



Public Hearing – February 1, 2021
Planning Board for our Future
February 5, 2021 - Takeaways from Public Hearing
“Lack of experience¹ + Lack of training¹ = Trouble”

Note: This is a 2021 discussion about 2021 facts and circumstances and our future. Nothing expressed is intended to reflect on the accomplishments, at different times and under different facts and circumstances, of our Planning Board and its faithful members and former members.

On February 1, 2021, the Village conducted a Public Hearing to present [Bill #1 of 2020](#) . For more information see our [Public Hearing Information | Village of Plandome Heights](#).

The meeting consisted of presentations from the Village Attorney, the Village Building Inspector, written comments received from residents prior to the meeting and then proceeded to resident input. The arguments, Pro and Con are as follows.

Pro: The lack of experience¹ and training¹ of our Planning Board could bring liability exposure to our Village that could be costly to residents. This concerns the Trustees sufficiently to make a proposal to mitigate that liability risk for residents in [Bill #1 of 2020](#) . Further, there are only 2 matters likely to come before the Planning Board in the next 10 - 20 years, after addressing only 4 matters (1 subdivision) in the last 20 years. The Board consumes 7 volunteers, who gain nearly no experience, and rarely has any business to conduct. One third of the Villages in our Town (including Munsey Park and Flower Hill) successfully use the model the Village suggests in Bill #1 of 2020. Change is necessary.

Con: Some in the community object to [Bill #1 of 2020](#) because it eliminates the “independence” of the Planning Board. Further, some members of the community have suggested mistrust of Village leadership. This includes those residents stated concerns regarding the “as of right” subdivision that was legally approved (3 to 2) in 2018. The negative inference of mistrust is unnamed and non-specific. Residents say their concern is not personal, but structural. Also, members believe that Plandome and Plandome Manor, where Planning Board activity is robust, should be the model for Plandome Heights, not 10 other villages. But Plandome Heights has little activity including only 4 matters in the last 20 years and 2 possible conforming subdivisions in the next 20 years.

¹ This is not intended as any negative comment about any of our existing or former members intelligence, commitment, service or otherwise. We have, and have had, talented and faithful members and we value their service to our Village. It is a comment on that unique knowledge and qualifications required of, and our Village’s lack of any transactions to generate experience for, a Planning Board member. See other parts of this document (and the transcript), particularly the Village Attorney’s presentation, regarding this belief.

Summary of Takeaways

- The Planning Board's primary responsible is reviewing "conforming" subdivisions
- There are essentially only 2 potential "conforming" subdivisions in the Village that could come before the Planning Board as conforming to Village Code
- Any subdivision requests that are *not* conforming to village code require prior approval of the Zoning Board, an Independent Board
- Our Planning Board has only considered 1 subdivision matter in 20+ years. That matter was a "conforming" subdivision and was appropriately approved
- Our Planning Board consumes 7 volunteers who need experience (which they cannot achieve in our Village because there are few or no matters) and training (which I believe that many members are not taking, perhaps I am wrong).
- Lack of experience¹ + Lack of training¹ = Trouble
- Many villages, 1/3 of those in our Town, faced with our situation have eliminated their independent Planning Board under various structures.
- Poor decisions of the Planning Board can result in litigation which could/likely require an increase in village property taxes.
- The proposal to merge the function of the Planning Board into the Board of Trustees is supported by: the Village Attorney, Building Inspector, Planning Board Chair, a majority of members of the Planning Board, the Mayor and all of the members of the Board of Trustees.
- Some in the community desire "independence" in the operation of the Planning Board.
- The desire for "independence" is accompanied by negative inferences of mistrust that is unnamed and non-specific or transparent.

Summary of Village Attorney's presentation

The scope and operations of the Planning Board and how it related to other Village Boards like Architecture ("ARB") and Zoning ("BZA") by the Village Attorney (summary)

The Planning Board considers proposed subdivisions, that come before it only if the proposal would create lots that conform to our zoning code (or after the BZA has granted variances for aspects of the proposed lot(s) that don't satisfy the zoning code). In the opinion of the Building Inspector, it is highly unlikely that the independent BZA would approve a zoning variance to accommodate a non-conforming subdivision. The Planning Board does not grant zoning variances. Those are handled by the *independent BZA*, in a process that also includes a public hearing – variances are requests to be permitted to build in a way prohibited by the zoning code. Therefore, the BZA has significant (but not unlimited) discretion in approving or denying variance applications. The ARB makes aesthetic determinations, under the rules in our Code that govern its review authority. Due to the nature of aesthetic determinations, the ARB, like the BZA has significant (but not unlimited) discretion in approving or denying design approval applications before it.

In contrast, the Planning Board has more limited discretion to deny a subdivision, if legally relevant issues that that the Planning Board or residents raise are adequately addressed by the applicant and its engineers. The public is entitled to provide input for each subdivision application, because the law

requires a public hearing for each application. But the Board is prohibited from denying a subdivision because it would create too much population density. The zoning code adopted by the Board of Trustees determines appropriate density. The Planning Board is prohibited from denying a subdivision because of general community opposition. The Planning Board can only deny an application if issues that are relevant under the laws that govern subdivisions are not addressed by the applicant in the review process to the Planning Board's reasonable satisfaction.

Residents who want to oppose subdivisions because they feel that the Village population density should not be increased should run for the Board of Trustees and change the zoning laws; that is the proper venue to restrict possible subdivisions beyond the restrictions now in place.

Based on a recent review of the Village by our Building Department, there appear to be only two viable, "as of right" subdivisions (i.e., not requiring a zoning variance from the BZA) that are possible in our village.

Any potential subdivisions beyond these two, would require a variance approval from our BZA, an existing and continuing independent board, before such matter could be considered by the Planning Board. If the BZA made such approval, then the Planning Board would have to consider such subdivision application as "conforming." So, there is an independent board that must approve a non-conforming subdivision before the Planning Board can consider it.

Meeting comments:

The Village has considered only one subdivision matter in the last 20 years.

There are essentially only 2 potential subdivisions in the Village that could come before the Planning Board as conforming to Village Code

Residents have indicated their desire to continue to have an independent Planning Board.

Any subdivision requests that are not conforming to village code require prior approval of the Zoning Board, an independent Board

This level of activity, 2 potential subdivisions in the next 10, 20+ years, does not justify maintaining a board requiring 7 volunteers.

Decisions of the Planning Board require members who are experienced and trained in the legal requirements of such a board.

The very infrequent need for our Planning Board to meet to consider subdivision and land use matters prevents its members from having opportunities to review applications and gain experience. We believe that our Planning Board members do not generally take legally required annual training, which we address through having our attorney provide remedial training in the infrequent event that a matter comes up.

Lack of experience¹ + Lack of training¹ = Trouble. The legal fees to defend litigation resulting from a subdivision decision cannot be absorbed by our operating budget so taxes could/likely be raised in that event.

At least 10 Villages in North Hempstead (near one third of the Town), do not have a planning board. Those villages have various legal structures which the village will consider in its deliberation.

Some residents believe that Plandome and Plandome Manor are more comparable to Plandome Heights than the 10 Villages above. Mayor Donno's reportedly "strong support" for independent boards was cited.

Plandome and Plandome Manor are not comparable to Plandome Heights from a Planning Board perspective. Those villages have larger parcels with more opportunities for possible subdivisions, and, thus, far more frequent matters to address; therefore, their members accumulate far more experience and have reason to take required training because it is relevant to work they perform on a regular basis. Mayor/Trustees often attend their meetings (most recently, Kenny property, Denihan/Terrace property, Bent property, multiple meetings all) so we know this from personal experience. Our Building Inspector, Ed Butt, is also Building Inspector for Plandome Manor. He sees the difference between the two villages and supports this proposed change.

Staffing the Planning Board with a full complement of 7 qualified, experienced and trained members and alternates is difficult in a small village like ours.

The existence of an independent Planning Board shields the Trustees from unpopular Planning Board decisions – approving any subdivision is likely to trigger community opposition, usually based on the issue of population density (“no more homes in our neighborhood”), the sort of input that offers no legal basis to deny a subdivision, but one that can weigh heavily on the fellow residents entrusted with the duty to review subdivision applications and decide them in accord with the law,

The Village, the Village Attorney and the Building Inspector believe that the Trustees are more experienced with the laws that govern Villages generally, and with land use issues, than are the Planning Board members who go years between calls to service, and so the Trustees are more easily and effectively trained through specific remedial subdivision training than their counterparts on the Planning Board. The Trustees, while not anxious to have such responsibility for what our Village Attorney described as a “thankless job,” are nonetheless willing to accept the responsibility in order to mitigate the risks to all residents of an inexperienced¹ and sporadically trained¹ board.

Several residents believe that an independent Planning Board has inherent value to the community.

The Village suggested that independence is another word for mistrust, which is troubling.

Residents suggested that the independence is a structural matter affecting current and future boards and that transcends any personal issues.

A resident questioned why Planning Board members were “added and deleted during 2018.”

The Village pointed out that prior to 2018 the Village decided not to replace Planning Board members who resigned or reached the end of their term. This coincided with the beginning of the consideration of merging the functions of Planning Board with the Board of Trustees. As such, when the Planning Board was requested to review the 2018 subdivision (Summit), it had 3 vacancies and one member whose term would expire in a short period of time (less than three months). The Village vetted candidates, presented them to the Trustees for consideration as required by law, and the Mayor appointed, and the Trustees unanimously approved, two new regular members and two alternates.

A resident restated this concern and questioned why the member with an expiring term was not “allowed to continue” on the 2018 matter since the matter had just begun.

The Village pointed out that a member of the committee cannot be appointed for a matter; members are appointed for 5-year terms. The record for the meetings of the Planning Board are captured by the Village stenographer and all of the new members and alternates were provided with the transcript of that first meeting so that they could participate in the matter with full knowledge. In fact, the member whose term was expiring was not available and did not attend the initial meeting on the subdivision matter. The matter ultimately had 4 total public meetings and one training meeting (which the new members attended).

A resident continued to question the appointment of members to the Planning Board. Post Script for the record: The members added in 2018 are Mr. Eric Carlson and Mr. Marijan Bernic. Both are life-long residents of the Village, both have parents who still live in the Village. Mr. Bernic’s brother also lives in the Village. Mr. Carlson is an attorney who works on real estate matters and Mr. Bernic operates a real estate management business with his family. They are highly qualified.

A resident questioned whether not replacing members of the Planning Board causes a “self-fulfilling failure” of the Planning Board.

The Village reiterated its reasons for considering merging the functions of the Planning Board into the Board of Trustees.

Several residents suggested that the Planning Board responsibilities be turned over to the Zoning Board or the Architecture Board.

In response, the Village and the Village Attorney expressed concern that, such additional burden, and a “thankless” one at that, would not be welcomed by those boards, which have more regular work-loads that do not have significant overlap with the more restrictive guidelines within which a planning board member must operate. The shifting from a function with more discretion to one with less discretion might itself lead to the sorts of uncertain decision-making bred by unfamiliarity that we are seeking to contain. The Village Attorney also questioned whether NYS law permits a BZA to also have subdivision approval authority.

There were members in the audience who would like to be considered for service on the Planning Board. The village will vet candidates for consideration for the Planning Board should the Board decide not to merge the function of the planning board with board of trustees.

Some villages have a structure with a “planning advisory board” to provide formal, additional community input to the Board of Trustees in executing subdivision jurisdiction. This too will be considered.

A former member of the planning board requested a meeting with the Trustees so they can learn from that departing members perspective. The Clerk will arrange this meeting for February.

A resident asked questions related to possible financial irregularities and the need for a Board Member to recuse oneself if they had a financial interest in a matter. Counsel advised that under our code of ethics, a member who had a financial interest in a matter would be required to disclose such interest and recuse themselves from the matter. A follow up question was asked about financial incentives and persons who are not directly on the decision-making board. For clarity, the Village asked the Village Attorney, “Is a member of the Board of Trustees permitted to participate as a resident in a Public Hearing of the Planning Board when that member/resident is interested in the outcome for the betterment of their own

neighborhood.” The Village Attorney responded that a resident does not give up their right to express freely their opinion on village matters simply by virtue of joining the Board of Trustees. In such a case, she or he should simply make clear that she or he is speaking as a resident and not as an elected official.

The Village noted, for the record, the existence and implication of *mistrust* which *should be explained and not merely implied*.

Residents responded that this is not personal mistrust, but structural construct of our government.

Residents wanted to know who makes this decision on this matter and when it would be made. The Board of Trustees makes this decision and it will be made as soon as practically possible after considering input from the Public Hearing process. That will likely be between March 1 and May 1, but there is no specific timetable and other matters have the attention of the board in that timeframe including the Tentative Budget (March), the Adopted Budget (April) and the Annual Meeting (April) and other significant and developing matters. Additional communication will be had.

The Village expects that the Transcript of the Public Hearing will be approximately 140 pages and will be available, and posted to our website, the week of February 15, 2021.

For more information, [Public Hearing Information | Village of Plandome Heights](#)