



ENVIRONMENTAL, LAND USE AND REAL ESTATE LAW

Tuesday, 28 November 2023

Via email only to: [mmclinton@villageofrhinebeckny.gov](mailto:mmclinton@villageofrhinebeckny.gov)

Mayor Gary Bassett and the Members of the Village Board  
Village of Rhinebeck  
76 East Market Street  
Rhinebeck, NY 12572

Re: 6 Mulberry Street : Proposed Dutchess Shepherd Rezoning & Project

Subj: December 5 meeting and Sequencing of SEQRA Review

Dear Mayor Bassett and Members of the Village Board:

As you may recall, our firm represents residents interested in the proposed Dutchess Shepherd zoning amendment and development project for 6 Mulberry Street.

Please note the comments set forth herein in advance of your planned discussion of a draft Full Environmental Assessment Form [FEAF] Parts 2 and 3 scheduled for your meeting to be held on December 5.

The Determination of Significance that you will make pursuant to the State Environmental Quality Review Act [SEQRA], will be one of the most important decisions you will make about this proposed project. This is a decision which must be made carefully, and with input from Village residents, especially those to be most heavily impacted by this proposed project.

Although SEQRA does not require that a public hearing be held in advance of making a Determination of Significance, it is the widespread practice of local lead agencies to do so. This practice recognizes that input from the public, and from those most impacted by a proposed action, ensures that the lead agency knows as much as possible about the potential impacts of an action BEFORE reaching the point of making a Determination of Significance.

In this case the Village Board promised early on that a public hearing would be held before any significant decisions would be made.

However, the planned sequence of the environmental review in this case is now giving our clients cause for concern.

As we understand it based on discussion amongst Board members and motion passed at the November 14 Village Board meeting, the plan for December 5 meeting is for the Board to internally consider drafts of an FEAF Part 2 and Part 3 that have already been created.

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When I inquired about the opportunity for public comment on the revised Dutchess Shepherd proposal, David Gordon, the Village's attorney informed me by email on November 20, 2023 that, while the Board will hold a public meeting, it will be after the December 5 meeting at which the Board is considering the draft FEAF Parts 2 and 3.

I point out that the function of FEAF Part 3 is to set forth the lead agency's Determination of Significance. In other words, it's the place where the Board will record and explain its decision whether to issue a Negative Declaration or a Positive Declaration.

To the extent a draft of this decision exists, then that means that the Board is being given a draft for discussion that already reaches a conclusion, creating the impression that, by the time the public hearing takes place, the Board members will have already made up their minds on the ultimate decision.

Even if unintentional, this sequencing feels like it tilts the process in favor of the project.

For the environmental review process to work properly in an atmosphere of good faith and transparency, the Board members must maintain open minds and a willingness to truly consider public comment.

Because of our clients' concerns about this matter, we have felt it necessary to make an interim submission to make sure the Board is aware of them if it proceeds to consider FEAF Parts 2 and/or 3 in advance of a public hearing.

Hence, below is a brief summary of our clients' concerns about the impacts that are listed on the FEAF Part 2. Our clients will expand upon the discussion of these points when the public hearing is held, but for now they wish you to be aware that:

**Question 15 On the FEAF Part 2 Asks about Noise Impact:**

This proposed action presents moderate impacts, especially to the surrounding residential neighborhood caused by construction noise.

- The Applicant's narrative on construction noise, and how it will be managed, is inappropriate for construction taking place at close quarters in a densely settled residential area.
- The undated Noise Construction letter submitted by the developer states that while "construction" would be allowed only between 7:00 A.M. and 6:00 P.M. on weekdays, drilling and other demolition work (including excavation) would be allowed until 10:00 P.M. (no specified limit on days) and operation of heavy equipment including pile drivers and pneumatic hammers that create "unreasonable noise" would be permitted 7:00 A.M.-6:00 P.M. on weekdays and 10:00 A.M.-6:00 P.M. on weekends. This is unacceptable in a residential neighborhood.
- The apparent relocation of HVAC and other mechanical units from the proposed apartment building rooftop to the lower roof level nearer existing residences raises concerns about the ongoing noise impact to the neighborhood and steps should be required to mitigate this impact.

**Question 15 On the FEAF Part 2 Asks about Light Impact:**

The proposed lighting of the proposed apartment building, and the lights from that building, present moderate impacts.

- Vague assurances that the project lighting will be "dark skies compliant" are insufficient, and the lighting plan submitted by Creighton Manning on behalf of the Applicant is insufficient. More study of this impact is required.
- The Applicant should be required to create and present a photometric plan, as well as night-time photo simulations and those should be subject to review by the Board and the public.
- The Applicant should be required to utilize landscaping and privacy fencing to mitigate the light and noise impacts of placement of the proposed apartment building and free standing homes on comparatively small lots immediately adjacent to other residences.

**Question 17 On the FEAF Part 2 Asks about Consistency With Community Plans:**

As yet, the Applicant has failed to demonstrate that this proposed project is consistent with the Village Master Plan.

**Question 17 On the FEAF Part 2 Asks about Consistency With Community Character:**

This proposed action presents moderate-to-large impacts by being inconsistent with existing community character. Saying this proposal is residential in a residential area is improperly simplistic, and ignores the true definition of community character. I remind you that community character refers not just to visual and/or aesthetic impacts. The term "community character encompasses all the natural and man-made features that make a place unique. It generally incorporates the concept of a "sense of place." A community's sense of place is defined through local conditions and values.

This proposed action presents moderate-to-large impacts to the community from its:

- Density (e.g., significantly increasing the residential footprint with the proposed apartment building and adjacent residences significantly impacting pedestrian and bike safety where this is already an acute issue; questions are also raised about the traffic study that apparently ignores the significantly increased use of Mulberry and the surrounding streets on Sundays due to services at Church of the Good Shephard and the Rhinebeck Farmers' Market - which is further exacerbated by numerous weekend events at the Fairgrounds and/or services at the Burnett & White Funeral Home and increased activities at the United Methodist Church diagonally across Market Street from the proposed development).
- Inconsistency of lot size; for example:
  - ▶ The proposed apartment building and associated parking lot consume nearly all of the apartment building's lot with essentially no green space.

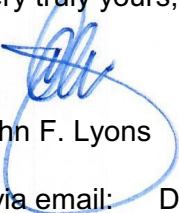
- ▶ The proposed detached homes have significantly smaller lots than existing homes in the immediately surrounding vicinity.
- Inconsistency with use, for example:
  - ▶ The proposed development would add a multi-unit apartment building into the center of a residential area currently dominated by single, detached residential homes. Any development of the property should require constructive use of landscaping, berming, and/or other methods to minimize the noise and lighting impact among the adjacent properties, including sizeable apartment building parking lot that would be immediately situated adjacent to a number of closely-spaced residential properties.
- Inconsistency with the existing the architectural scale and character which dominates and defines the immediately surrounding neighborhood, for example:
  - ▶ The proposed detached homes are of a modern architectural style that is notably out-of-synch with the historic character and period of surrounding residences in the heart of the Village's historic district.
  - ▶ The proposed detached home located at the corner of East Market and Mulberry Street is oriented to the east, facing Mulberry Street, which is inconsistent with, and at odds with, all of the other homes located along Market Street, which face East Market Street.
  - ▶ The proposed detached homes have no front porch or similar design that is nearly ubiquitous for the surrounding historic residences.
  - ▶ The proposed apartment building has no apparent "front" or front porch entry consistent with the surrounding residences to integrate it into the neighborhood.

Please bear these concerns in mind as you consider the FEAF Part 2. And please keep your minds opens so that you do not make improper prejudgments in attempting to answer the questions in the FEAF Part 3.

And finally, please refrain from considering the FEAF Part 3, and reaching a tentative decision on your Determination of Significance, until the public and residents of the neighborhood most impacted by this project have had an opportunity to be heard in the public hearing.

Thank you for your time and consideration.

Very truly yours,

  
John F. Lyons

c via email: David Gordon, Esq., Gordon & Svenson LLP  
Brandee Nelson, PE, Tighe & Bond

Martina McClinton, Village Clerk (for posting on the Village webpage devoted to the 6 Mulberry proposal)  
Mayor Garry Bassett  
Deputy Mayor & Village Trustee Ric Lewit  
Village Trustee Lydia Slaby  
Village Trustee Vanessa Bertozzi  
Village Trustee John Penny