

City of Dunkirk Planning Board
Meeting Minutes

The Planning Board of the City of Dunkirk met on Thursday, January 27, 2011 at 6:00 pm in the Mayor's Conference Room at City Hall, 342 Central Avenue.

Members present were Chairman Chris Piede, Ed Schober, Jim Rozen, Andy Bohn and new member, Aisling Heenan.

Also present were Tim Gornikiewicz from the Development Department, Al Zurawski from the Building and Zoning Office; and Gib Snyder from the Observer.

Meeting was called to order by Chris Piede at 6:02pm.

Agenda was passed out by Tim Gornikiewicz.

Jim Rozen made motion to accept the December 15th minutes. Andy Bohn seconded that motion. All voted aye. Carried

Ed Schober later rescinded motion, and wanted to table motion.

It was determined that entire minutes could not be rescinded, only certain motions.

Communications from the Public and Petitions

Dan Gard, attorney for Old Sarge's Drop Zone, wrote a letter requesting that the Planning Board rescind their decision from December, 2010's meeting regarding the sign at 400-402 Central Avenue. He hoped that litigation would be avoided. (Letter is attached in minutes) Ed Schober asked that Resolution 2010-28 be tabled while the Planning Board seeks legal advice; to avoid any litigation.

Old Business

Historic Architectural Review-16 W Fourth St (St John's the Baptist Church)
Resolution 2010-30

Al Zurawski was present to give information on what St John's needed, and why Planning Board needed to approve of the new stairs. No one was present from St John's. Ed Schober made motion that we table resolution again, until we hear directly from a St John's the Baptist Church representative.

Recording Secretary Tim Gornikiewicz called St John's the Baptist Church and found out that they were just repairing the steps, not replacing them. This resolution was withdrawn.

New Business

Sign Review-617 Central Avenue

Resolution 2011-01

Enzo Rossi, owner of RE Sign & Design was reached via phone to answer questions regarding sign at 617 Central Ave for Dr. Raman Sood. He explained how there would be one sign facing North, and one facing South. The Board informed him that the City Code only allows for one (1) sign per lot, unless a variance is granted. Mr. Rossi said that he would talk to the building owner and see what he would prefer. He asked if the Board would be willing to vote via email when he gave more information. Andy Bohn made motion to table resolution until we got more information. Seconded by Aisling Heenan. All voted aye. Carried.

On Monday, February 7, via email, Ed Schober made motion that a detached sign be placed on the North side to replace the existing sign contingent upon that the sign complies with City Code and regulations, the Planning Board reserves the right to have the position or angle of the sign changed in order to achieve a balanced overall appearance; if another detached sign is proposed for the South side in the future. Andy Bohn seconded that motion. All voted aye. Carried.

2011 Meeting Schedule

Resolution 2011-02

Andy Bohn made motion to accept resolution of 2011 Planning Board meetings. Jim Rozen seconded that motion. All voted aye. Carried.

Ed Schober made motion to adjourn at 6:55. Andy Bohn seconded that motion. All voted aye. Carried.



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January 26th, 2011

Dunkirk Planning Board
City Hall
342 Central Ave.
Dunkirk, NY 14048
Ph: (716) 366-9876
Fx: (716) 363-6460

Re: Old Sarge's Drop Zone

Dear Board Members,

We respectfully request that the Board reconsider Resolution No. 2010-28 before it is filed, so that litigation on this matter may be avoided. It is our position that the Board exceeded its authority in several respects.

First, in Section 6 of the Board's Order, the Board instructs my client to seek a temporary sign permit for window signage pursuant to Local Law §79-21050. As the signs in question are, by the Board's own admission, located in the windows of the business, they are not "temporary signs", as covered by that section of the City Code, but "window signs" which are covered in §79-21060 of the City Code. As these signs comply with §79-21060, they do not require a temporary sign permit, or any other permit. My client's position on these signs was confirmed verbally by HZBO Allan Zurawski prior to the opening of the business. Therefore, the Planning Board exceeded its authority in this section of the Order.

Second, Section 5 of the Planning Board's Order states in part, "The Planning Board specifically retains the right to approve all future signage including window signage pursuant to Local Law §79-14030 and requests applicant make all requests in a timely manner." While Local Law §79-14030 does outline the scope of the Planning Board's authority in regard to permits in the Historical Overlay District, it does not give the Planning Board any authority concerning window signage. Window Signage is specifically addressed in §79-21060 of the City Code. As the Code does not give the Planning Board any authority in this matter and my clients window signs comply with §79-21060 of the City Code, no permit was sought concerning these

window signs, nor was one necessary. Again, this position was confirmed verbally by HZBO Allan Zurawski prior to the opening of the business. It is also interesting to note that while no permit for these window signs was sought and they were in the windows prior to both of the meetings at which this matter was discussed, the Planning Board did not raise this issue or discuss it publically, at either of their meetings. Therefore the Planning Board exceeded its authority in this section of the Order.

Third, Sections 1 through 4 of the Planning Board's Order concern my client's application for approval to modify the neon "Ehler's sign" to reflect the new use of the building, namely, "Old Sarge's Guns". As the proposed sign was to be the exact same square footage, color, and theme of the original sign, it is interesting to note that the alleged "historical" nature of the "Ehler's sign" was never discussed during the public portion of either of the Board's meetings. The only discussion during that time centered on the use of the word "guns". Setting aside the obvious Constitutional issues which require that such restrictions be neutral as to content, §79-21040 specifically permits the content of signs which advertise the use, goods sold, or services rendered. It was never our intention to request permission for the language of the sign, as this permission is not necessary. The only reason that a permit was requested was due to the fact that the sign was to be neon. While neon signs are permitted in Commercial Districts and specifically prohibited in Residential Districts, the issue of neon in the Historical Overlay District is not quite as clear. While a good argument could be made that the sign, as it was neon for quite some time, is grandfathered, it was our desire to work with the Planning Board in this matter. Interestingly, the "neon" nature of the sign was never addressed during any of the public portions of the Board's meetings, nor is it addressed in the Board's Order.

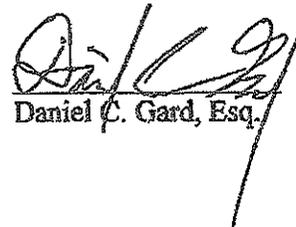
In any case, it is our position that the removal of the "Ehler's sign" did not require the permission of the Board. The Board's alleged authority to require a permit to remove the sign is shaky at best. Nowhere in any of the City Code is there a discussion of "historic signage". The building at 400-402 Central Avenue was constructed at the turn of the last century and is clearly historical; however, it strains logic to allege that a neon sign attached to the exterior some 50 years later, with a completely different style, suddenly became historic as well. While the Planning Board does have the authority to regulate the construction, alteration, or demolition of the historical building itself, the sign is simply not part of the structure. Therefore the Planning Board exceeded its authority in requiring a permit for its removal.

Additionally, the "Ehler's sign" was dangerous to the public and as such, could be removed without any permission from the Board. Even if the sign could actually be considered to be part of the "historic structure", §79-14030 states, "Compliance with these historical requirements shall be subordinate to requirements for the protection of the public and the users of the building." In fact, §79-21030 (5) states, "No person shall maintain, or permit to be maintained on any premise owned, occupied or controlled by them, any sign which is either not structurally sound or creates an electrical hazard. Any such sign shall be removed or repaired by the owner or user of the sign or the owner of the premises." The owner of the sign received written notification, from a professional in the industry, that the sign was dangerous. Therefore, the Planning Board exceeded its authority in requiring a permit for the removal of the sign and in directing the City Building Inspector to withhold such a permit pending the approval of the Board.

I have advised my client that he should file an Article 78 proceeding challenging this Order, if the Board files the Order or the minutes of the December 21st meeting. Procedurally, the Order of the Board must be challenged within 30 days of the filing of the Order or the minutes of the meeting at which the action was taken by the Board. Despite the fact that I did receive a copy of the Order on December 22nd, following some controversy over the removal of the "Ehler's sign", I have the written assurance of the Board's attorney, Michael Cerric, Esq., that the filings required to begin the time for appeal of this matter will not take place until January 28th, 2011.

We request that the Board take whatever procedural steps necessary to rescind or void its proposed Order in this matter and allow Dunkirk's newest downtown business to focus its funds and its energy on conducting business.

Sincerely,



Daniel C. Gard, Esq.

CITY OF DUNKIRK PLANNING BOARD

RESOLUTION

No. 2010-30

A meeting of the Planning Board (the "Board") of the City of Dunkirk (the "City"), was convened on Thursday, January 27, 2011 at 6:00 p.m.

The following resolution was duly offered and seconded, to wit:

**RESOLUTION AUTHORIZING ST JOHN THE BAPTIST
CHURCH TO CONSTRUCT NEW STEPS AT 16 W FOURTH
STREET**

WHEREAS, the City Code provides that the Board shall have full power and authority make investigations, maps, reports, recommendations, and approvals relating to the planning and development of the city ; and

WHEREAS, pursuant to these duties the Board has reviewing the information supplied by St John the Baptist Church for the project located at 16 W Fourth Street related to the constructing of new steps; and

WHEREAS, the Board wishes to approve the transaction submitted and reviewed subject to the conditions contained below; and

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE CITY OF
DUNKIRK PLANNING BOARD AS FOLLOWS:**

Section 1. Hereby offers its approval to St John the Baptist Church for the sole purpose of constructing new steps located at 16 W Fourth Street

Section 2. The above approval is subject to the following terms and conditions:

1. _____
2. _____
3. _____
4. _____
5. _____

Section 3. The above resolutions shall take effect immediately.

Dated: January 27, 2011

STATE OF NEW YORK)
COUNTY OF CHAUTAUQUA) SS:

I, the undersigned Recording Secretary of the City of Dunkirk Planning Board, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the City of Dunkirk Planning Board (the "Board"), including the resolution contained therein, held on January 27, 2011, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Board and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that all members of the Board had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

I FURTHER CERTIFY that there was a quorum of the members of the Board present throughout said meeting.

I FURTHER CERTIFY that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City this 27th day of January, 2011.



Tim Gornikiewicz
Recording Secretary
City of Dunkirk Planning Board

[SEAL]

CITY OF DUNKIRK PLANNING BOARD

RESOLUTION

No. 2011-01

A meeting of the Planning Board (the "Board") of the City of Dunkirk (the "City"), was convened on Thursday, January 27, 2011 at 6:00 p.m.

The following resolution was duly offered and seconded, to wit:

**RESOLUTION AUTHORIZING DR. RAMAN SOOD TO
PLACE SIGN AT 617 CENTRAL AVENUE**

WHEREAS, the City Code provides that the Board shall have full power and authority make investigations, maps, reports, recommendations, and approvals relating to the planning and development of the city ; and

WHEREAS, pursuant to these duties the Board has reviewed the information supplied by Dr. Raman Sood for the project located at 617 Central Avenue relating to the placement of a sign; and

WHEREAS, the Board wishes to approve the transaction submitted and reviewed subject to the conditions contained below; and

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE CITY OF
DUNKIRK PLANNING BOARD AS FOLLOWS:**

Section 1. Hereby offers its approval to Dr. Raman Sood for the sole purpose of a placing a sign at the property located at 617 Central Avenue

Section 2. The above approval is subject to the following terms and conditions:

1. The sign complies with City Codes and regulations.
2. The Board reserves the right to have the position of angle of this sign changed in order to achieve a balanced overall appearance-if another detached sign is proposed for the south side of the property in the future.
3. _____
4. _____

Section 3. The above resolutions shall take effect immediately.

Dated: January 27, 2011

STATE OF NEW YORK)
COUNTY OF CHAUTAUQUA) SS:

I, the undersigned Recording Secretary of the City of Dunkirk Planning Board, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the City of Dunkirk Planning Board (the "Board"), including the resolution contained therein, held on January 27, 2011, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Board and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that all members of the Board had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

I FURTHER CERTIFY that there was a quorum of the members of the Board present throughout said meeting.

I FURTHER CERTIFY that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City this 27th day of January, 2011



Tim Gornikiewicz
Recording Secretary
City of Dunkirk Planning Board

[SEAL]

CITY OF DUNKIRK PLANNING BOARD

RESOLUTION

No. 2011-02

A meeting of the Planning Board (the "Board") of the City of Dunkirk (the "City"), was convened on Thursday, January 27, 2011 at 6:00 pm

The following resolution was duly offered and seconded, to wit:

RESOLUTION AUTHORIZING 2011 MEETING SCHEDULE

WHEREAS, the City Code provides that the Board shall have full power and authority make investigations, maps, reports, recommendations, and approvals relating to the planning and development of the city; and

WHEREAS, the Board seeks to meet on a regular basis to promote the business of the board;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE CITY OF DUNKIRK PLANNING BOARD AS FOLLOWS:

Section 1. The 2011 Planning Board meeting schedule shall be as follows:

January 27, 2011-6:00 pm Mayor's Conference Room, City Hall

February 24, 2011-6:00 pm Mayor's Conference Room, City Hall

March 24, 2011-6:00 pm Mayor's Conference Room, City Hall

April 28, 2011-6:00 pm Mayor's Conference Room, City Hall

May 26, 2011-6:00 pm Mayor's Conference Room, City Hall

June 24, 2011-6:00 pm Mayor's Conference Room, City Hall

July 28-2011-6:00 pm Mayor's Conference Room, City Hall

August 26, 2011-6:00 pm Mayor's Conference Room, City Hall

September 22, 2011-6:00 pm Mayor's Conference Room, City Hall

October 28, 2011-6:00 pm Mayor's Conference Room, City Hall

November 17, 2011-6:00 pm Mayor's Conference Room, City Hall

December 15, 2011-6:00 pm Mayor's Conference Room, City Hall

Section 2. The above resolutions shall take effect immediately.

Dated: January 27, 2011

STATE OF NEW YORK)
COUNTY OF CHAUTAUQUA) SS:

I, the undersigned Recording Secretary of the City of Dunkirk Planning Board, DO
HEREBY CERTIFY:

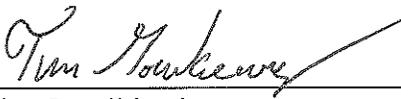
That I have compared the annexed extract of minutes of the meeting of the City of Dunkirk Planning Board (the "Board"), including the resolution contained therein, held on January 27, 2011, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Board and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that all members of the Board had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

I FURTHER CERTIFY that there was a quorum of the members of the Board present throughout said meeting.

I FURTHER CERTIFY that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City this 27th day of January, 2011.



Tim Gornikiewicz
Recording Secretary
City of Dunkirk Planning Board

[SEAL]