

**MINUTES OF A MEETING OF THE
VILLAGE OF AVON PLANNING BOARD
TUESDAY, DECEMBER 15, 2020
7:00 PM; VILLAGE HALL**

I. ATTENDANCE

Paul M. Drozdzziel, Chairman
Marilyn Borkhuis
John Gibson (remotely)
Robert C. Hayes
William J. Wall

STAFF

Lance Brabant, MRB Group
Anthony Cappello, Code Enforcement Officer
Patrick McCormick, Village Board Liaison
Gary Margiotta, Secretary

GUESTS (in-person and remotely)

David Botts, 172 D'Angelo Parkway
Sarah K. Freeman Botts, 172 D'Angelo Parkway
Cheryl S. Bovard, 151 D'Angelo Parkway
Mark Bovard, 151 D'Angelo Parkway
Catherine M. Clancy, 127 D'Angelo Parkway
Patrick Clancy, 127 D'Angelo Parkway
Dolores Gunther, 133 D'Angelo Parkway
Janice E. Hayes, 109 D'Angelo Parkway
Robert E. Hayes, 109 D'Angelo Parkway
Keith D. Herman, 4295 Lake Road, Williamson
Cynthia J. Kostraba, 126 D'Angelo Parkway
Patrick J. Kostraba, 126 D'Angelo Parkway
Richard E. Martin, 22 River Street
John McCaffrey, 154 D'Angelo Parkway
Robert Mellen, 175 D'Angelo Parkway
Kurt Meyer, 290 North Avenue
Lynne C. Mignemi, 112 D'Angelo Parkway
Thomas A. Mignemi, 112 D'Angelo Parkway
Christa E. Minnehan, 169 D'Angelo Parkway
James Perkins, 115 D'Angelo Parkway
Kathleen Rizzolo, 139 D'Angelo Parkway
Michael Rizzolo, 139 D'Angelo Parkway
Atty. Anthony Scalia, 1844 Penfield Rd, Penfield
Bruce Wolfanger, 145 D'Angelo Parkway
Constance Wolfanger, 145 D'Angelo Parkway

II. APPROVAL OF THE MINUTES

MOTION: Hayes moved for approval of the minutes of the November 17, 2020, meeting, seconded by Borkhuis. Voting in favor were Drozdzziel, Borkhuis, Gibson, Hayes and Wall. Voting against were: none.

CARRIED, 5 Ayes, 0 Nays

III. OLD BUSINESS

**A. North Avenue Heights Subdivision
Sidewalk Relocation**

Public Hearing Resumed

The Planning Board had opened a public hearing on the location of sidewalks in the 25-lot North Avenue Heights subdivision, more commonly referred to as D'Angelo Parkway, October 20, 2020. On the recommendation of Village Attorney Jake Whiting, the hearing had been left open.

The original subdivision plan called for the sidewalks to be located on the inside loop. Due to the growth of vegetation and topography, the Village had sought to modify the plan and relocate the sidewalks to the outside loop.

Sidewalks: which side of the street . . .

Or should they go in at all?

Mellen of 175 D'Angelo Parkway, a resident of the outside loop, opened the proceedings, saying the first question he had was on which side of D'Angelo Parkway should the sidewalks go – or, for that matter, should they go in at all?

But, Board member Hayes quickly stepped in, saying it wasn't a matter of whether the sidewalks should go in, but where, when and how they were going to go in.

The Village, Brabant tagged-in, had felt there was the most room on the outside loop, less utility infrastructure, but, he added, the actual questions of when and where would be decided by the Village Board - the Planning Board's only role was to make a recommendation.

Application from the Village Board

To the Planning Board Flawed

The Village Board had accepted dedication of the North Avenue Heights subdivision in 2002 - contingent upon the installation of sidewalks. If the sidewalks hadn't been installed within six months, the Village could liquidate the developer's, Sam D'Angelo's, letter of credit and use the money to install the sidewalks themselves.

When D'Angelo did fail to install the sidewalks, the Village stepped into the developer's shoes. If they encountered extraordinary hardships, they could turn to the Planning Board. And, the Village Board had sought relief from the Planning Board, asking them to allow them to shift the sidewalks from the inside to the outside of the Parkway loop.

But, Scalia, the Penfield attorney the Rizzolo's had retained, pointed out the Village Board's application for relief hadn't been dated. He wondered if it had simply been created in response to the Planning Board's initial sidewalk relocation meeting – back on October 20.

What's more, Paragraph 11, Chapter 31, Article VI, of the Village's Municipal Code stated sidewalk information should be shown on the subdivision's preliminary plat – not decided later on.

In its application, the Village Board had sought to move the sidewalks from the inside to the outside of the loop because of extraordinary hardship, but then failed to demonstrate that hardship. There had been a passing reference to an investigation done by the Department of Public Works (DPW), but Scalia suggested that investigation should have focused on putting the sidewalks where they'd been proposed not where the Village wanted to put them.

The sidewalks, Scalia contended, must be in their original location. Impractical didn't equate to extraordinary hardship, he reasoned.

The New York State Court of Appeals recognized the contents of a subdivision map as the basis of where buyers bought their land, Scalia continued. The Village had sat on D'Angelo Parkway sidewalks for two decades. What residents needed to know now were the facts that demonstrated the Village's hardship. In fact, Scalia asserted, it was the residents, not the Village, suffering extraordinary hardship.

Plat void if

Revised after approval

Chapter 31, Section 32, Paragraph G of the Village’s Municipal Code stated,

“No changes, erasures, modifications or revisions shall be made in any subdivision plat after Approval has been given by the Board and endorsed, in writing, on the plat. In the event that subdivision plat, when recorded, contains any such changes, the plat shall be considered null and void, and the Planning Board shall institute proceedings to have said plat stricken from the records of the County Clerk.”

This is not easily overcome, Scalia asserted. If the Village insisted on sidewalks, they must put them where originally sited, he maintained. In closing, the attorney contended the Planning Board should deny the relief requested.

Sidewalk Requirements

According to Development Regulations approved by the Village Board June 2, 1987, and revised in April, 1989, sidewalks shall be:

1. one foot inside the Village’s right-of-way
2. on one or both sides of the street; and
3. five feet in width and five inches in depth

Hardship Defined

Unusual circumstances of shape, topography or other physical features might result in extraordinary hardship in complying with regulations. As such, the Planning Board could waive the regulations in order to achieve substantial justice and secure the public interest.

What are the standards?

Hayes of 109 D’Angelo Parkway and another outside loop resident said they were fighting a change to the original subdivision plan – a plan they’d agreed to when they’d bought their property. He had picked his lot and decided on his setbacks based on that original plan.

And, the original plan had called for sidewalks to be installed on the inside loop and according to the Village Code, but when Hayes had called Village Hall, he’d been told no one had the sidewalk code. Sidewalks, for instance, are supposed to be five feet wide not three feet, Hayes said.

So, why was the Village changing the plan now? Hayes wondered. Nothing had changed on D’Angelo Parkway, but the Village had had its DPW Superintendent walking around the neighborhood and its engineer drawing a yellow line on an aerial map. The Village, Hayes charged, was in the predicament it was in because they’d taken over responsibility from Sam D’Angelo.

According to his estimates Hayes figured it would cost \$185,000 to install sidewalks on the outside loop - as the Village had designed them - versus \$150,000 to put them on the inside loop where they’d originally been planned.

In addition to 5-foot wide sidewalks, Hayes said there should be a green strip between the sidewalk and the street and trees every 20 feet. Utility boxes, he pointed out, were on the outside loop and they were more of an impediment than anything on the inside loop.

Sam D'Angelo may have been relieved of his responsibility, but someone still owed the D'Angelo Parkway residents that original sidewalk plan, Hayes maintained.

Residents, Hayes continued, never thought they'd need sidewalks. Houses in the neighborhood were assessed at an aggregate \$7 million and property owners paid \$264,000 in combined taxes. It was an embarrassment that this had ever happened, Hayes opined. He would go public and, perhaps, hire an attorney, he told Board members.

Opposed to inside loop location;

Situation can't be fixed

McCaffrey of 154 D'Angelo Parkway and an inside loop resident said he agreed with Hayes' and Scalia's comments. He referenced the 2002 agreement between the Village and Sam D'Angelo and letters between then Mayor Richard Burke and D'Angelo, stating, if the sidewalks were not completed within six months of dedication, D'Angelo's bond would be forfeited.

And, it was, but, the Village didn't follow through; they didn't install the sidewalks back then and McCaffrey wanted to go on record as objecting to moving them back to their original location, the inside loop, now.

Putting it simply, McCaffrey said the horse was out of the barn – this situation couldn't be fixed. Installing sidewalks in front of his house would damage his property and, what's more, he'd have to handle snow removal which would cause him yet another hardship.

Conflict of interest:

Village as Village; Village as developer

Kathleen Rizzolo of 139 D'Angelo Parkway, an outside loop resident, had 7 ½ pages of material she said she wanted to read . . . but didn't.

Instead, she said Scalia had done an excellent job representing them and Hayes' comments had been good, too. Rizzolo didn't want D'Angelo Parkway sidewalks moved from the inside loop to the outside - in front of her home.

The Village, she noted, had an inherent conflict of interest here: as the Village, they had a responsibility to see the original subdivision plan was followed, but as the developer they could seek changes to the plan because of whatever hardship they perceived.

Plainly stated, Rizzolo said she didn't want sidewalks on the Parkway at all, asserting residents didn't need them. She herself walked three miles per day and she felt there were other streets in the Village that needed sidewalks more than D'Angelo Parkway. East River Road didn't have sidewalks neither did South Avenue, she cited as examples.

Rizzolo didn't want to pursue litigation or an Article 78 proceeding, she told Board members, but added Parkway residents would do what they had to do.

**Don't make sidewalks an
Extension of the street**

Thinking about himself, personally, Perkins of 115 D'Angelo Parkway and an outside loop resident, said he didn't care if they had sidewalks or not.

Since he'd lived on D'Angelo Parkway, his daughter had grown up and gone on to college . . . and she'd survived. But, Perkins conceded, it was valuable to have sidewalks for safety and there were more kids on D'Angelo Parkway now than ever.

Perkins felt the Village should follow the original subdivision plan and put the sidewalks across the street from his house, on the inside loop, but he agreed with Hayes. the sidewalks should be five feet wide and have a grass strip between them and the street.

Sidewalks shouldn't simply be an extension of the street, Perkins contended. If they were, Village snowplows would deposit snow and ice from the street on them – it was important to see that sidewalks, if they were installed, were done "properly," Perkins urged Board members.

Why can't we be friends?

Harkening back to his comments from the Planning Board's October 20 meeting, Hayes said they were all friends and neighbors and he hoped they would remain so.

Without question, the nicest development in Avon was D'Angelo Parkway, he said, \$7 million in homes generating, over time, millions of dollars in taxes – all developed privately with no federal funding involved.

Safety?

Greater need elsewhere

Safety? Cheryl Bovard of 151 D'Angelo Parkway and an outside loop resident asked. Ask the Police Department how safe D'Angelo Parkway had been over the years. There was more danger elsewhere, Pole Bridge Road, for instance. Pole Bridge only had sidewalks on the south end, but was a popular walking route.

The Village had let Sam D'Angelo off the hook. Other developers had put sidewalks in their subdivisions, Bovard pointed out, Frank Csapo had put them in on Chamber and Commerce Drive and Richard Martin had done the same in Village View (Five Lot Farm).

Nothing has changed

We can all live happily ever after

Nothing has changed, proclaimed Patrick Clancy of 127 D'Angelo Parkway and an outside loop resident. His 1999 map was the same as the Village's. It was clear, a majority of the property owners didn't want sidewalks and all those people were paying taxes so, why not vote on it then they could all live happily ever after.

Point of Order:

Municipal Code Available

As a point of order, Board member Hayes, noted the Village's Municipal Code was available on the Village's website.

**Wrong to follow that
“Ridiculous plan”**

It was wrong to follow that “ridiculous plan” with the yellow highlighter sidewalk path that the Village engineering consultant, the MRB Group, had prepared, Patrick J. Kostraba of 126 D’Angelo Parkway and an inside loop resident said via telephone.

Look at the way things were being done, a plan relying on a yellow highlighter hadn’t been well-planned, Kostraba contended. Who from the Village Board was going to take responsibility for this? Addressing Planning Board members, Kostraba wondered if a plan was being pushed through just to get it done.

It was unfortunate they weren’t getting answers, Kostraba lamented, adding it seemed the Board wasn’t listening to taxpayers.

Roles in the process

Planning Board/Village Board

The Planning Board wouldn’t attempt to answer any financial questions, Drozdziel responded, adding such questions were the Village Board’s and Mayor’s responsibility.

Full support for sidewalks

Gives safety and peace of mind

David Botts of 172 D’Angelo Parkway and an inside loop resident said he and his wife, Sarah Freeman Botts, fully supported sidewalks. The Botts have children.

Their over-riding concern was safety, Botts added. The Village’s extension of sidewalks on North Avenue had been a great improvement and had given them peace of mind, he said.

Re: monetary element

Hardship is created by cost

Regarding the monetary element, Scalia said hardship was also created by cost. Safety was also relevant and should have been reflected in the Village Board’s application for relief to the Planning Board.

Another “Why now?”

Let’s leave it open

Had the question been raised, “Why now?” Bovard asked.

The Planning Board had been asked to take another look, Drozdziel responded.

Should the Mayor recuse himself since he had family on D’Angelo Parkway? Bovard followed-up.

Anthony Cappello, the Village’s Code Enforcement Officer, had been talking with Mary (Judy) D’Angelo, the late Sam D’Angelo’s widow, about the completion of sidewalks in June, Hayes mentioned. Maybe someone woke up in June and realized it was a Village problem.

The Board didn't want to act on anything that night, Drozdziel remarked, suggesting they leave the hearing open, consult with the Village Attorney and go from there. The next Planning Board meeting would be at 7:00 PM Tuesday, January 19, 2021 at Village Hall.

MOTION: Hayes moved to keep the hearing open, seconded by Borkhuis.

What would that mean for the residents? Rizzolo asked.

Your attorney had brought up many points, Drozdziel responded, adding he would like Village Atty. Jake Whiting to meet with Scalia.

Would the Board hold the hearing open until Parkway residents wintering in Florida returned and until the pandemic was over? Parkway resident Hayes asked.

We'd like to keep the ball rolling, Drozdziel said.

They'd need more than a couple of days notice before the next meeting, Mark Bovard remarked.

We are in a pandemic and this was the worst time for a hearing, Rizzolo added, suggesting the Board put things off until the public could "participate properly."

People didn't know it would cost \$150,000 to put sidewalks in, McCaffrey said, adding that sort of expense affected more than their little street, it affected the whole village.

It was premature to discuss dollars, Drozdziel cautioned.

MOTION: The discussion having ended, the motion to keep the hearing open was moved. Voting in favor were: Drozdziel, Borkhuis, Gibson, Hayes and Wall. Voting against were: none.

CARRIED, 5 Ayes, 0 Nays

B. Solar Development in the Village

Follow-up Discussion

Interest had been expressed in the development of solar fields on properties in the Town and the Village. Drozdziel had written to the Livingston County Planning Department for guidance.

And, Drozdziel had spoken with Mary Underhill in the County Planning Department, but she apparently had no sample legislation for Villages. Drozdziel said he'd follow-up further next month.

IV. NEW BUSINESS

A. The Martin-Pole Bridge Road Subdivision, Sect. 3

Keith D. Herman, Applicant

Behind Tom Wahl's Restaurant
283 East Main Street, Avon, NY

4295 Lake Road
Williamson, NY

5.836 acres, zoned Agricultural (AG)

Herman wanted to subdivide 5.836 acres from a 24.75-acre parcel owned by Richard Martin of 22 River Street. The 5.836 acres was vacant, zoned Agricultural and located behind Tom Wahl's Restaurant. Herman represented the restaurant.

At some point, Herman said Wahl's would like to tie-in their rear parking lot to the access road running behind CVS Pharmacy which went over to Dream Valley Boulevard then out to the signalized light on Routes 5&20, the restaurant saw that as a safety factor for their patrons, Herman stated.

But, for the time being, Wahl's had no plans to develop the 5.836 acres. Besides the potential Dream Valley Boulevard connection, the land could be used for overflow parking during the restaurant's summertime, Tuesday night concert series or for car cruise-ins.

Any plans to change the ingress or egress? Gibson, speaking remotely, asked.

No plans right now, Herman reiterated.

Although not part of his subdivision application, at the southeast corner of the 5.836 acres, there was a 60-foot wide easement onto Pole Bridge Road, an easement Martin would retain, McCormick noted.

Herman acknowledged the easement and said it might allow Wahl's a back door onto Pole Bridge Road at some point in the future.

Before making any decision on Herman's subdivision application, there would have to be a State Environmental Quality Review (SEQR) determination, Brabant stated. And, with any potential development, the applicant should be aware there may be drainage requirements, he added.

Parking on the lawn?

Would Wahl's be asking for a change in zoning classification or a use variance? Drozdziel inquired.

If they planted grass or parked cars on the 5.836 acres, would that require a zoning classification change? Herman asked.

Potential easements

Or rights-of-way

Drozdziel asked about potential easements or rights-of-way.

The western side of the 5.836 acres Herman wanted to subdivide, the side closest to the CVS access road to Dream Valley Boulevard, ran 518.79 feet from the restaurant's parking lot south.

While he didn't have any intention of developing the land behind Avon Town Plaza (part of his 24,75 acre parcel), Martin noted when the Pathstone Development Corporation of Rochester had proposed building 60 1-, 2- and 3-bedroom apartments and townhouses there five years ago they'd also proposed a 1,600 foot access road running north, along the western edge of the parcel Herman proposed subdividing, and, eventually, connecting to the access road behind CVS.

That sort of connection would be good for Tom Wahl's and good for the Village, Hayes observed.

Gibson agreed, noting he was on the Traffic Safety Committee. Tom Wahl's would be very interested in a rear exit to Dream Valley Boulevard, he remarked.

For the safety of their customers, they certainly would, Herman said, but reiterated they had no timeframe for that.

**Public Hearing
January 19, 2021**

Drozdziel called for a motion to move Herman’s application to a public hearing at 7:00 PM Tuesday, January 19, 2021, at Village Hall.

MOTION: Wall sponsored that motion, seconded by Borkhuis. Voting in favor were: Drozdziel, Borkhuis, Gibson, Hayes and Wall. Voting against were: none.

CARRIED, 5 Ayes, 0 Nays

B. Area Variance

191 Genesee Street, Avon
34.10-1-42, Zoned Village Residential (VR)
Shed 5-feet from the side property line

Ricardo R. Boor

191 Genesee Street, Avon

Boor had applied for a building permit for a 10-foot X 12-foot shed on the northwest corner of his lot. Cappello had reviewed the application and determined the shed would fall five feet from the side property line. Chapter 30, Section 23, of the Municipal Code required a 10-foot setback. Boor hadn’t applied for an area variance or paid the \$80.00 application fee.

Drozdziel advised requesting an application and the fee from Boor. Boor should bring-in a note from his neighbor, stating he had no objection to the shed. Contingent upon those things, Drozdziel called for a motion for a positive recommendation to the Zoning Board of Appeals (ZBA).

MOTION: Borkhuis made the motion, seconded by Hayes. Voting in favor were: Drozdziel, Borkhuis, Gibson, Hayes and Wall. Voting against were: none.

CARRIED, 5 Ayes, 0 Nays

C. J&M Kitchen Demolished

425 Wadsworth Avenue, Avon

Carol Lyttle & Ruby Greer

5256 Avon-East Avon Road, Avon

The former J&M Kitchen at 425 Wadsworth Avenue, owned by Carol Lyttle and Ruby Greer, had been demolished, Cappello reported.

V. ADJOURNMENT

MOTION: Wall moved for adjournment at 9:30 PM, seconded by Hayes. Voting in favor were: Drozdziel, Borkhuis, Gibson, Hayes and Wall. Voting against were: none.

CARRIED, 5 Ayes, 0 Nays

Gary Margiotta
Secretary