

INCORPORATED VILLAGE OF PIERMONT
BOARD OF TRUSTEES MEETING
April 17, 2018

Present: Mayor Bruce Tucker, Deputy Mayor Mark Blomquist, Trustee Ivanya Alpert, Trustee Rob Burns, Trustee Lisa DeFeciani, Walter Sevastian, Esq. -Village Attorney and Jennifer DeYorgi-Village Clerk-Treasurer.

Mayor Tucker called the meeting to order and led everyone in the Pledge of Allegiance.

Item #1 – Approval of Meeting Minutes

Trustee DeFeciani made a motion to approve the minutes for April 3, 2018. The motion was seconded by Trustee Blomquist and so carried with a vote of 5 ayes and 0 nays.

Item #2 – Approval of Warrant

Deputy Mayor Blomquist made a motion to approve Warrant #041618 in the amount of \$11,097.02 and Warrant #041718 in the amount of \$72,041.81 for a grand total of \$83,138.83. The motion was seconded by Trustee DeFeciani and so carried with a vote of 5 ayes and 0 nays.

Item #3 – Department Reports

Department of Public Works - Highway Superintendent Tom Temple advised the Board the water main is in and complete on Hudson Terrace. They are approximately half-way through house services now and still have to install the 6 new fire hydrants. It is probably 2-3 more weeks, weather pending. Regarding rebuilding the end of the Pier, they are in the permitting process with DEC and Army Corp of Engineers. As soon as they get the permits, they will be able to move forward with that. Hopefully by Memorial Day, but he is unsure if he will have the permits in time to have it built by then. Tom Temple stated he is waiting for the drawing from Ken DeGennaro, who he spoke to, and send to DEC and he will complete the application process and send it to DEC. Mayor Tucker asked if Ken DeGennaro sent the Boat Ramp drawings? Tom Temple stated yes, he sent them and Jennifer sent them in for approval and once we get approval from Department of State approval, we can move forward. Mayor Tucker complimented DPW for cleaning up the drains on 9W. Tom Temple stated the heavy rains is a problem and where it starts for them, they wanted to get up there right away and take care of it.

Police Department – Chief O’Shea thanked Tom Temple for their efforts on 9W yesterday. It was bad, traffic was down to one lane. They called the State and they said 45 minutes. He called Tom and DPW was up there in about 5 minutes. The grant activity will be starting this month. One of the big problems they have is texting and driving, so one day they will be enforcing that and another day will be safe stop where they follow school buses, speeding and red lights. They look at their accident stats and that is where they concentrate their efforts. The grant is due in May, so they are looking to get that again next year. Right before Memorial Day and around the holidays they do it again. He gave his monthly reports to the Board, activity is way up. Chief O’Shea stated they have been doing the annual sales tax vehicle replacement program this year, which is the same as last year. It works very well because they reduce the repair costs and sell back is much better. This year they are going to sell an SUV and hope to get back over \$10,000. If the Board approves that, they will place that order. They have \$45,000 in the budget for that for next year. Mayor Tucker stated they will look into that.

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Building Department - Building Inspector Charles Schaub stated he has finished his State Training for the year. Last week he took his standard set of courses and on Monday he took a course that Mayor Tucker asked him to attend on Energy Conservation, which will put them at the top of the list for any State grants now as we are considered an active Village in that area. Mayor Tucker thanked him for attending and it gets us one step closer to Climate Smart and Clean Energy Dedication.

Parks Department – Dan Sherman, Chairman of the Parks Department informed the Board, regarding the drawbridge, the Administrator of the Art in Public Places Committee told him there was an additional \$6,000 from the County that needed to be spent on the Bridge on something artful, not electrical connections. They selected 4 benches at \$1,000 each and some planters. He will be presenting it next week to the Art in Public Places Committee. Dan Sherman further stated that the Community Garden, starting its 23rd season, had its Spring clean-up which was super well attended and cleaned up. There is \$4,000 in the Treasury and full membership. Continuing with the Solar Grant from the Green Mountain Sun Club, the hand rails for Half Moon Park turned out to be extremely expensive and would be reliant on rebuilding the park to bother with, therefore they are not going to continue with that. They are going to continue with the Boathouse and solar panels on the Village Hall. He has two proposals out and should have them in the next day or two and hopes to have the grants together by the weekend. The Civic Association will be the not for profit sponsor on this project. The Dog Run is starting its 8th Season. Lucy has stepped down as the membership coordinator and Andrea Sherman has stepped in to help with that. She will be receiving applications and they found a new way to streamline, set up a website where people can pay. Cedar wood chips were just delivered as a donation and he read that cedar will deter ticks.

Fire Department – Chief Don Hardy was not present.

Item #4 - Old Business

Village Clerk Treasurer stated some of the bidders on the floating dock project have emailed her asking if there has been any determination yet. She had previously told them that we were looking into getting more funding and asked the Board if she should give the same update? Deputy Mayor Blomquist stated he made a request for additional funding to both Jaffe and Carlucci's offices and has not heard back from either one, but will call and follow-up tomorrow. Further, Brooker Engineering sent over the proposal from Tilcon for the road resurfacing totaling \$285,639.40. Mayor Tucker asked if that was higher or lower than it was? Tom Temple stated that is higher than the previous quote. The price of asphalt went up \$2/ton and this total reflects that, about \$4,000 more from the previous quote. Tom Temple stated as soon as the Board approves this and we sign the contract, we can get a schedule, hopefully for early May. Trustee Alpert made a motion to approve the contract with Tilcon for the road resurfacing totaling \$285,639.40. The motion was seconded by Trustee Burns and so carried with a vote of 5 ayes and 0 nays.

Mayor Tucker stated there was an article today that Governor Cuomo announced the Old Tappan Zee Bridge is going to be sunk off the coast of Long Island to make artificial reefs. He finds this interesting that we couldn't use it to help shore up our Northshore Seawall because DEC said they didn't want it in the water here. Him and Trustee Burns will follow-up with the DEC on this. Further, the proposal he was waiting for came in and it was close, but after discussing with our sustainability coordinator, we have decided to go with Real Term. Trustee DeFeciani asked if we got the number for O&R. Mayor Tucker stated now, that has not been received yet. If anything, he thinks Real Term might be able to help them to negotiate that when it comes time. Tom Temple stated he did send an email and mail to O&R asking for the purchase price of the lights. Trustee DeFeciani asked if they acknowledged they received the email? Tom

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Temple stated no, and they have 90 days to review and send a price and if we accept it, it must go to Public Service Commission for their approval as well. Mayor Tucker stated, in the meantime, Real Term can start doing the setup, which lights, brightness, etc. so that when we do finish our negotiations with O&R, they can get right into it.

Trustee Burns made a motion to accept the Real Term contract. The motion was seconded by Trustee DeFeciani and so carried with a vote of 5 ayes and 0 nays.

Trustee DeFeciani had no old business to discuss.

Trustee Blomquist had no old business to discuss.

Trustee Alpert had no old business to discuss.

Trustee Burns had no old business to discuss.

Item# 5 New Business

Village Clerk-Treasurer stated every year we have an agreement with Cornell Cooperative for 2018 Stormwater Consortium Contract. We enter into a contract with them every year for the education program and there is a \$1,000 fee that we pay every year. It is up for review again now. Village Attorney stated this is part of a State Law Mandate on stormwater management. Part of it is public outreach that most municipalities in Rockland contracted Cornell to do. The State says we have to do it, and they undertake and do the public outreach portion of it. He recommends the Board go forward with it.

Trustee Burns made a motion to enter into the 2018 Stormwater Consortium Contract with Cornell Cooperative. The motion was seconded by Trustee DeFeciani and so carried with a vote of 5 ayes and 0 nays.

Additionally, Village Clerk-Treasurer shared Brooker Engineering's proposal for engineering for the annual MS4 report. Their fee is \$1,200, which is the same fee as last year. Village Attorney asked if this fee is paid for by the grant? Highway Superintendent Tom Temple said they prepare the report for the DEC for the report. Village Attorney stated we tried to get a grant, they have an overall grant for the mapping of the stormwater outflows that we paid for. This is required public reporting that we cannot do in house, so we are kind of stuck it.

Trustee DeFeciani made a motion to approve. The motion was seconded by Trustee Burns and so carried with a vote of 5 ayes and 0 nays.

Trustee DeFeciani had no new business to discuss.

Mayor Tucker had no new business to discuss.

Trustee Alpert had no new business to discuss.

Deputy Mayor Blomquist had no new business to discuss.

Trustee Burns had no new business to discuss.

Item #6 Other Non-Agenda Items:

None.

Item #7 7:40pm Public Hearing to amend Special Permit for Community Market including a request for six (6) parking spaces

Trustee Burns made a motion at 7:48pm to open the Public Hearing. The motion was seconded by Trustee Blomquist and so carried with a vote of 5 ayes and 0 nays.

Shane Hovorka was before the Village Board on behalf of the Community Market looking for 6 more parking spots. They went before the Planning Board. Originally, they were looking for 5 more parking spots, after consideration, he believes he should look for 9 as that is what he would be allotted.

Village Attorney stated this is a proposal to re-establish a special permit in the Business B Zoning District, when they add seats, that requires provisional parking. If the parking cannot be provided on site, our code provides the opportunity to give us a contract for parking nearby or to purchase off-street parking pursuant to our Fee in Lieu of Parking program. They come to the Board to request a special permit, there is a fee associated with it, and the Village conducts an inventory every year of how many off-street parking spaces we have available in the bank, Charlie has confirmed that there are spaces available. Our special permit procedure requires a public hearing.

Trustee Alpert asked Mr. Hovorka to explain what they are doing with the market and why they need additional spaces.

Shane Hovorka stated with the market right now would allow for 9 people seating. It's allotted 3 spots. He has 3,500 square feet to bring back to Piermont Market and make it a viable business. He would like to incorporate some type of eating environment where somebody could grab their food and sit down and make it a fun atmosphere to enjoy their meal on premise.

Trustee DeFeciani asked if the Planning Board had any issues? Shane Hovorka stated they seemed to not have any.

Bob Samuels asked what will be at the Market. Shane Hovorka stated what the market used to be, but more upscale environment. A deli section, seafood section, a butcher onsite as well as prepared meals, craft beer selections, milks. They are trying to incorporate local farms. It will still be called the Community Market.

Trustee Alpert asked if there will still be basic supplies? Shane stated yes, there will be staples and spring for more of a craft opportunity there as well.

Village Attorney asked if it is table service or counter? Shane stated counter service for right now.

Doug Stone, resident, 870 Piermont Avenue and new owner of the new pizza restaurant coming to town, so he believes he more than just a citizen's interest in this and he also has a business interest in this. We need to be transparent in what 6 new parking spaces means, that is 18 seats in the space. When you combine 18 seats with the existing 9 seats they are already approved for, that is a total of 27 seats. That doesn't sound like a market to him. This Village needs a market and he is so happy to hear they are on their way to opening a market, they have needed this for years, but 27 seats is not a market, that is a restaurant. He is urging the Board to seek reasonableness with 10 or 12 seats because, he stated, we all know with whatever what they are going to be officially granted, it always gets fudged up an additional seat or two, we all understand that. If they are going up to 27 seats approved, which means it will be really close to 30 seats, which seems very unreasonable. Mayor Tucker asked how did he come to that? Doug Stone stated that is what everybody in town does. He is willing to bet that if you go into every restaurant in this town, no matter how many seats they are officially approved for, in a jam, they can pull out another seat or two and then put them back in the closet and he doesn't have a problem with it. Mayor Tucker stated he is not sure that everybody does that.

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Village Attorney stated whether it is a restaurant or a market or a retail shop, those are permitted uses in the zoning district and they do have the ability to ask for the assignment of these spaces, and if they are in the inventory, they could be provided, but that is up to the Board.

Doug Stone's point to Board is they shouldn't grant all these spaces because he believes 6 additional parking spaces is unreasonable for a market.

Trustee Alpert asked how many extra parking spaces we have in the bank. Building Inspector Schaub stated the pizza place uses 13, Sidewalk Bistro uses 13, 14 & Hudson uses 8. Our total inventory is about 50, we just got 10 back because Lizzie's closed, so there are more than enough. The Community Market always used 3, he is just looking to expand with 6 more spots. Trustee Burns asked, if somebody else came along, will we still have spaces in the bank to provide for somebody else. Building Inspector Schaub stated the code reads they are allowed 9 by right, so anyone that is over the 9, we then have the opportunity to take back seats from them and knock them back down to 9, which would be the pizza place and the Bistro. Village Attorney confirmed. After the 9 it is a variance with the condition that if someone else needs parking, we can take from the overages that we gave to certain people. Trustee DeFeciani asked, the only reason we would deny someone the 9 that our code allows is if the Planning or Zoning says there is not enough space in a particular establishment to have that many seats? Building Inspector stated if they don't have them available to assign, but they are available right now. Deputy Mayor Blomquist asked what the total of spots is in inventory for the Village right now? Building Inspector stated about 50-60 spaces, the Village owns about 148 spaces between the River Lot and all the parking spaces in town. Trustee DeFeciani asked how many spaces are in inventory? Building Inspector Schaub stated there is about 20 spaces.

Village Attorney stated the code reads, the Board grants a special permit and the spaces are there to grant a special permit, it's an annual renewal and the special permit will say that they are allowed up to 9, but they are "granted due to the availability of inventory at the time of the application, said spaces may not be available when the special permit is renewed." The problem with parking downtown for the reason of the whole idea of grandfathering spaces, exempting square footage from retail and giving businesses the opportunity to purchase additional spaces was that so that the downtown wouldn't get overwhelmed by a single business, so there has to be balance. But, if the spaces are available, he doesn't know that it makes sense to hold anything back. Any special permit at an annual renewal, the Board has to look at what's available and what is there, maybe that's got to be some balancing overall.

Trustee Alpert asked if there is a formula for matching seats to parking spaces, for example, 14 & Hudson has more tables, but less parking space? Village Attorney stated yes and 14 & Hudson also has some off-street parking that they utilize. Building Inspector Schaub stated they were also grandfathered and some isn't, just like the Bistro, some is grandfathered and some isn't. Village Attorney stated, generally speaking, it is 3 seats per space.

Trustee DeFeciani made a motion at 8:01 pm to close the Public Hearing. The motion was seconded by Trustee Burns and so carried with a vote of 5 ayes and 0 nays.

Trustee Burns made a motion to grant the additional six (6) parking spaces as requested. The motion was seconded by Trustee Blomquist and so carried with a vote of 5 ayes and 0 nays.

Trustee Alpert stated she is questioning the 25 seats. Village Attorney stated with granting the 6 parking spaces, they are going to use the seats commensurate with the number of parking spaces assigned to the building. The purpose of the law is to permit business that otherwise wouldn't be able to provide off-street parking because they were built before anybody ever thought about this, to establish themselves and operate in town.

The question is when is there so many businesses that there isn't any parking. Some municipalities think that's a good problem to have. When this law was amended in 2015, it was addressed what the town could take as far as parking against what was there and what could be anticipated in the future. It will probably never be a perfect formula, but something that will allow businesses that will otherwise may not be viable to establish themselves. Business B also stretches down to 2 Kings, but they don't have any grandfathered spots.

Item #8 7:45pm Public Hearing for Proposed 2019 Budget

Mayor Tucker stated, with the work of the all the Board members, the Budget for the Fiscal year beginning June 1, 2018, we will have a cap of 1.99%, we are staying under the 2% cap. The total budget next year comes out to \$5,836,132 of which \$4,792,728 is coming from real estate tax and \$1,043,404 is coming from other revenue. It took the Board a lot of hard work to get that under the 2%. He thanked all the Board members for their help. That is less than half of that the budget raise was last year and we didn't have to go into any reserve.

Trustee DeFeciani made a motion at 8:07pm to open the Public Hearing. The motion was seconded by Trustee Burns and so carried with a vote of 5 ayes and 0 nays.

Fred Devan was before and stated he has been making the same comment for years without a proper answer. In his opinion, the Fund Balance is too high and has been too high for a number of years. The people that could give an educated answer is the New York State Comptroller's office. They can come here and review and give an opinion on the excessive fund balance.

Trustee Burns made a motion at 8:09 pm to close the Public Hearing. The motion was seconded by Trustee DeFeciani and so carried with a vote of 5 ayes and 0 nays.

Trustee Burns made a motion to accept the 2019 budget as proposed. The motion was seconded by Trustee Blomquist and so carried with a vote of 5 ayes and 0 nays.

Item #9 8:00pm Public Hearing Application to amend existing Special Permit for Pier 701 Restaurant to allow ambient music outdoors

Trustee Burns made a motion at 8:09pm to open the Public Hearing. The motion was seconded by Trustee Alpert and so carried with a vote of 4 ayes and 0 nays. Mayor Tucker recused himself from this public hearing.

Brian Condon of Condon, Catina and Marin, 55 Old Turnpike Rd, Ste. 502, Nanuet, NY, on behalf of Dennis Whitton for this application. He believes Mr. Whitton sent members of the Board color photos. Mr. Whitton has been back here several times and he knows the special is not automatic and has to be renewed every year. In years past, Mr. Whitton had taken the comments of the public seriously and raised the vinyl fence which cuts down not only on music, but the talking on the back deck and lighting and he believes that has worked. Regarding the ambient music, Dennis has taken steps this year. They had a sound expert tell them where the speaker level was previously, was ground level. What that does is competes with the people talking in the restaurant so they have to raise the level of the volume to hear the music because it is competing with the patrons. They have raised the speakers up 8 feet and pointed them down so now to avoid the competition of the patrons and their speaking their normal conversational speak. In addition, Mr. Whitton has zoned the speakers, so the speakers that are facing Piermont will turn off at 8:00pm with no sound coming from those speakers coming toward the Village. The speakers toward Westchester will remain on, but the decibel level will drop to half, which is 25%, that way they can keep the ambient music which is facing Westchester at a minimum, not

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facing the Piermont side of it to try and help cure the concerns of the public and that of the Board. The pictures that Mr. Whitton provided show some volume levels. The only people that have control over the volume are Mr. Whitton and management staff. The physical speaker system will be locked. No waiter or waitress can go in and change the sound. It will be control. The vinyl fence in the past has helped to curb the noise. They believe the speakers facing Piermont and being turned off at an early hour should help alleviate any concerns of volume. Lastly, he believes Mr. Whitton has decided to have no live bands out on the deck. This is ambient music for the patrons to enjoy. In the past with no music there, patrons would bring their phones, turn music on and put it on their table, which is not much to run a restaurant. There were postings on Facebook, which were rather embarrassing. This is a beautiful restaurant and waterfront property. They want to hear from the neighbors, they understand that they probably would like it to be zero, but we need to try and work out a favorable balance that makes everybody happy.

Village Attorney asked what time would the speakers facing Westchester be turned off?

Dennis Whitton stated they will still be 50% and the fence forces in that direction until midnight.

Village Attorney asked how they define ambient music? There is not going to be a situation where this is a live band inside and those speakers are plugged in there and playing their music outside?

Dennis Whitton stated, no. That has all been eliminated. There is nothing on their schedule whatsoever for the summer months. Just the radio.

Village Attorney stated the existing special permit is detailed and there are a lot of conditions about parking, hours of operation, valet, etc. He asked if they were looking to modify anything else besides this one condition of music?

Dennis Whitton stated no, only the one condition.

Building Inspector Schaub stated, in the past, the Board asked Dennis to put up higher fences and do several things to contain the sound. All those things have been done that he has been there and inspected. Please educate your restaurant staff

Tammy Kuiper, 696 Piermont Avenue, was before the Board. She read an email send sent to Pier 701 in January 2014 as follows: "Please educate your restaurant staff about the noise ordinance in Piermont and require them to comply. We have called the restaurant and police on more than one occasion. We are trying to be understanding that you are running a business, but it has gone too far, too many times. Be neighborly, turn the music down from 11:00pm on so the noise doesn't leave your property as required by law." This gives the board some idea that this is not something she only started in 2014, that they were only able to get an effective policy in place at Pier 701 in May of 2017. She wanted the Board to understand the doubt and lack of trust and frustration that they have that one summer out of three they have been able to have a little bit of quiet and now this other request. Additionally, she pointed out that Mr. Whitton mentioned the music running into Westchester will be running until midnight. She noted that in his current special permit, section 5(iii), "outdoor service shall cease Sunday through Thursday at 11:00pm and at midnight on Friday and Saturday." She wanted to make the Board aware of that and they do not want to those hours to be moved any later. It has taken them several years to be able to have their windows open in the summer and sleep through the night.

Peter Kuiper, 696 Piermont Avenue, was before the Board and stated 3 or 4 years ago when the first request was made for special permit for music, the words similar to ambient music or music to the liking of a restaurant was used then too. Over time, it grew louder and several people from town complained about the music continuously being too loud. He understands there is a need for ambient music in a restaurant, but it is very difficult to enforce. He stated Dennis and his staff have not been very forthright. They have made police calls, as soon as they call police, music gets turned down, the police leave and the music gets turned up again. If the police stand there

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with a meter. He believes last year he was not allowed to make any music because of the enforcement issue. He recommended signs (that he saw at a gas station in Fort Lee) that say "Residential Zone, Please Be Quiet" to be placed on the exterior doors so as patrons come in and out they realize over time that they need to be aware of their own voice as they leave as well.

Anthony Riso, was before the Board and stated this special permit goes back to 2015 which, at that time, designated there will be no music outdoors, no music of any kind. Since 2015, we have had multiple violations of the special permit. He has presented multiple police reports that are in the record.

Village Attorney stated these special permits are renewed annually, and last year, 2017, the special permit was not renewed administratively. The way our special permit law works is, if you have a special permit and you don't have any violations at the time it renews, it is automatically renewed by the building inspector, you don't have to come back. If you have a violation, it is not automatically renewed and that was the case last year. This special permit was not automatically renewed, because there was a violation, and a new special permit was issued last year which said no music outside. This year, the special permit is up for renewal right now and that would be done administratively because there were no violations last year, except for the fact that the applicant is asking to change it, which they are entitled to do. The change they are seeking is to permit some type of music outside whereas it is not permitted, so that is why they are here.

Anthony Riso continued they have two major issues with that. An enforcement issue, claiming that speakers are going to be facing East or Northeast across the river, a waitress goes by and the speaker turns. Who is going to enforce that? How are we going to enforce the direction of a speaker? This is an applicant who has proven to violate the special permit since 2015. Granted last year's permit hasn't had any violations, but the action before that doesn't prove to them that they can be sure this is going to work. Further than giving one applicant outside music, that sets precedent. They have had other applicants in the past that wanted music, they were turned down. If you allow one business that has loud outdoor music, it is going to be very difficult to deny the next business. They don't want another public nuisance. They want to protect their privacy and quiet and this has been a nuisance. This doesn't look like something they can trust. Lastly, he mentioned New York State Law of private nuisance and enjoyment.

Michael Canter, 867 Piermont Avenue, was before the Board concerned as he can hear the DJ music from the View. This proposal sounds great, but who knows if in two years from now there will be bands outside. What is more concerning is the valet parking. Last Saturday, there were cars backed up all the way to Olar. There were buses trying to go through and it was a very dangerous situation.

Jonathan Levy, 99 Orchard Terrace, was before the Board and stated that he lives about a quarter of a mile away up the hill. He is not adjacent to the place. He hears music DJs loud and clear all the way to his house. It was disturbing. As far as 11:00pm, this would be on a Saturday or Sunday afternoon when one wants to enjoy the beauty of Piermont and why he has a house here. He loves this town. He loves music, but doesn't necessarily want to hear it when he is in his yard, he wants to go to a club and rock out, not outside on his porch on a beautiful summer day. When music was allowed he could hear it loud and clear all the way to his house.

Dean Toucher, Orchard Terrace, was before the Board and stated Pier 701 did everything that was asked about fencing and after the special permit was renewed, they started doing trivia night and amplified outside and he could hear the questions clearly, a quarter of a mile away, while sitting having dinner at night. They can hear people talking and clinking glasses, that's fine, people are out there having a good time. But amplified anything is really intrusive. This has been 3 or 4 years of continuously being before the Board wasting the police time. As an example, they would call the police, who would drive to Pier 701. When you are right next to 701, driving on the road, you don't hear the music, he would wait, call again and they would come to the house, sometimes late at night. He believes their time and police time is being wasted and in addition, it is not a crime, it is Building Inspector's problem and he doesn't work at night or the weekends,

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so the fact that there was only one citation all this time is probably the fact that no one is there to enforce it when the violation is happening. He requested the Board to not extend this courtesy to him. He hopes his business is successful, but not at their expense. Trustee Burns asked is Trivial Pursuit was this year? Mr. Toucher stated yes and he called Village Attorney about it. It was this summer after everything else had stopped. Trustee Alpert asked if there was only the one night? He stated yes, after he spoke to Village Attorney, there was maybe an additional phone call, but that was it.

Mrs. Levy, Orchard Terrace, was before the Board and stated that she previously called the police on two occasions and when they arrived at their house there was no music and when the police left, the music started up again 10-15 minutes later. She believes it is almost impossible to enforce it. She asked the Board not to grant ambient music. She doesn't know ambient music means. They can sometimes hear traffic from the bridge, which is 3 miles away. Sometimes they can hear the train in Westchester going by, so she believes they will hear the music toward Westchester loud and clear. The idea of speakers on the water facing Piermont and Westchester is not a good idea. She wished them well with their business. She had a drink there once 2-3 years ago and she supports all local businesses, but she doesn't believe this can be controlled.

Attorney Brian Condon, for Pier, stated they are cognizant of the complaints of the neighbors. The idea that the fence and the facing of the speakers is not going to make a difference is just not true. The fence issue itself has solved even the talking noise, if we could control that. Regarding the police coming, his client doesn't get called by the police, when the police show up and there is not sound in the building, it's not that we turned it down and then turn it back up, we didn't get notified by anybody and he believes Mr. Toucher said that when he went to 701 he couldn't hear it, but when he went back to his house he could. There is only so much they can do and they are really trying. This is not inexpensive, the zones and everything else. Mr. Whitton has spent money to try and alleviate the problem. They don't want to upset the neighbors and want to live in harmony, they are not having rock music outside anymore, that has stopped. The idea of having ambient music is a necessity in this day and age with regards to the restaurant. They will work with the neighbors, they are trying to meet their needs. The idea of a sign, they would be more than happy to do so, but he would ask that every restaurant on the strip there have to have the same thing. There is talking and cigarette breaks, it is a vibrant community and one that is respected and we want to make everyone happy. Mr. Whitton is willing to make some concessions, they want to make everyone happy, they don't think they are going to make everybody happy, but they are going to do their best to do what they can do what is in the code run a successful business and live in harmony with their neighbors.

Village Attorney stated there are penalties in the code that were graduated in terms of violating the special permit. There were allegations of violation of a special permit in town and there was an argument raised by an attorney for a property owner that the fine schedule in the code didn't apply to special permit, we disagreed with that, it was litigated. They modified the code to make the fines substantial and the thousands of dollars in graduated basis per violation and it is specifically tied into violations of the special permit. If there are 3 violations to the special permit, the special permit can be revoked.

Trustee DeFeciani stated there is a difference between a violation of the special permit and a violation of the noise ordinance. If we allow ambient music in the special permit, then there is no violation of any kind of special permit if music is playing and people can hear it, that is a noise ordinance issue.

Trustee Burns stated there is a violation if they don't do what they set forth here as far as the music and how loud it will be and what days it will be, etc.

Village Attorney stated those are separate violations that get sited in accord and get processed in accord, like any code violation.

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Trustee DeFeciani asked Mr. Condon to define ambient music for the Board, as the last time Mr. Whitton was before the Board with this prior attorney, he said it could not be defined and ambient music could be live music, one many band without an amplifier, amplified music.

Mr. Condon stated he was not aware of what the previous attorney said. He suggested the Board look at the spirit of what they are trying to do. They are trying to do with Spotify, radio, internet music is have music played for the patrons, not looking to have bands or acoustic guitar players. Ambient music to him is like when you go to the dentist and there is light music playing or in an elevator. It might be rock and roll, but it is not going to be loud or a live band. It is not going to be rushing water or ambient that you are going to fall asleep. There will be no amplifiers. It will be piped in from inside where the receiver is through the speakers. He doesn't know if he can define it any better, but that is the spirit of it.

Village Attorney stated if they Board is going to entertain a request, they have to define exactly what is going to happen in the Special Permit itself, it can't just be left as a general concept of what is going to happen.

Deputy Mayor Blomquist stated the way this permit stands right now, there is a real black and white line. If music is played outside, it is a violation. It is very easy to define. The one issue he has with this is, if they change it to allow ambient music, when then constitutes a violation? That is an enforcement issue.

Village Attorney stated, in his opinion, they couldn't just say it's "ambient music", they would have to define it. Music based on either internet or radio played through a specific set of speakers at a specific volume at specific times. It may take a little more work on behalf of the Board to go there and listen to what the setup provides and tie it into the equipment that actually exists there. This needs to be as specific as possible and as they don't want to be a situation where one general thing is allowed and nobody knows what that is.

Trustee Burns stated he is, personally, not ready to open this up every single night and everything. He would like to see this adjourned and have a trial weekend. Have them try this on a Saturday night and get input from the neighbors and see how it worked out. If it works out, then do it on a limited basis, if it doesn't, leave the permit the way it is.

A member of the public stated the Planning Board has done sound audits for residents in the past for other restaurants. It is not up to the neighbors. If they are going to push this forward to somebody, they should push this forward to the Planning Board who has actually done sound audits with professionals.

Village Attorney stated he is not familiar with that. The Board is entertaining the application and the Board is discussing amongst themselves and need to get a consensus in the form of a motion, of how this is going to proceed. If they don't want to make a decision tonight and they want to do a trial and a majority of the Board agrees, that is what they can do. If they want to vote to approve it, that is what they can do. He suggests they get a little more detail in what they approve other than just ambient music or if they make a motion to deny the request, it has to be something moving forward and consensus of the Board.

Vince O'Brien, Ferdon Avenue, he was a chair of the Planning Board at one point. He hears a business owner that has a need to enhance his business and he presented it quite clearly and he expressed a willingness to be considerate of the neighbors, we heard very specific people with very specific places with really concrete evidence of the problem of noise. He believes and audio engineering study needs to be done and he recommends who the engineer is and have them set the music the way they document the levels and times and measure it at the different houses and then come back and talk about it. If they make it subjective, it is pitting one interest against another. He believes this engineering will be objective and inexpensive and he believes the Planning Board has done this previously. This way, the Board has some data to consider.

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Trustee DeFeciani made a motion at 8:41pm to close the Public Hearing. The motion was seconded by Trustee Burns and so carried with a vote of 4 ayes and 0 nays.

Deputy Mayor Blomquist stated he needs more information on this.

Trustee DeFeciani stated she needs a more thorough definition of “ambient music”. What it is and what it is not.

Attorney Brian Condon stated he will put it in writing and submit same to Village Attorney. Whatever Spotify, internet, that is what they are talking about. They are not talking about piping live music from inside.

Someone from the public stated it is volume and distance, it has nothing to do with music.

Attorney Brian Condon stated they are going to hear glasses clinking, people talking and they might hear music, he can't solve the fact that the neighbors say they can hear it. He can solve the ambient noise, the decibel level, the time, they put up the fences, that is working with them. He is here on behalf of his client trying to work with the community. He understands their concerns, however, from what he is hearing is, only in the community, but not in my backyard. They want to go to a club, but they don't want to be able to hear it up the street. Mr. Condon stated they are willing to submit a more detailed definition of what ambient music is. They are going to keep it at a level and if that is a good level, that is the level it will stay. They will work with the Board and the Community.

Village Attorney asked if the Board inclined to work just on definitional phrases or do they want to have some type of trial run. If so, do they want to have somebody monitor this who does this for a living? Many times, when Land Use applications are put in, expert testimony is received and that is received and paid for by an escrow account established by the applicant. Special permit uses are permitted in the zoning district where they exist. This restaurant is allowed to be there and has been on that site for many, many years. But, what a special permit recognizes, generally speaking, based on location, that use is in an area where general products of the use, noise, clinking of glasses, traffic and things like that can have more of an affect than if it was located in the general business district. They are allowed to put conditions on the special permit when normally you wouldn't be able to do on uses permitted by right. There is always trying to find a balance and, usually, the neighbors nor the applicant are happy with the balance. He can look at the definition of ambient music is, but thinks that is has to be site specific here so they know exactly what is being played and when and do they want to try and get a sound expert? The applicant will have to put up an escrow for that. He agrees with Mr. O'Brien that one man's low music is another man's high music and an objective standard of a professional is untainted by someone's interest.

Trustee Burns would like to have the applicant agree to pay for an independent engineer that the Board would hire. Pick a date sometime in May on a Saturday night and let them do what they are planning to do and let the expert go and see what comes back. Adjourn this over until after they get the engineer's report and give the people in the community another opportunity at that time to comment on what happened on that night and to comment on the engineer's report.

Dennis Whitton stated background music is usually around 60 decibels. Up the block, a quarter of a mile up the road, it might be 10 decibels. Trustee Burns stated they are not doing it on that basis, that Saturday night. He will set it up the way he wants it played. The engineer will listen and then go to the system and see what it's playing at and where the speakers are aimed, etc. From his perspective, if they don't have that additional information, he is not inclined to give an outright pass for everyday of the week and all during the summer, he cannot do that to the neighbors.

Attorney Brian Condon asked how the independent nature of the engineer is going to be done? Who is going to be select them?

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Village Attorney stated the Village is going to pick them and the applicant is going to pay for them.

Mr. Condon asked if they had one or two choices if their prices are comparable?

Trustee Burns stated no. It cannot be someone that they mutually agree on, it has to be completely independent.

Village Attorney stated we have a procurement police, so we solicit prices. We might not pick the cheapest one.

Trustee Burns made a motion to adjourn this matter until May 15, 2018, with the consent of the applicant that they will pay for an engineer and subject to said report being provided and reviewed by the Board and a definition of “ambient music” is provided to the Board. The motion was seconded by Trustee Alpert and so carried with a vote of 4 ayes and 0 nays.

DeFeciani made a motion to keep the Public Hearing open until May 15, 2018. The motion was seconded by Trustee Burns and so carried with a vote of 4 ayes and 0 nays.

Item #10 8:00pm Continuation of Public Hearing T-Mobile [ON AGENDA FOR ADJOURNMENT PURPOSES ONLY, PUBLIC HEARING TO BE ADJOURNED UNTIL 5/1/18]

This matter has been adjourned to May 1, 2018.

Item #11 Public Comment

Vince O’Brien – He is part of the Piermont Rowing Club and thanked the Board for getting the boat ramp project back on track and working with Tom and the Engineer. They are having their opening day here on Sunday at 7:30am for some club business at 8:00am by the boats.

Francis Brooke – According to the Department of Justice Services, in 2016 this Village had only 20 reported crimes. 4 burglaries and 16 larcenies. This puts in question comments made by Chief O’Shea during his Meet the Chief form last month. Chief O’Shea indicated that his officers make 300-500 arrests a year. How is that possible when the Village averages 25 crimes per year for the past 5 years. Spring Valley had 511 crimes in 2016. Is Chief O’Shea having us believe that Piermont would be a bad a crime area as Spring Valley? Chief O’Shea indicated that domestic calls are a part of the Piermont picture, yet the Village only had 2 domestic violence reports to DCJS in 2016. Chief O’Shea also said that drugs and alcohol are involved in many arrests. This Village only had one DWI and zero drug arrests in 2016. Is it possible that Chief O’Shea is misrepresenting the truth about crime in Piermont? If so, could he also be misrepresenting the truth about the reports which I have requested several times? The Chief has indicated that my name is not on any of the reports for 2017. Please look at these reports and decide for yourself. Is the name Francis Brooke on either of these reports and is there actually a pending police investigation in the Village which does not have any crime as I indicated? This Board is comprised of 5 people who are entitled to the truth. Is Chief O’Shea leading you into deeper legal action? I am sure the money spent on attorneys would be better spent on the Pier. I look forward to your review of these reports in order for you to see the truth yourself and I will see you at the next board meeting. I have also indicated reports from the source, DCJS. (Copies given to the Board).

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Naomi Vargas – A resident and realtor with the listing at 449 Piermont Avenue. There was previously a dental office in this space which was then leased out into a spa for 5 years. There is now someone interested in buying the building, but it requires a new permit. He has a CO for a business district only. It would be required for a mixed use for retail. She read the perspective buyers note to the Board: “Dr. Friends, I established Flower Power Herbs and Roots and Herbal Apothecary on 406 E. 9th Street, Manhattan, New York City in 1994. Business there is thriving and I am hoping to open another Flower Power at 449 Piermont Avenue a charming village in Piermont, NY 10968. My husband Zander Kennedy is a professional musician who has toured extensively. He is very much taken by the Village and the Turning Point. He and I will personally occupy the apartment upstairs. My shop in New York is 300 square feet, I am attaching some photos to this email as well as a link to my website. [Naomi forwarded the email to Jennifer]. Our hours of operation will be Wednesday to Sunday from 11am-6pm.” She is planning on utilizing about 400 sq. ft. of retail space and the back will be utilized for inventory. She will start with two employees, including herself, she’s going to be looking to serving the local people of Piermont as well as the visitors to this community. They will likely get weekly UPS deliveries; garbage pick-up will be once a week and they do not incinerate. Please feel free to contact her with any questions. She is happy to be joining the community and joining local herbalists and contributing to the community as a member.

Village Attorney asked Building Inspector what the application process is on this? Building Inspector stated this is a special permit. The use is going to change from professional use to retail, so they must go to the board. They do not need any parking, we have something in our code for retail under 600 sq. ft. Just by the hours of operations, he believes it will complement the restaurants. Village Attorney stated this is essentially a new mercantile retail use, Business B district, so it needs a special permit, public hearing and referral to the Planning Board (May 14, 2018).

Trustee Alpert made a motion to refer this to the Planning Board for a recommendation and schedule a public hearing for May 15, 2018 to change special permit for retail use 449 Piermont Avenue. The motion was seconded by Trustee DeFeciani and so carried with a vote of 5 ayes and 0 nays.

Trustee DeFeciani requested an executive session

Item #12 Adjournment

Trustee Burns made a motion at 9:13pm to adjourn. The motion was seconded by Trustee DeFeciani and so carried with a vote of 5 ayes and 0 nays.

Executive Session

Trustee Blomquist made a motion to enter Executive Session at 9:10pm. The motion was seconded by Trustee DeFeciani and so carried with a vote of 5 ayes and 0 nays.

Trustee DeFeciani made a motion to exit Executive Session at 9:13pm. The motion was seconded by Deputy Mayor Blomquist and so carried with a vote of 5 ayes and 0 nays.

No action was taken.

Respectfully submitted,

Jennifer DeYorgi
Clerk-Treasurer