.

27. While Defendant eventually submitted an application for a sign permit, the sign applied for and partially constructed contradicts the previous renderings of the sign that were submitted to and approved by the Planning Board. See Exhibit L at pp. 5 and 11.

28. To date, Defendant has not obtained any permit for construction of a sign and the unapproved partially constructed sign remains on the premises.

29. By e-mail dated December 9, 2021, Defendant requested that the Project not appear on the agenda for the December 14, 2021 Planning Board meeting and that they appear at the January 2022 Planning Board Meeting.

30. I advised that the referral to the December 14, 2021 Planning Board meeting was a courtesy to allow the Defendant to attempt to obtain the required approval. Defendant was further advised that it was up to them whether they appeared at the December 14, 2021 Planning Board meeting and that if they did not obtain the required approval from the Planning Board at that

meeting that the Village would proceed with enforcement action. A true and accurate copy of my e-mail exchange with the Defendant is annexed to the Verified Complaint as **Exhibit K**.

31. Defendant appeared at the December 14, 2021 Planning Board meeting. The Defendant, however, failed to submit any application for an amended site plan and as such the Planning Board was unable to take any action on the requested deviations from the approved plans and specifications.

32. At the December 14th Planning Board meeting, the Planning Board reiterated that the Architectural Renderings were a critical component of the site plan approval and that all deviations from same would have to be submitted to the Planning Board for review and approval via an application for an amended site plan.

33. Section 10-10 of the Code of the Village of Pawling provides in relevant part that “[t]he Building Inspector may revoke a building permit theretofore issued and approved ... [w]here he finds that the work performed under the permit is not being prosecuted with the provisions of the application, plans and specification.”

34. Given Defendant’s continued violations of the Village Code and deviations from the approved application, plans and specifications, on December 22, 2021 the Defendant was advised in writing that pursuant to Section 10-10 of the Code of the Village of Pawling (the “Village Code”) and other relevant section of the Village Code that Defendant’s permit for the Project was revoked for performing work outside the scope of the application, plans and specification for the Project. A true and accurate copy of my letter to Defendant, dated December 22, 2021 is annexed to the Verified Complaint as **Exhibit L**.

35. Defendant was provided with a list and pictures of all of the unapproved architectural elements. These pictures were keyed directly to the approved Architectural Renderings. Compare Exhibit L at pp. 4-5 with pp. 6-11.

36. Defendant was advised that it needed to immediately cease and desist from performing any further work on the project.

37. Contemporaneously with the revocation of the Permit the Village of Pawling issued a Stop Work Order as Defendant was also violating Section 98-65 of the Village Code and New York State Building Code Section 105.4 as the construction of the Architectural Finishes was being performed not in accordance with the approved plans. Defendant was advised that the Stop Work Order would remain in effect until all non-approved architectural elements were corrected or approval has been granted by the Village. See Exhibit L at p. 2.

38. The letter and Stop Work Order were sent via certified mail to Defendant and were also personally delivered to Michael Barnett, Defendant's agent and construction manager.

39. Defendant is currently working on the Project. Such work is being performed without a valid permit and in violation of the Stop Work Order.


Edward Larkin, PE

Sworn to before me this
6th day of January, 2022


Notary Public

ELIZABETH K. SHEDD
Notary Public, State of New York
No. 01SH4825019
Qualified in Dutchess County
Commission Expires 8/31/2022

FILED WITH
FEB 24 2022
VILLAGE CLERK

At a Meeting of the Village of Pawling Zoning Board of Appeal held at 9 Memorial Avenue, Pawling, New York, on the 23rd day of February, 2022, at 7:00 PM

RESOLUTION OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF PAWLING

Identifier: Appeal from Main Corner Properties

The meeting was called to order by Chairman Michael Keupp and the following were:

P R E S E N T:

___ Chairman Michael Keupp
___ Ann Hardeman
___ Nicholas Vorolieff
___ Thomas Zarecki (recused)
___ Fred DiVitto

The following Resolution was proposed by **Nicholas Vorolieff**, who moved its adoption, and seconded by **Ann Hardeman**.

WHEREAS, on or about January 18, 2022 Main Corner Properties, LLC. (the “Appellant”) submitted an appeal to the Village of Pawling Zoning Board of Appeals (“the “ZBA”) from the December 22, 2021 decisions of the Building Inspector a) revoking the Applicant’s permit to perform work at the property located at 146 East Main Street, Village of Pawling (the “Premises”) and b) issuing a Stop Work Order for the Premises;

WHEREAS, pursuant to New York Village Law Section 7-712-A the ZBA has jurisdiction to “hear[] and decide[] appeals from and review[] any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of” the zoning code of the Village of Pawling [fill in zoning code provision] ;

WHEREAS, on February 4, 2022 a duly noticed Public Hearing was held and the Appellant, the Building Inspector and members of the public were provided with an opportunity to be heard;

WHEREAS, proper notifications were placed in the Poughkeepsie Journal and provided to the surrounding landowners in accordance with the requirements of the Village Code;

WHEREAS, on February 23, 2022 a duly noticed continued Public Hearing was held and the Appellant, the Building Inspector and members of the public were provided with an opportunity to be heard;

WHEREAS, Upon due deliberation the ZBA has reached a decision on the subject appeal.

NOW THEREFORE BE IT RESOLVED THAT the ZBA issues the following decision:

Record

The following documents were entered into the record of this appeal and were reviewed by the ZBA in reaching this decision:

1. Appeal submitted by Main Corner Properties, LLC., dated January 18, 2022.
 2. Letter from Edward P. Larkin dated December 22, 2021 with attachments.
 3. Application from Main Corner Properties, LLC. for "Site Plan Approval" and "Architectural Approval", dated January 24, 2020.
 4. Excerpts from the transcript of the Planning Board meeting held on September 8, 2022.
 5. Resolution of the Planning Board re: Site Plan Approval 146 East Main Street, dated December 8, 2020.
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6. Minutes of the Planning Board Meeting held on September 14, 2021.
 7. Proposed Exterior Views, 146 East Main Street, Sheet A-2, dated 9/10/21
 8. Letter from Edward Larkin, dated September 27, 2021
 9. Letter from Edward Larkin, dated November 10, 2021.
 10. E-mail from Ed Larkin to Diana Tomasetti, dated December 10, 2021
 11. Pages from 146 East Main Street Building Permit Set, Sheets G-0.00, A-1.03, A-2.00, A-2.01, A-3.00, A-3.01, A-3.02, A-3.10 and A-3.11.
 12. Section 10-10 of the Code of the Village of Pawling (“Village Code”), with highlights made by Appellant’s counsel.
 13. Photograph of an unsigned letter from John Mallozzi, P.E.
 14. Affidavit from Edward Larkin, sworn to January 6, 2022.
 15. Data Sheet for Quarrix Building Products (Double Roman)

Relevant Law

Section 98-29 of the Code of the Village of Pawling (“Village Code”) provides in relevant part that “[n]o building or any structure shall be erected or structurally altered without a building permit duly issued upon application to the Building Inspector.”

Section 98-34 of the Village Code provides in relevant part that “[n]o building permit shall be issued for any building where the site plan of such building is subject to approval by the Planning Board except in conformity with the plans approved by said Planning Board.”

Section 98-65 of the Village Code requires that a site plan be approved before building permits can be issued for certain projects in the Village including the Project at issue in this appeal.

Section 10-10(C) of the Village Code provides that the Building Inspector may revoke a building permit “[w]here he finds that the work being performed under the permit is not being prosecuted in accordance with the provisions of the application, plans or specifications.”

Factual Findings and Conclusions of Law

On or about January 24, 2020, the Appellant applied to the Planning Board of the Village of Pawling (the “Planning Board”) for “site plan” and “architectural approval” to construct a new 8,321 square foot, 2 ½ story, 135 seat restaurant¹ with related site plan improvements (the “Project”). The application included detailed architectural renderings entitled “Proposed Exterior Views” Sheet A-3 prepared by Curt M. Johnson, Registered Architect. The same architectural renderings were presented to the ZBA in support of Appellant’s application for certain variances.

The architectural renderings were discussed in detail by the Appellant’s agent Curt Johnson at meetings of the Planning Board and the ZBA. Indeed, at the September 8, 2020 Planning Board meeting Mr. Johnson presented pictures of the surrounding neighborhood and explained how the design of the Project was compatible with the existing characteristics of the neighborhood. Specifically, Mr. Johnson stated:

And also architecturally, what we've done on here is we've taken some cues from existing buildings along [East] main street in this picture. The first one on the lower left is actually the the houses across the street, the intersection of East Main Street and South Street. We have the Durcan apartment building, which is further down on our north east main street and then the front of the [K]ane house there, which is also on East Main Street. So architecturally, we took some cues from that created a colonnade, which would provide for some outdoor covered seating, as well as an open porch up above the gabled roof, double hung windows. Shutter's mixture of clapboard siding look, as well as stone veneer on the base and keeping the chimney that was on the existing building, that the

¹ The Appellant initially sought a 200-seat restaurant, however, due to water restrictions in the Village subsequently reduced the seat count to 135.

essence of the chimney recreated on the south end of the building just for continuity there.

On December 8, 2020 the Planning Board approved Appellant's application for site plan approval subject to certain conditions and limitations. Specifically, the resolution provided, in relevant part, that the site plan approval was "limited to and conditioned upon the plans, specification and uses set forth in the application for site plan approval, as amended, and the reports of the Village Engineer and Village Planner submitted to and accepted by the Planning Board in review of the application."

Additionally, it is noteworthy that the ZBA relied upon the architectural renderings, and a similar presentation by Curt Johnson, when it granted the required variances and determined that the proposed project with the variances would not have "an undesirable change in the character of the neighborhood or to nearby properties."

In or about early 2021 the Appellant applied for a Building Permit to construct the Project. The application for a building permit included, as required, building plans which were consistent with the architectural renderings that were approved by the Planning Board and incorporated into the site plan approval. Excerpts of these building plans (A-2.01 and A-2.02) were entered into the record by both the Village and the Appellant.

On or about August 31, 2021, the Building Inspector discovered that a large quantity of brick had been delivered to the Project site. As the Architectural Renderings and the Building Plans did not call for the use of any brick on the Project, the Building Inspector informed Michael Barnett, Appellant's construction manager, that Appellant could not put any brick on the Project unless and until Appellant obtained permission from the Planning Board. Appellant appeared at the September 14, 2021 Planning Board meeting and requested permission to

substitute brick for stone on the approved site plan. In support of its request to substitute brick for stone, Defendant presented slightly modified architectural renderings (Proposed Exterior Views, 146 East Main Street, Sheet A-2, dated 9/10/21) to the Planning Board. These modified renderings were nearly identical to the approved Architectural Renderings in that they simply replaced the stone in the approved Architectural Renderings with brick. After discussion, the Planning Board approved a motion to approve the “change [set forth on the Amended Architectural Renderings] pending receipt by the Clerk of an additional two confirmations from suppliers that sufficient quality of the materials would be needed to be backordered.” (the “September 14th Resolution”).

On or about September 24, 2021 Defendant began installing brick on the Project. Given that the Planning Board took the position that Appellant had not satisfied the required preconditions to substitute brick for stone the Building Inspector advised the Appellant in writing that the use of brick siding in lieu of stone siding was conditional on approval by the Planning Board and reminded Appellant that the work was not being performed in conformance with the approval. The Building Inspector further advised Appellant that “all brick construction performed to date, as well as any additional brick construction performed prior to approval is at your own risk” and that “[w]ithout approval from the Planning Board, all brick siding will need to be removed prior to issuance of a Certificate of Occupancy for the building.”

Notwithstanding the September 27, 2021 letter from the Building Inspector, the Defendant continued to place brick on the Project. Indeed, while Appellant took the position that the Planning Board had given permission to substitute brick for stone, which is disputed by the Planning Board, Appellant proceeded to place brick on the Project outside the areas set forth in the Amended Architectural Renderings and the approved building plans. Specifically, Appellant

constructed:

- a. Brick siding on the second level stairwell;
- b. Brick knee walls on the first and second floor outdoor dining areas; and
- c. Brick exterior finishes at building corners and around architectural glass curtainwall.

In or about early November 2021, Appellant proceeded to begin placing orange terracotta style roofing tiles on the Project. By letter dated November 10, 2021, Appellant was advised that, in addition to previously documented unapproved changes, the roof color and material was unapproved, and that Appellant needed to submit an application for an amended site plan to the Planning Board to seek approval for all unapproved changes. The letter also documented the brick that has been placed on the second-floor stairwell.

Appellant was advised that the construction materials and methods detailed in the letter and previously discussed with the Building Inspector were unapproved and that “any continuing work is performed at your own risk.” Appellant was further advised that all of the non-approved methods or materials had to be resolved “prior to issuance of your Certificate of Occupancy [and that] [r]esolution must include approval by the Planning Board or removal of the non-compliant materials and infrastructure.”

As a courtesy, Appellant was advised to appear at the December 14, 2021 Planning Board meeting to see if permission could be obtained for the unapproved changes. Appellant however continued to violate the Village Code and continued to place the non-conforming roofing material on the Project.

Appellant appeared at the December 14, 2021 Planning Board meeting. The Appellant, however, failed to submit any application for an amended site plan and as such the Planning

Board was unable to take any action on the requested deviations from the approved plans and specifications. At the December 14th Planning Board meeting, the Planning Board reiterated that the Architectural Renderings were a critical component of the site plan approval and that all deviations from same would have to be submitted to the Planning Board for review and approval via an application for an amended site plan.

On December 22, 2021 the Appellant was advised in writing that pursuant to Section 10-10 of the Code of the Village of Pawling (the "Village Code") and other relevant sections of the Village Code that Appellant's permit for the Project was revoked for performing work outside the scope of the application, plans and specification for the Project. Appellant was provided with a list and pictures of all of the unapproved architectural elements. Appellant was advised that it needed to immediately cease and desist from performing any further work on the project.

Contemporaneously with the revocation of the Permit the Village of Pawling issued a Stop Work Order as Appellant was also violating Section 98-65 of the Village Code and New York State Building Code Section 105.4 as the construction of the Architectural Finishes was being performed not in accordance with the approved plans. The Appellant was advised that the Stop Work Order would remain in effect until all non-approved architectural elements were corrected or approved by the Village.

On January 28, 2022 Appellant appealed the Stop Work Order and revocation of the permit to the ZBA.

At the February 4, ZBA meeting the Appellant argued that the Building Inspector a) did not have authority pursuant to Section 98-65 of the Village Code to issue a Stop Work Order; b) did not have authority pursuant to Section 10-10 of Village Code to revoke the Appellant's

permit and c) that the orange terracotta style roof was in conformity with the building plans.

Each argument is addressed in turn.

The Building Inspector Had Authority and Properly Issued the Stop Work Order

In support of its position that the Building Inspector did not have authority to issue the Stop Work Order Appellant argues that Section 98-65 of the Village Code, which is referenced in the Stop Work Order, relates to site plans and does not mention a stop work order. We reject this argument for the following reasons. Specifically, Section 98-58 of the Village Code provides that the Building Inspector has the duty to enforce the provisions of the Village Zoning Code and all rules, conditions and requirements adopted or specified pursuant thereto. Section 10-11 of the Village Code likewise allows the Building Inspector to issue a stop work order where he/she finds a violation of the applicable building laws, ordinances or regulations. The Building Inspector therefore has the authority to issue a Stop Work Order if he finds a violation of the Village Zoning Code.

To the extent that Appellant was arguing that it did not violate Section 98-65 of the Village Code we reject that argument as well. As noted Section 98-65 of the Village Code requires a site plan for the Project at issue in this appeal. While the Appellant received site plan approval for the applied for Project the approved site plan did not include the construction referenced in the Stop Work Order. In reaching this conclusion we note that the Appellant's application for site plan and architectural approval included detailed architectural renderings. These architectural renderings were discussed in detail by the Appellant's architect who explained both to the Planning Board and the ZBA how the proposed project was in conformity with the character of the neighborhood and the surrounding buildings. The resolution granting site plan approval stated that the approval was "limited to and conditioned upon the plans,

specification and uses set forth in the application for site plan approval, as amended, and the reports of the Village Engineer and Village Planner submitted to and accepted by the Planning Board in review of the application.” The architectural renderings were included in the Appellant’s application for site plan approval and were therefore incorporated by reference into the approved site plan. As such, the Appellant was required to construct a building that was in conformity with the architectural renderings.

Based upon our review of the architectural renderings and the pictures of the construction that were attached to the Letter from Edward Larkin, dated December 22, 2021 we agree that the Appellant deviated from the approved site plan by:

1. Using terracotta roof tiles where approved plan shows a black, architectural shingle roofing.
2. Placing brick exterior on the second level stairwell where approved plans show siding and white trim to match remainder of second level finishes.
3. Constructing brick knee walls on first and second floor outdoor dining areas where approved plans show open and/or metal railings between columns.
4. Placing brick exterior finishes at building corners and around architectural glass curtainwall where approved plans show white trim.
5. Constructing a flat roof with mechanical equipment on northern building elevation where approved plans show a small, pitched roof over door.
6. Constructing a large brick sign structure where approved plans show small wood sign.

As such, we conclude that the Building Inspector properly found that the Appellant violated Section 98-65 of the Village Code as it did not have site plan approval for the construction set forth *supra*.

The Building Inspector Had Authority to and Properly Revoked Appellant’s Permit

Appellant next argues that the Building Inspector did not have authority to revoke the building permit. Specifically, the Appellant argues that Section 10-10 of the Village Code,

which was cited by the Building Inspector in his December 21 letter, limits the Building Inspector's authority to revoke a building permit to deviations from the application plans or specifications *on which the building permit was based*. In support the Appellant cites to Section 10-10(A) of the Village Code which provides that the Building Inspector may revoke a building permit where "he finds that there have been false statements or misrepresentations as to a material fact in the application, plans or specification on which the building permit was based." The Appellant also provided the ZBA a copy of Section 10-10 of the Village Code and highlighted the end of Section 10-10 A which states "on which the building permit was based" and argued that the Building Inspector had not properly quoted Section 10-10 of the Village Code in his December 21st letter. The Appellant, however, did not highlight to the subsection of Section 10-10 on which the Building Inspector relied. Specifically, Section 10-10 C of the Village Code allows the Building Inspector to revoke a building permit "where he finds that the work performed under the permit is not being prosecuted in accordance with the provisions of the application, plans or specifications." Nothing contained in this subsection limits the Building Inspector's authority to revoke a building permit based solely on deviations from the application, plans or specification on which the building permit was based. As such, we conclude that the Building Inspector's authority to revoke a permit extends to deviations from the approved site plans. As we have previously concluded that the Appellant deviated from the approved site plan we uphold the decision of the Building Inspector to revoke the Appellant's building permit.

The Appellant's incorrect argument that Section 10-10 of the Village Code limits the authority of the Building Inspector to only revoking permits based upon deviations from the building permit plans does not support the appeal. During the hearing the Building Inspector specifically reviewed the pictures of the non-conforming construction and directed the ZBA to

the specific notations on the relevant building plans which contained contrary materials. We have carefully reviewed the excerpts of the building permit plans (A-2.00 and A-2.01) and the pictures of the work performed and conclude that the record establishes that the Appellant deviated from the building plans by:

1. Using orange terracotta roof tiles where approved plan shows an architectural fiberglass shingle roofing.
2. Placing brick exterior on the second level stairwell where approved plans show hardy board siding and white azek trim to match remainder of second level finishes.
3. Constructing brick knee walls on first and second floor outdoor dining areas where approved plans show open and/or metal railings between columns.
4. Placing brick exterior finishes at building corners and around architectural glass curtainwall where approved plans show white azek trim.
5. Constructing a flat roof with mechanical equipment on northern building elevation where approved plans show a small, pitched roof over door.
6. Large brick sign structure where approved plans show small wood sign.

It is noteworthy that when the Appellant reviewed the building plans with the ZBA it did not even address items 2 through 6 above and has failed to present any evidence that items 2 through 6 are not deviations from the approved building permit plans or the approved site plan. Thus, even assuming that the Appellant's interpretation of Section 10-10 of the Village Code was correct, and it is not, we would still uphold the decision of the Building Inspector to revoke the Appellant's permit.

We also reject the Appellant's argument that the orange terracotta roof tiles were in conformity with the building plans which provided for an architectural fiberglass shingle roofing. The approved building plans clearly reflect a hatched roof and not the barrel tile terracotta style roof. A simple google search for architectural shingles reveals images of a roofing pattern similar to that set forth on the building plans. Indeed, the data sheet for the roofing tiles

used by the applicant (Quarrix Building Products) describes the product as a “tile” and not a “shingle” and notes that “Quarrix Double Roman composite tile delivers the same beautiful aesthetic look of traditional clay and concrete tiles” whereas architectural shingles are designed to simulate cedar or slate roof tiles²

Moreover, the building plans cannot be viewed in a vacuum. Section 98-34 of the Village Code provides in relevant part that “[n]o building permit shall be issued for any building where the site plan of such building is subject to approval by the Planning Board except in conformity with the plans approved by said Planning Board.” As such, the building plans must be read in conjunction with the Planning Board approval which includes, as noted, the architectural renderings. These renderings show a black flat roof and thus the building plans when read in conjunction with the approved renderings required a black flat roof³.

Based upon the foregoing we uphold the decisions of the Building Inspector to a) revoke the applicable permits and b) to issue a stop work order. The appeal is denied in its entirety.

² <https://www.certainteed.com/residential-roofing/what-are-architectural-roofing-shingles/#:~:text=Also%20known%20as%20laminated%20or,refined%2C%20water%2Dresistant%20asphalt.>


³ For all the reasons set forth herein the letter from John Mallozzi, P.E. does not warrant a different result.

The question of the foregoing Resolution was duly put to a vote, the Zoning Board of Appeals voting as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>
Chairman Michael Keupp	<u>✓</u>	—	—
Ann Hardeman	<u>✓</u>	—	—
Fred DiVitto	<u>✓</u>	—	—
Nicholas Vorolieff	<u>✓</u>	—	—
Thomas Zarecki	Recused	—	—
TOTAL	<u>4</u>	<u>0</u>	<u>0</u>

I hereby certify that the above is a true and correct copy of the Resolution passed by the Village of Pawling Zoning Board at a meeting held on February 23, 2022

Date: February 23, 2022


Vivian Nikolatos
Zoning Board of Appeal Secretary
