

Village of Skaneateles
Zoning Board of Appeals Meeting
May 23, 2018

Public Hearing in the matter of the Special Use Permit application of Gary Dower for a 6 lot open space subdivision as part of the proposed Mirbeau Gateway development project at the corner of Fuller and West Genesee Streets in the Village of Skaneateles.

Present: Michael Balestra, Chairman *Recused*
Gerald Carroll, Member
Michael Kowalski, Member
Maureen Wopperer, Member
Kathleen Zapata, Deputy Chairman

Riccardo Galbato, Attorney for the ZBA
John Crompton, Code Enforcement Officer
Beth O'Sullivan, Deputy Zoning Inspector
Dennis Dundon, Clerk to the Boards

Bob Eggleston, architect, on behalf of the applicant
Jonathan DalPos, on behalf of the applicant
Gary Dower, applicant

Gregg Eriksen, Village Trustee

At 7:55 pm, Chairman Zapata called for Gary Dower for the continuation of the public hearing on the Mirbeau Gateway development, noting that Chairman Balestra has recused himself in this matter.

Eggleston – I am Bob Eggleston architect for Gary Dower. Gary Dower is also here along with Jon DalPos. This is a special permit for the open space subdivision. You have the prototype houses we are talking about. We are looking to do houses in the 1,800 SF range so they have a first floor bedroom-bath, and they have two bedrooms and/or a bedroom and a den upstairs. We have front porches; we have paid close attention to appropriate architectural guidelines. We have shown you a sketch of the three block adjacent area, that shows that half of the houses are in a similar size as what we are proposing. There's only 5 conforming lots in that 3 block area, so it's not out of character with the Village neighborhoods in general. We have gone through the special permit criteria, as well as the open space subdivision criteria. We are providing a substantial preserved open space between the lodging A-3 use and the houses here. The intent was that it would offer a buffer between the A-2 residential and the A-3 lodging use. We are keeping a lot of the vegetation. We have a water quality pond that has been recently redesigned. Would you like to go through the special permit criteria?

Carroll – Do you have the ability to put it on the screen? [Brief delay] What’s the distance from the street to the front of the dwelling?

Eggleston – From the road line; we have a 15 foot setback, but that’s from the sidewalk. That’s 15 feet to the porch. Then you have a 5 foot sidewalk, and then probably about 15. It’s probably about 30 to 40 feet from the edge of the parking space. What we have proposed is that we create on-street parking by pulling the curb in 9 feet. It’s probably about 45 feet from the current but 30 to 35 feet from the edge of the new curb.

Carroll – How wide is the driveway behind the buildings?

Eggleston – 20 feet wide.

Carroll – And is it 20 feet the whole way?

Eggleston – I believe so, yes.

Carroll –What’s standard?

Eggleston – 10 feet. I’m sorry, it is 18 feet. It narrows to 18 feet just behind the building.

Carroll – John, were you able to answer the fire chief’s question about the appendix D issue? In the fire chief’s reply he said “I believe it would be beneficial for all parties to make a determination if the Village building code includes appendix D of the 2015 International Fire Code. Did you have an opportunity to have a look?”

Crompt – The Village does not have its own fire code so, you fall back on New York State. As far as I’m concerned the fire code is the fire code.

Eggleston – In 1967, the Village adopted the state fire prevention and building code council. I have not found anything in Village law beyond that. One assumes that when they update the codes, it updates the Village. In appendix D it specifically says on the chart that was brought into question, that has to be specifically adopted by reference. It is my position that it is a suggestion, not a mandate.

Wopperer – So what you are saying is that appendix D can be taken into consideration if something is?

Eggleston – Yep. Yep. There’s probably about 8 or 10 shared driveway situations in the Village; they have been developed over the years. Not that it is an excuse to do the same thing. Polley Lane up on Roosevelt Hall, the Bitter End/Bobbett/Day/Compass/Clift/Palmer/Woodmere. These are all private share driveways that have two to five houses on it. The big difference is they don’t have street frontage. All these houses have direct street frontage; our position is the fire apparatus access point is on the street.

Dower – The point of the design was to try to put together as reasonable a plan as we could, to take into account all the different issues that we were being asked to take into consideration – including traffic, including fire and police safety, including all of the various elements that the Planning Board was focused on. This is what we think is a reasonable compromise if you will; a reasonable plan given the circumstances that we were facing. And the Planning Board agreed with us on that. This Board really is tasked with the responsibility of looking at the specific criteria that is called for in the Village code. To the extent that you feel it is not a reasonable plan for whatever reason, I think you would probably need to advise the Planning Board of your perspective and allow them the chance to revisit it. This was as best a plan as we could put together given all the constraints and conflicting push-pulls that we were involved in over the past several years.

Kowalski – One of the specific criteria that we have to find in favor of is reasonable fire and police access. The fire chief has expressed his opinion on it; and you would think that is a good opinion in regards to fire. He is still making suggestions of individual driveways. How do we use our personal opinions there?

Crompton – The fire chief does not get the last word. But I think it would behoove the developer and the fire chief to sit down and at least talk. He's saying that by the time you take into account the set-back of the building, the parallel parking in front of the buildings, by the time he puts his ladder up he barely reaches the building. The angle of the ladder is not ideal. He loses a lot of reach. That's what I am hearing from him. His suggestions – lose the parallel parking in front, have individual driveways or have an access road in the rear. Perhaps the developer and the fire chief could come to some compromise.

Dower – I think that's a thoughtful approach. The unfortunate thing is that we have been at this for quite a long time and we have never heard of this issue before. To the point of what the Board's responsibility is – I think you are the arbitrator of what you think is reasonable. You have to consider all of the various applications. The advocacy of the applicant and the comments that are coming from all different areas of the public, including the chief of the volunteer fire department. He justifiably is focused on an issue that he feels particularly is important and we all need to respect that as best we can. But there are other groups that also have issues that they think are very important, that we are also trying to respect. Ultimately, that mantle of responsibility falls on your shoulders, where you try to use your best judgment as citizens and try to weigh and balance the conflicting issues that we are faced with here. Luckily this issue of access is really, to me, a relatively easy one to resolve. If there was no driveway anywhere, there would be no issue. The addition of a driveway does not hinder or reduce the accessibility, in fact it improves it.

Zapata – Wasn't the chief more concerned about individual driveways between the houses?

Dower – It seemed to me from his comments that what he was looking for was some kind of driveway between the residences so you could pull a truck up between the residences for different reasons.

Zapata – So the absence of a shared driveway doesn't really solve the problem. The presence of several driveways probably would.

Dower – Correct. But if there were no driveway in the back, would you require driveways that weren't a part of the overall plan – just to allow a fire truck to drive into? I don't think you would. What we are suggesting is that the frontage on Fuller Street is perfectly satisfactory; the addition of the driveway in the back is almost 360-degree control for these access points that are particularly important for the fire department. We are not proposing to allow the fire truck to park between the buildings, but that's in part because of the needs of the community in other areas, and in part because of geography and the dimensions of the site. Ultimately, it's up to you to think about what's reasonable. We are suggesting to you that his plan is reasonable; it's a decision that comes with your jurisdiction.

DalPos – Also the Department of Transportation had restrictions on curb cuts.

Carroll – What's the current parking arrangement on that street?

Dower – There is no parking on that street.

Carroll – And what's the need for parking for these buildings?

Dower – To provide additional parking as necessary for the operation of the residences. The Planning Board felt it would be an added value to have parking on Fuller Street that was apart from and separate from the travel lane, similar to what you see downtown.

Eggleston – What we based the design on is something called 'New Urbanism' and 'Hamlet Design Guidelines'. What they'd like to do is get rid of suburbia; they want a traditional neighborhood, where you have a public zone with a sidewalk, a porch with railing around it, which is a semi-public area, then you have the private part of the house. The on-street parking allows people visiting to park on the street and come to the front door in a traditional neighborhood setting.

Carroll – How many spaces?

Eggleston – We have actually eight parking spaces.

Dower – And that would serve any residence along that area of street.

Eggleston – This driveway is 18 feet wide. A fire truck can get behind the building. What it doesn't have is an easy, convenient turnaround.

Carroll – Dennis had sent you an email because I read Mr. Dower's email, but I couldn't find any Planning Board minutes focused on fire safety. I know the fire chief didn't present his issues to the Planning Board.

Dower – There may not be any particular details in the minutes on that issue, but I know that issue is part of the Planning Board’s criteria when they think through how they are trying to organize thoughts. I know we had a lot of discussions at the applicant about how best to accommodate all the criteria for the special permit that we knew was part of the overall obligation of the applicant. The intent of the Planning Board; my impression was the Planning Board was trying to do the best that they could to try to provide something of value to the community that satisfied all the criteria that they had, but they were also being respectful of fire safety, police, sanitary, DOT traffic, the municipal commissioner’s issues with regard to water, sewer and all those issues. So, I think in fairness to them I mentioned that this was a plan that they felt comfortable with.

Eriksen – I can clarify that the fire chief sent an email to the Planning Board well in advance of one of their previous meetings. The matter came to the fire chief’s attention since this was discussed at a Village Board meeting that the chief happened to be at. He raised those concerns and was encouraged to put that in an email to the Planning Board which he did. So, the Planning Board has had it for some time. It is my understanding that these concerns are over and above the applicable fire codes, and that they were raised in the last couple of months. [Several ZBA members thought it was not in the Planning Board record.] It is definitely in the Planning Board record. It is FOIL-able. They definitely had it and were aware of the chief’s concerns.

Eggleston – My recollection is that the response came from the fire chief after the Trustees meeting to Patty Couch, who distributed to all the Board members. My response was likewise distributed.

Dower – I believe everybody is respectful of the chief’s concerns because that is his job. We need to all listen, as best we can, to his points of view. But my sense of the community leadership is that they understand it but they also recognize the other issues they are trying to accomplish and it didn’t appear to them that this was as important an issue as the chief feels it is.

Zapata – Does anyone have any questions?

Wopperer – I guess I was looking for more information from the Planning Board regarding this and regarding the emails. I have not seen them. And while there seems to be consensus that this was ok, I haven’t seen it. I would like to see specifically that the Planning board is ok with the points made by the chief.

Chairman Zapata said that, “The Board needs to go though the special use permit criteria. I’d like to do that as a Board, and as a Board alone.” Chairman Zapata asked if anyone present wished to speak? Hearing no one she said, **“I move that we close the public hearing.” Member Carroll seconded the motion. Upon the unanimous vote of the members present and voting in favor of the motion, the motion was carried 4 – 0.**

Chairman Zapata said, “Now I would like to talk through the criteria. Section 225-39 Application Procedure for Special Use Permits, we will go through Section I.

Basis for determination.

Before issuing a special use permit, the Zoning Board of Appeals shall consider the public health, safety, morals and welfare and shall make the following findings:

(1) There shall not be any unreasonable detrimental effect by the establishment of such conditional use on any other building, structure or use, actual or permitted, within the district.

Zapata – I feel comfortable with this point 1.

Carroll – I don't see any detrimental effect on any building, structure or use.

Wopperer – I agree.

Kowalski – The only comment I had was from a previous meeting there was concern from a neighbor that if the soil was disturbed and the previous contamination did get a chance to move, that could cause; I know this is something that has been discussed at the Planning Board and all the Boards many, many times. So, I think it is well noted on the record.

Zapata – I agree and I feel that there has been a lot of mitigating effort. So I am comfortable with #1.

(2) Such conditional use and site development plan are in harmony with and will not impede the orderly development of the district, and the location, nature and height of buildings, structures, walls, fences and parking areas will not discourage the appropriate development and use of the adjacent lands.

Zapata – In point number 2, what I have spent much of my time focusing on is if this is in harmony and will not impede the orderly development of the district. But really is it in harmony? I would like to talk about that for a few minutes, if anybody has any thoughts on that specifically.

Carroll – My thoughts are that it is. The Village, as Bob has noted, has various parts to it where dwellings are close to each other as these are. I don't know that we can say there is a particular theme to the entire Village, or that putting dwellings like this at the end of Fuller is inconsistent with the Village when we have sporadic spacing throughout the Village. Also, it is a vast improvement on the property as it currently sits. I went through the Joint Comprehensive Plan and it seemed to me to be consistent with that; inasmuch as again it is similar to other structures in the Village. It has been represented to us that it is going to be at a relatively lower cost than other homes in the Village. Given the improvement to the existing property, I can't say that it is not in harmony with the development of the district.

Kowalski – I would say that the harmony issue, of the various issues here, is the thing that I have been looking at and considering most closely. I think the single thing that I have been observing is the number of units in the given space. One of the things provided is subdivision under the current zoning requirements, which shows 3 houses on 3 parcels. As part of the cluster housing and open space subdivision, there is now the open space set aside and the housing moved down to Fuller Street. In doing so and also with the storm water containment basin, effectively you are using roughly half the amount of space for 5 houses instead of 3. So it seems like it is a significant increase in density, obviously. The one thing that I am looking at is the width between the houses, if you are counting the set-backs 5 and 10, roughly 15 feet; and also the 50 foot lot width. We have this here that shows a lot of highlighted parcels described as similar size. Many are listed; I'd say 60 feet seems to be an average for what is selected for the smaller units. There are a few at 50. I have driven by the four lots on Genesee Street several times that are also listed as a 50 foot width. One of the things I have noticed is, I suppose it's the width of the houses, but there does seem to be more space between the houses, to the point where at least between two of the houses there are 2 separate driveways with a grass median between them. So, the thing I wonder about is if you look directly across the street, in roughly a comparable amount of space, you've got 3 residential units. If you head up the road, many of the parcels are much wider, and as you head up that road you are entering rural town area; as you head up Genesee you are heading into a rural town area. This cluster, looked at in the spot that it is on the map, feels significantly more dense than what it is surrounded by. That's where I'm wondering about the 'in harmony with' the local area.

Zapata – Yeah. I've gone back...

Wopperer – Just one second. I just want to say that I totally agree with what you just said about the in harmony and the lot sizes. That is just exactly what you said. When you go down that street it like the lots are bigger, there's 3 houses within that same aspect, and just exactly what you said. I think it is definitely a significant improvement. I think that it follows the Comprehensive Plan. I totally appreciate everything with the storm water. I totally get that and I think it is really great. But that's my biggest concern. And my other concern is the cost of the houses that are going to be there. I'll let you finish.

Zapata – Our job to do here is to interpret the Code as written and, for me, the Comprehensive Plan doesn't come into play necessarily, because we are interpreting the Code.

Kowalski – That was the other thing I was wondering about. The Comprehensive Plan is a very comprehensive document and gives a lot of guidelines, suggestions and good advice, to continue to build an attractive community. Ultimately for a special use permit, that is more suggestion.

Carroll – But we are being asked to test whether something is in harmony with the development in the district. Where is the development in the district defined?

Zapata – It is defined in the Code.

Carroll – The Code?

Zapata – The definition of the Residential A-2 District. ‘The purpose of this district is to define and establish regulations for those portions of the Village lying north of Genesee Street (US Route 20) and to the east and west of Fuller Street, where low-to-moderate-density residential development is and should continue to be the predominant use of the land.’

Carroll – But we have a separate provision allowing the Planning Board to establish a subdivision.

Wopperer – Correct, which is exactly why I was leaning on the Comprehensive Plan. Not so much to follow that, but to discern the aspect of this subdivision.

Zapata – I think the harmony of the neighborhood can have several components here. I certainly appreciate the need to develop this parcel of land, but I also appreciate the precedent it sets by putting lots of this size in the district.

Dower – Madam Chairman and Members of the Board, if I may comment for just a second?

Zapata – I’d actually just like to keep this to Board discussion. Thank you. I see the lot size; this is me looking at the A-2 district as a whole. And I specifically started zoning into the neighborhoods Bob has pointed out, like Griffin. There are several lot widths that are similar in size; I could find one that the area was the same as the proposed lots here. I don’t know if that constitutes harmony. While I certainly see the need for future development and different types of houses. I won’t get into the affordable housing, because I don’t think that fits this category.

Carroll – How can we say it is not in harmony, when we’ve got a specific section that allows an open space subdivision containing a certain number of acres to be approved by the Planning Board?

Kowalski – It doesn’t specify the number of individual housing units within the subdivision, only that it can be subdivided.

Wopperer – It doesn’t dictate the lot size.

Zapata – And this is not something that we, as a Board, have to agree on.

Wopperer – And the terminology low to moderate.

Zapata – When we were looking at this a year ago, I asked why there were 5 houses. I still don’t understand why that is the best future for the Village; the best precedent to set for a subdivision within the Village. I understand that the Planning Board has been over this many times, but I am still struggling with that.

Dower – Is that a question that you’d like me to speak to?

Zapata – You can go ahead, sure.

Dower – With regard to the number of units, there was a great deal of discussion about that. The number of units in many respects, is a function of the overall development and the cost of the development. The effort was to arrive at a number of units that would fit the context of the whole purpose of the overall open space subdivision, which was to set aside a large tract of land in the open space category and to cluster the units together in a relatively small area to preserve that open space. We started originally with an application for 6 units and reduced it to 5.

Kowalski – Could I ask where that 6th lot was relative to the existing plan?

Dower – The original plan that had the 6 units had a smaller profile of the detention basin.

Kowalski – So it took up less frontage on the street?

Dower – It took up less frontage. The feeling as we talked to the Planning Board was they requested that we consider reducing the number of units because they felt that 6 was perhaps too large for that geographic space. They wanted to make sure that there was enough space to design the detention basin the way that they and the Village engineer had requested.

Eggleston – Also the plan at some point had semi-detached units, like at Whitegate, where you had a zero lot line to connect the buildings. That was one of the early versions of this. I also want to point out that even though we have a required 10 foot set-back, we actually do have 20 feet between the buildings; the 10 feet is for the patio. This is identical to the 60 foot lot on Genesee Street with no driveway, where you have 10 feet of car. So it actually makes a little bit nicer space.

Dower – One of the reasons that the Planning Board recommended that we move in the direction of this open space subdivision was that they felt, in order to provide for the density on Fuller Street, the Village should get something in return, which is the open space that's part of the open space subdivision program. That's why this was recommended as part of the overall development package.

Kowalski – So at a certain point there is the financial reality of number of units as compared to time/cost invested to make it work.

Zapata – I personally appreciate that this is a project and you want it to be profitable; just like I will not dissect how much the home values are around you and would be in harmony with these homes, I am not going to look at what this would cost somebody to make a profit or loss in this area. It's just not something; I don't see any benefit to that. Anyone else have any points on Point 2? Jerry?

Carroll – No.

Kowalski – The other thought I had which is a continuation of the previous thought is, relatively small houses close together with almost 2:1 in terms of lot widths with the closest lots, and also you've got the weird triangle as you get down to the intersection there. So, there's effectively some open space there. You have the open space of the

detention basin which is necessary in order to function correctly. So in effect you end up squeezing these lots from both sides even further. So from the harmony consideration it feels like even more compressed lots due to the fact that there are these issues.

(3) The water supply, sewage disposal and surface drainage systems shall be adequate to serve the conditional use.

Zapata – I feel comfortable with point 3.

Wopperer – I feel comfortable with that.

(4) The flow, control and safety of traffic in the district will not be adversely affected to an unreasonable degree by such conditional use.

Zapata – I think this is something that has been thoughtfully planned out. The driveway being where it is has taken some time and thought. I know that there were neighbor concerns about traffic, but it seems that it's been looked at closely.

Kowalski – There was concern at the original hearing I read that neighbors nearby commenting that they needed to walk on the road, so the sidewalk will be new and a benefit to the neighbors.

(5) The plans for such conditional use provide that all structures, equipment and materials shall be reasonably accessible for police and fire protection.

Zapata – I feel like we have discussed this but would anyone like to discuss it further?

Wopperer – No, I think my comments were well noted.

Carroll – Just to focus on it, I am prepared to say that it is reasonably accessible; it is not perfectly accessible but it is reasonably accessible. But I'm not an expert on fire safety.

Zapata – I tend to agree with you.

Carroll – But we've got a fire chief giving us some comments. So, I sort of fall back to what Maureen said, I would have liked to have seen this developed more at the Planning Board stage. I think the miss at the Planning Board was the fire chief came in and talked about the driveway being an access road and it needed to be longer or a turnaround. I think that was before the Planning Board. What wasn't before the Planning Board was him thinking there were additional driveways needed because he didn't have access. In my opinion, that's a different opinion from him. So where I'm sort of stumped is, hearing everything I think it's reasonable.

Zapata – I agree, and where I stumble a bit with this too, not being an expert makes me a little nervous. What it comes back to with me is -- this is a whole new building type. However, the way the driveway is laid out is not customarily seen in the Village. To me

that goes back to the question of harmony; the two have kind of played back and forth for me in that respect.

Kowalski – Me having no expertise in fire would say that it seems reasonably accessible; the one issue I have is the latest email from the chief – in the middle in capitals ‘do not provide reasonable access per number 5’. It is a tough thing to read and then say that I am comfortable superseding that.

(6) The plans for such conditional use contain reasonable provision for open spaces and recreational areas appropriate to such conditional use.

Zapata – I think the open space has been taken care of.

Wopperer – Um hmm.

(7) The plans for such conditional use meet the prescribed requirements of this chapter, inclusive of the requirements for the district in which located and the following prescribed standards, and are not otherwise prohibited by law, ordinance, rule or regulation.

Zapata – Anybody have any thoughts on that? I’m comfortable with 7.

Carroll – I agree.

Kowalski – Yes.

Chairman Zapata, “We have gone through all the 7 requirements for special use permit and I feel that we have received as much information as we are going to receive and we have certainly gone through this, so I would ask, Jerry would you make a motion?”

Member Carroll, “I move that we approve the special use permit application of Gary Dower for a 6 lot open space subdivision as part of the proposed Mirbeau Gateway development project at the corner of Fuller and West Genesee Streets, specifically finding pursuant to Section 225-39I:

- 1. There is no unreasonable detrimental effect by the establishment of such conditional use on any other building, structure or use, actual or permitted, within the district.**
- 2. The conditional use and site development plan are in harmony with and will not impede the orderly development of the district, and the location, nature and height of buildings, structures, walls, fences and parking area will not discourage the appropriate development or use of the adjacent lands.**
- 3. The water supply, sewage disposal and surface drainage systems are adequate to serve the conditional use.**
- 4. The flow, control and safety of traffic in the district will not be adversely affected to an unreasonable degree by such conditional use.**
- 5. The plans for such conditional use provide that all structures, equipment and materials are reasonably accessible for police and fire protection.**
- 6. The plans for such conditional use contain reasonable provision for open spaces and recreational areas appropriate to such conditional use.**

7. The plans for such conditional use meet the prescribed requirements of this chapter, inclusive of the requirements for the district and all applicable standards. The applicant shall have until May 23, 2020 to complete.” Chairman Zapata seconded the motion. When polled, the members voted as follows:

Member Carroll	YES
Member Kowalski	NO
Member Wopperer	NO
Chairman Zapata	NO

With Chairman Balestra recused.

On a vote of 1 – 3, the motion was defeated.

This matter was concluded and on motion of Chairman Balestra and seconded by Member Carroll unanimously adjourned at 8:49 pm.

Respectfully submitted,

Dennis Dundon, Clerk to the Boards