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City Info <cityinfo@plattsburghcitygov.com>

Zoning Board of Appeals meeting 4/20/2020 re: Prime LLC Special User Permit

2 messages

Timothy Palkovic <palkovtj@plattsburgh.edu> Fri, Apr 17, 2020 at 12:37 PM
To: cityinfo@plattsburghcitygov.com

The proposed Prime Building fails in each of the five following categories which have been presented by myself and other concerned citizens before.

1) General character, height and use of the structure:

Too large, massive and out of character.

2) Provision of surrounding open space:

Green space marginalized.

3) General fitness of the structure in the proposed location:

Unnecessary attempt at gentrification of a historically blue collar neighborhood.

4) Provision for automobile parking and storage:

Long term off street parking inadequate.

5) Street capacity and use:

Unsafe diagonal parking on Durkee Street.

Shift to one way traffic will not meet traffic and safety needs.

My opinions on the proposed development of the Durkee Street Lot are formed by these three standard books; **Strong Towns**, **Palaces for the People** and **Walkable City Rules**. These books offer fundamental city planning principles.

Strong Towns by Charles L. Marohn, Jr. argues that large block developments offer the illusion of wealth but in reality create long term unpayable liabilities. He persuasively argues that rehabbing old areas of a city are more financially productive than shiny new buildings.

A reviewer of **Palaces for the People** by Eric Klienberg says that "This book, but especially the conclusion, warns of the danger of delegating public works to private companies, particularly companies who project a community-minded motto but are really profit driven."

Dar Williams, reviewer of **Walkable City Rules** by Jeff Speck says "Yes I DO want to make my town more livable, walkable, equal and fun." The proposed Prime LLC building on the Durkee Street Lot does none of these things but proposes a gated community in a civic space.

Submitted by Tim Pakovic, City Resident

City Info <cityinfo@plattsburghcitygov.com> Fri, Apr 17, 2020 at 2:52 PM
To: mcmahonj@cityofplattsburgh-ny.gov
Cc: "Beebie, Lisa" <BeebieL@cityofplattsburgh-ny.gov>

[Quoted text hidden]

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City Info <cityinfo@plattsburghcitygov.com>

Zoning Board Comment - April 20, 2020 ZBA meeting - Prime Plattsburgh

1 message

Scott Allen <scottallen@aesnortheast.com> Mon, Apr 20, 2020 at 10:23 AM
To: "cityinfo@plattsburghcitygov.com" <cityinfo@plattsburghcitygov.com>

1. The zoning ordinance requires a project to commence "substantial actual construction within 6 months" or else the permit becomes null and void. We question whether it is feasible that Prime could meet this requirement given the current pandemic crisis. If the applicant knows at this time that they cannot meet this requirement, then they should withdraw their application. Please ask the applicant this question.

2. Additional front yard setback should be provided. There is no need to crowd the edge of the sidewalk with the proposed building. Green islands between the front of the building and back of the sidewalk should be made a condition of any approval, or a grounds for disapproval if the applicant refuses to comply.

3. I remind the board that a petition was presented to the board by the Plattsburgh Citizens Coalition at a previous ZBA meeting containing 1900+ signatures of people opposed to the project in its current form.

4. The zoning ordinance defines building height as "*The vertical distance from the average grade adjacent to the foundation walls to the top of the highest finished roof surface of a flat roof or to the average height of a pitched, gabled, hip or gambrel roof.*" Please observe the building height of the proposed structure. Please disregard the applicant's characterization that the proposed structure is equivalent to a 4 story building.

5. In order to mitigate the impact that the project would have on the neighborhood, if the project fails financially and becomes vacant, the building should be constructed in a way that separate, smaller sections could be sold. Rather than one massive single building, the project should match the pattern of the rest of downtown, and consist of several individual buildings, joined by party walls, and capable of being sold separately.

6. SEQR. The ZBA must conduct its own findings before acting on approval or disapproval of the application. The ZBA can make findings that requires the applicant to prepare a Supplemental Generic Environmental Impact Statement.

President, Plattsburgh Citizens Coalition

and

AES NORTHEAST

Scott B. Allen, LS

Managing Partner
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Zoning Board of Appeals Comments 4/20/2020

1 message

Plattsburgh Citizens Coalition <plattsburghcitizencoalition@gmail.com> Mon, Apr 20, 2020 at 8:44 AM
To: cityinfo@plattsburghcitygov.com, Joe <mcmahonj@cityofplattsburgh-ny.gov>, beebiel@cityofplattsburgh-ny.gov, Sylvia <parrottes@cityofplattsburgh-ny.gov>
Cc: Amanda Dagley <amanda@wnbz.com>, estigliani@freepressmedia.com, news@northcountrynow.com, newstips@mynbc5.com, rrockstroh@mychamplainvalley.com, nate@suncommunitynews.com, jlotemplio@pressrepublican.com, pbradley@wamc.org, McKenzie Delisle <mdelisle@pressrepublican.com>, Emily Russell <emily@ncpr.org>

PCC Letter to ZBA.pdf
151K

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Plattsburgh, NY 12901
518-570-9940
www.plattsburghcitizenscoalition.com
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Incorporated 2019 Under Section 402 of the Not-for-Profit Corporation Law
Plattsburgh Citizens Coalition Inc. is a community-based organization created to advance the interests of businesses, service providers, employees, residents, and visitors of downtown Plattsburgh, NY. PCC advocates and promotes smart growth that enhances and improves the quality of life for all.

January 15, 2020

Zoning Board Member Name

Address

RE: Plattsburgh Durkee Street Development

Dear Zoning Board Member:

We are very grateful for your service as a volunteer member of the City of Plattsburgh Zoning Board. As an autonomous board driven only by concern for our community, the public relies on your board to do the right thing for the community in accordance with State and local rules for Zoning Board review law separated from political influence. We thank you for your service.

Attached please find a compilation of public comments submitted by various community members, downtown property and business owners, agencies and other boards. As you know, one of the questions during SEQR review is "Is the project likely to cause public controversy?". A petition has been signed by nearly 2,000 people in the community opposed to the Prime Development project in our downtown; an impressive number of people for a project in a ward that typically turns out 400 to 600 voters for Ward Councilor.

We urge you to carefully read all these comments and we think you will be convinced that the Prime Development Project as proposed cannot possibly be approved in good conscience. As you know you will be tasked with evaluating whether the applicant(s) have satisfactorily demonstrated that the proposed project will safeguard the public health, convenience and preserve the general character of the neighborhood using the following five standards:

1.) **General character, height and use of the structure**. The proposed 5 story building is mammoth relative to the neighborhood of almost entirely 2-3-story buildings (plus two 4-story buildings). Furthermore, the residential use will appear very much like a gated community in our downtown. The GEIS does not provide adequate inventory, analysis or visual depiction to properly evaluate this concern. It is the burden of the applicant to demonstrate that the proposed project will preserve the general character of the neighborhood, which they have clearly not done. Therefore, the only conclusion that can be reached is that this monstrous building, given its size and height relative to the neighborhood, does not satisfy the SUP standard that the general character, height and use will preserve the general character of the neighborhood. Perhaps if the proposed project were scaled back to 3 stories, then a modest development could be built that is in keeping with the general character and height of the community and that is less disruptive to parking and leave more room for public space, access to the waterfront and safe bicycle and pedestrian travel.

2.) **Provision of surrounding open space and the treatment of grounds.** The intention of the DRI was to create a vibrant downtown and public space of interest that will attract visitors and residents alike. This overarching objective has been largely abandoned in favor of a massive private housing development, converting our critical public asset (i.e. our primary municipal parking lot upon which we all rely) into private corporate housing.

3.) **General fitness of the structure or use to its proposed location.** The Durkee Street Parking Lot is situated on a Public Waterfront property. New York State Public Trust Law forbids the alienation of public waterfront property. A court challenge is forthcoming which will prevent the City of Plattsburgh from violating that law and the public trust. That is an issue for the courts. However, the reason behind that law is an issue for the ZBA. The construction of a massive 6-story / approximately 72-ft tall building (the latest plan indicates a 5-story building at the Durkee Street side which grows to a 6 story building along the river) is not suited for the proposed location nor does it safeguard public health. Throughout the DRI planning process many varieties of waterfront uses were considered; all of them intended to benefit the public and the community. Instead, the proposed plan abandons all those beneficial uses and conveys the public access to a private corporation. The single walkway between the very tall 6-story building and the riverbank will create a very narrow and dangerous alley over 200-ft long. Concerned citizens who have studied this plan closely have dubbed this "danger alley". The applicant will likely tell you about proper lighting and brick pavers as if that removes the danger and makes the danger alley a desirable use of public waterfront property. It does not. Ask yourselves this question: Would you allow your son or daughter to walk down that corridor alone? We know the answer for our children. This proposal is clearly not safeguarding public health.

4.) **Provision for automobile parking or storage**. This project is particularly unique for the ZBA, perhaps unlike any some of you have ever been asked to review. Most applications allow the ZBA to simply consider the parcel itself. However, this application is quite different in that the parcel is currently occupied as a public asset. Therefore, your consideration of whether the application will safeguard the public health, convenience and preserve the general character of the neighborhood cannot be limited to the Durkee parcel. The ZBA must consider the numerous locations in which compensatory parking will be created at various locations around the city. Take for example the issue of convenience. The Durkee neighborhood is the County center for County Surrogate, State and Federal Services, Department of Social Services, Social Security Administration Office for the Aging, which serves everyone from disabled veterans, to seniors, to youth and families all of whom rely heavily on the Durkee Street Municipal parking lot. You will see from the attached comments that the applicant has not demonstrated a viable alternative parking plan; the number of compensatory parking spaces is inadequate; the developer no longer meets the City zoning code parking requirements; on street diagonal parking is deemed unsafe by the NYSDOT Regional Traffic Engineer for pedestrians, bikes and vehicles.

5.) **Street capacity and use**. You will see from the comments that the traffic study is flawed and inaccurate. The study is inconsistent with traffic volumes reported on the NYSDOT Traffic Volume viewer for the streets in question and are inconsistent with previously commissioned City traffic studies. Specifically, the traffic study under reports the most critical leg (City Hall Southbound traffic) of the most critical intersection (Bridge – City Hall / Durkee) by 300% as compared to the Lu Engineers traffic study. Deviations of 5% or 10% are not unusual, but differences of 300% are cause for conducting additional test counts. In terms of street use, the Community adopted Saranac River Trail

Phase 2 project was to have made the ultimate connection along Durkee Street, thus bringing the SRT all the way from the Plattsburgh High School, through the College campus along Steltzer and Pine Streets and ultimately connecting both the Middle School and also, with two new bridges at Saranac Street and at Durkee Street connecting the SRT to the downtown business district. The use of Durkee Street is not only dangerous for all users as pointed out by the NYSDOT Regional Traffic Engineer, it destroys the previously adopted plan for connecting the SRT to the downtown. The use of sidewalks is not an acceptable alternative for bicycles as it is against the law to ride a bike on a sidewalk.

Lastly, a comment regarding the SEQR / GEIS process. You are receiving some very bad advice and guidance from City Departments. The Community Development Department in their December 19th letter to the ZBA and PB seems to be confusing the distinction between a SEQR determination and an EIS Findings statement and conflating the role of the Common Council as lead agency and diminishing the role of the Zoning Board of appeals. Specifically, Mr. Miller writes, *"Pursuant to the SEQRA regulations, the SEQRA Findings Statement will be binding on all involved agencies."* That is incorrect.

Determination vs. Finding Statement.

The SEQR **Determination** was the positive declaration that was made by the lead agency prior to, and triggering the need for, the GEIS. That determination is indeed binding on all involved agencies.

The **Finding statement** is a written document prepared following acceptance of a final EIS. All involved agencies *must* make their own findings statement.

The finding statement made by the lead agency is most definitely NOT binding on involved agencies as Mr. Miller would have you believe. Quite the contrary. Each involved agency, not only the lead agency, *must* prepare its own SEQR findings following acceptance of a final EIS.

The following is a verbatim excerpt from page 155 of the SEQR Handbook:

> **6. Who makes SEQR findings?**
> All involved agencies must make findings.
>
> **7. May an involved agency rely on the lead agency to make the required findings?**
> No. Each involved agency is responsible for preparing its own findings. However, if an involved agency concurs with the completed findings of the lead agency, and those findings respond fully to the environmental concerns of the involved agency, then the involved agency may adopt all or a portion of the lead agency's findings within the involved agency's findings.
>
> **9. Can findings differ among involved agencies**?
> Agencies involved in the same action may have entirely different findings. This can result from agencies' differing balancing of environmental with social and economic factors, as well as from fundamental differences among agencies' underlying jurisdictions. **An involved agency is not obligated to make the same findings as the lead agency or any other involved agency**. However, findings must be based on, and related to, information in the EIS record. If one agency prepares positive findings, and another prepares negative findings, the action cannot go forward unless the conflict is resolved.

So, you can see that these and other statements written in the guidance letter from the Community Development Office are an attempt to conflate the role of the Common Council and to diminish the role of the Planning Board and Zoning Board. The community relies on autonomous Boards to make good planning decisions in the interest of the community as a whole and divorced from political influence. That is a difficult

job even *with* dependable staff support, but even more so when you are being misled by those who are supposed to provide a supporting role to assist you.

The attached compilation of comments is lengthy, and we appreciate that reading through all of them will take considerable time, however, it is incumbent on you to do so. As you do, if it feels like a lot of commentary, let that serve as a mounting understanding of the breadth and depth of the rational community opposition to the proposed project. At the end of a thorough evaluation, we hope and trust that you will see that the GEIS is flawed and incomplete and that the proposed project does not meet the standard required for approval of a Special Use Permit (SUP).

Thank you very much for your consideration.

Respectfully,

Plattsburgh Citizens Coalition

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City Info <cityinfo@plattsburghcitygov.com>

Zoning Board Comment

1 message

Libby Yokum <adklotus@gmail.com> Mon, Apr 20, 2020 at 10:12 AM
To: cityinfo@plattsburghcitygov.com

In light of the COVID-19 Pandemic our country faces the specter of unparalleled social, political and economic fallout whose impact no one can predict. Plattsburgh isn't an exception to this precarious future and yet the mayor and the city council have persisted in their efforts to pass and implement the downtown redevelopment initiative (DRI) regardless of circumstance.

In the Press Republican 4/18/2020 "Plattsburgh Mayor Read said that small cities were being bypassed by the aid to households, businesses and healthcare". Noting that, and "...after weeks of discussion and deliberation regarding our looming financial crisis" (Councilor Elizabeth Gibbs, Thursday 4/16/20, Plattsburgh City Council meeting), it is clear that the City of Plattsburgh acknowledges serious financial concerns which need to be addressed. The city government chose to restructure, furlough or lay-off 35 jobs while what is needed is to stop and look at the bigger picture of the Durkee St. Parking Lot, the DRI, and the city expenses in the midst of this crisis.

If the city government is seriously concerned about the well-being of our citizens then the mayor and the city council need to consider what revitalization might look like in a post pandemic Plattsburgh. With businesses closing, layoffs looming, renters unable to pay rents, landlords unable to pay mortgages and taxes, the push for the current DRI plans reflects hubris and carelessness on the part of city government. It is time to pause and reassess.

To vote on building heights, parking spaces, open space use, etc. at this time raises concern about the city's priorities and questions their ability to care for our citizen's welfare.

Luis F. Sierra

Elizabeth (Libby) Yokum

7 Point View Terrace

Plattsburgh NY

518 310-1678

City Info <cityinfo@plattsburghcitygov.com>

22 Durkee Street

1 message

joseph rotella <jfrotella@hotmail.com> Mon, Apr 20, 2020 at 10:24 AM
To: "cityinfo@plattsburghcitygov.com" <cityinfo@plattsburghcitygov.com>

TO: Zoning and Planning Boards

By allowing ground floor apartments in the central business district you are opening up for other variances from landlords. If you disapproved other landlords it could be a potential article 78!
This project has changed so much since its conception by the mayor.
As I read the city attorney will also represent the developer? If this is the case its the appearance of a conflict and who is paying him if he does represent both?
Under the circumstances of the pandemic it should be tabled to give the public full input in person to do it right. Besides construction is almost at a stand still.
You are doing an injustice to the public.

J.F. Rotella

Sent from my iPad

Gmail by Google

City Info <cityinfo@plattsburghcitygov.com>

Zoning Board Comment

1 message

Deborah Yokum <debyokum@gmail.com> Sun, Apr 19, 2020 at 10:26 AM
To: cityinfo@plattsburghcitygov.com

To The Zoning Board of Appeals:

We are writing to express our concerns about the proposed Prime Plattsburgh, LLC project in the Durkee Street Parking lot in downtown Plattsburgh. It seems to us that, based on the five criteria that are in the purview of the ZBA, the Prime Project fails on all accounts.

Specifically:

1. The project is out of character with the surrounding historic buildings. It overpowers the scale of the buildings around it. In addition, the target demographic of the proposed building is unrealistic, especially considering what we all foresee as the new economic reality caused by the COVID-19 pandemic. What we need is more affordable housing, not up-scale apartments for a market that never really did, but definitely now does not exist.

2. By building such a tall structure so close to the river and not allowing sufficient space as a buffer, the project functionally interferes with the purpose of the Riverwalk as a community asset.

3. As above, the project provides housing for a demographic that has not been proven to exist. In addition, it precludes the use of the Durkee Street location as the primary parking lot for downtown businesses, agencies and other services. At the same time, newly created parking will not make up for what is lost in that lot.

4. As to the proposed parking provided by Prime Plattsburgh for their tenants, their use of their own metric is not sufficient. In addition, the spaces they say are reserved for public use are not guaranteed for that purpose and could well end up being used for tenant parking.

5. The reconfiguration of Durkee Street is problematic for a number of reasons. Diagonal parking and the switch to one-way traffic will create dangerous and chaotic conditions. Commercial deliveries, which are numerous for Margaret Street businesses, will further block traffic. It would be impossible for emergency vehicles to gain access to the many additional residences created by the project. Plowing in winter and the storage of snow, which currently is piled in the Durkee Street lot is also a concern.

In summary, it seems imprudent to embark on a project of this size at a time when our economy is especially fragile. We can assume that our community is going to take a big hit economically from the COVID 19 pandemic. It would be irresponsible to proceed with a project that runs the risk of turning a public asset into a financial liability for the city and the taxpayers.

Deborah Yokum

Hal Moore

Saranac, NY

Zoning Board of Appeals April 20th meeting.docx
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City Info <cityinfo@plattsburghcitygov.com>

Durkee st project(to be read at this evening's zoning board meeting)

1 message

John Seiden <johnnys4466@gmail.com> Mon, Apr 20, 2020 at 11:35 AM
To: cityinfo@plattsburghcitygov.com, ron.nolland@gmail.com

To all zoning board members ,
First of all as the project has been presented today I am vehemently oppose this development does not fit into the historical nature nor does it visually fit into our existing downtown. Current project has morphed into a behemoth which has deviated substantially from the first presentation in the ultimate goal of the DRI money to infuse the vibrancy and energy to create a new downtown. I use to be on the zoning board for 20 years and have re-developed over 20 properties in the city. When I was on the zoning board the importance of keeping the visual integrity of the downtown was always Paramont. The importance of the streetscape keeping the first floor for commercial retail should always be number one priority to add to the vibrancy of any downtown any notion of creating housing is misguided and I would highly recommend to the zoning board not to allow this short sighted development scheme. We are not here to Enrich any developer. The city zoning and planning boards both have a responsibility of not deviating from our norms I would also recommend not to allow the height to be any higher than what our existing four-story allow. In any redevelopment plan should enhance not take away what we already have this new project completely fails in creating a more livable community and utilizing the surrounding grounds and add any benefit to the city recreational aspects along the river is a complete failure and a lack of imagination . they have maximized The footprint to generate the most income. city zoning boards and planning boards again are not vessels to make developers more enriched it is extremely important to minimize the over development of the template of land to create a more copacetic relationship with the downtown and at citizens. The importance of the physical location being in the center city of our community will be the renaissance, it help generate A vision of what can be if done correctly. Unfortunately as presented this project fails on so many levels. City is rolling the dice that this project will be such If history has taught anything to us these large pie in the sky ventures rarely work out. The most conflicting in most disheartening analysis has been done with the ongoing shell game of the parking scenario today I don't believe that anyone has any true numbers of what's going to happen when this development starts construction and or its completion. The lack of parking for the downtown has always been an issue as far back as I can recall this project is going to make the problem 100 times worse it is extremely important more than any other issue to have this resolved. I believe most all residents of the city of Plattsburgh The last thing we all want is to have an Albatraoz around our neck like the Crete Civic Center or The million dollar parking lot for the hotel that was never built and years of litigation or The housing project that was built at the old Saint Johns school owed the city $9 million by the way was never paid. You are the zoning board have a very important job this evening now with the new pandemic that has made the finances in the city of Plattsburgh even more in a dire situation you are in a very unique position certainly hold this development to the highest level. if this development is to move forward it is extremely important to put timelines on any approval that may be given To ensure start dates and finish dates.in this unsure climate and the uncertainty of any type of bank finance I believe it is extremely important to make any approvals to this development condition subject to proof of bank financing to prove to the Citizens that they can actually do what they say. You just have to look across the lake in Burlington Vermont with their big development in there downtown that has not taken place years after the pie in the sky was presented now there downtown is looking at a big hole in the ground. In closing I would like each of you members to put great thought into the new normal after this pandemic we do not have the luxury of our old reality we must all think differently there's going to be many businesses in our downtown that will not survive you have to make a very important decision I wish you all the best and be safe.
Your friend and neighbor,
John S. Seiden
Sent from my iPad

Gmail by Google

City Info <cityinfo@plattsburghcitygov.com>

Zoning Board and Planning Board

1 message

Frank Zappala <fgzappala@hotmail.com> Mon, Apr 20, 2020 at 11:40 AM
To: "cityinfo@plattsburghcitygov.com" <cityinfo@plattsburghcitygov.com>

Please distribute the attached to each of the Board Memebers

Law Office of Frank G. Zappala
142 Margaret Street
P.O. Box 2886
Plattsburgh, NY 12901
(P) 518-566-7211
(F) 518-566-7214

Conflict of Interest .pdf
1418K

Frank G. Zappala

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To: The Plattsburgh City Planning Board
The Plattsburgh Zoning and Appeals Board

From: Frank Zappala, Esq.

Re: Dean Schneller, Esq. Conflict of Interest

Dated: April 20, 2020

I am a taxpayer in the City of Plattsburg, New York and want to alert you to the conflict of interest concerning Dean Schneller, Esq. the attorney who represents the Mayor Colin Read and the City Council of Plattsburgh. The City of Plattsburgh presently has a SEQR application pending before the Planning Board and the Zoning Board. As a taxpayer I am greatly concerned of the multiple parties he is representing.

The Planning Board and the Zoning Board are independent of the City Council and the Mayor.

New York State General City Law authorizes municipalities within the State of New York to have a Planning Board and a Zoning Board of Appeals. Each of these Boards has the authority to hire their own legal counsel to assist in reviewing applications before them. In fact, the City Charter under section 360-61 allows each Board to hire their own attorney.

Mr. Schneller is in violation of The New York State Rules of Professional Responsibly as follows:

DR 5-105 (a) and (b) (22 NYCRR 1200.24 [a], [b]) — failing to decline proffered employment and continuing multiple employment if the exercise of independent professional judgment on behalf of a client will be or is likely to be adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests, and a disinterested lawyer would not believe that he could competently represent the interest of each client and each client did not consent to the representation after full disclosure of the implications of the simultaneous representation and the advantages and risks involved; and

DR 5-105 (c) (22 NYCRR 1200.24 [c]) — representing multiple clients with differing interests without disclosing the implications of the simultaneous representation and without obtaining the consent of the clients to the representation.

The Planning Board and the Zoning Board are required by law to approve, disapprove or require modification to the City Council's application. As stated, Mr. Schneller's client is the City Council, so how can he represent the Boards when they have different interests then his client. This is a clear conflict of interest.

His loyalty is to his client, the applicant, the City Council. He cannot represent the applicant before the independent Boards.

Recently, a New York State Court stated in a decision the following:

DR 5-105 (A) and (B) (22 NYCRR § 1200.24) of the Code of Professional Responsibility provides:

A lawyer shall decline proffered employment if the exercise of independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve the lawyer in representing differing interests.... A lawyer shall not continue multiple employment if the exercise of independent professional judgment on behalf of a client will be or is likely to be adversely affected by the lawyer's representation of another client, or if it would be likely to involve the lawyer in representing differing interests....

Given the conflicts inherent in simultaneous representation, a prima facie rule of disqualification applies where there is an existing attorney-client relationship on behalf of a client whose interests are adverse to the interests of another current client (Cinema 5, Ltd. v Cinerama, Inc., 528 F2d 1384 [2d Cir 1976]). Under this standard, where the attorney-client relationship is a continuing one, adverse representation is prima facie improper, (Matter of Kelly, 23 NY2d 368, 376 [1968]), and the attorney must be prepared to meet the very high standard that there will be no actual or apparent conflict in loyalties or diminution in the vigor of representation (Cinema 5, Ltd. v Cinerama, Inc., 528 F2d 1384 [2d Cir. 1976]; Thaler v Jacoby & Meyers Law Offices, 294 AD2d 230, 742 NYS2d 241 [2002]). The prima facie rule of disqualification applies, even though the simultaneous representation occurred unknowingly and inadvertently (see, e.g., Cinema 5, Ltd. v Cinerama, supra).

An attorney must avoid not only representing clients who have actual conflicts but also must avoid representing client whose interests appear conflicting (Cardinale v. Golinello, supra; see also, Kassis v. Teacher's Ins. & Annuity Assn., 93 N.Y.2d 611 [1999]). And, an attorney must avoid not only the fact but even the mere appearance of impropriety (Tekni-Plex, Inc. v Mayner & Landis, 89NY2d 123,130-131 [1996]). Where there is a conflict of representation, doubts as to the existence of a conflict of interest are to be resolved in favor of the disqualification (Lammers v Lammers, 205 AD2d 432,

Mr. Schneller has a conflict of interest and the Boards need to retain outside counsel. Preferably from outside Clinton County. At the very least, the proceedings should be adjourned to obtain a legal opinion from an ethics attorney from outside Clinton County.

City Info <cityinfo@plattsburghcitygov.com>

Zoning Board Comment 04/20/2020

1 message

Courtney Shipman <clcshipman@gmail.com> Mon, Apr 20, 2020 at 11:43 AM
To: cityinfo@plattsburghcitygov.com

To the members of the Zoning Board,

I am a resident of the City of Plattsburgh, and urge you to consider not approving the proposed development for the Prime LLC building at the Durkee Street Parking lot because the proposed development does not abide by the special use permits guidelines #2 and #5.

Thank you,
Courtney Meisenheimer

4-20-2020

To the Zoning Board of appeals:

I have reviewed the packed that was submitted regarding 22 Durkee Street and I have some issues to discuss about the proposed plan.

1. The Board is being asked to grant 1st floor Apartments in a "C" district where residential use is not permitted. If the request is granted it will set a precedent where other property owners would also be allowed to do the same. They would be justified because when they lose their commercial tenants for lack of parking they will need some way to pay their taxes. First floor residential tenancies will ultimately provide poor impressions of the Downtown area.

2. I also object to the proposed building height that will exceed and dwarf the current buildings in the surrounding area. Many of the existing buildings have scenic views to the east and if approval is granted all that will remain is a dark alley, a dark alley where snow and ice won't melt until June without the current sunlight that is there now.

I have owned property in Downtown and the Special Assessment District since the 1970's and have seen many half-baked ideas through the years. This is another one that will have many negative and not easily rectified consequences.

Thank you for your attention to this matter.

Sincerely,

David Merkel

Gmail by Google

City Info <cityinfo@plattsburghcitygov.com>

Letter to Zoning Board of Appeals - DRI Durkee Street Development.

2 messages

Plattsburgh Citizens Coalition <plattsburghcitizencoalition@gmail.com> Sun, Apr 19, 2020 at 11:58 PM
To: cityinfo@plattsburghcitygov.com, "McMahon, Joe" <mcmahonj@cityofplattsburgh-ny.gov>, beebiel@cityofplattsburgh-ny.gov, "Parrotte, Sylvia" <parrottes@cityofplattsburgh-ny.gov>, ron.nolland@gmail.com
Cc: WIRY Radio <wiry@wiry.com>, Amanda Dagley <amanda@wnbz.com>, estigliani@freepressmedia.com, news@northcountrynow.com, newstips@wptz.com, rrockstroh@mychamplainvalley.com, pbradley@wamc.org, nate@suncommunitynews.com, jlotemplio@pressrepublican.com, McKenzie Delisle <mdelisle@pressrepublican.com>, Emily Russell <emily@ncpr.org>

PCC Letter to ZBA April 2020 - Building Height 02.pdf
1273K

Plattsburgh Citizens Coalition <plattsburghcitizencoalition@gmail.com> Mon, Apr 20, 2020 at 12:11 AM
To: cityinfo@plattsburghcitygov.com, "McMahon, Joe" <mcmahonj@cityofplattsburgh-ny.gov>, beebiel@cityofplattsburgh-ny.gov, "Parrotte, Sylvia" <parrottes@cityofplattsburgh-ny.gov>, ron.nolland@gmail.com
Cc: WIRY Radio <wiry@wiry.com>, Amanda Dagley <amanda@wnbz.com>, estigliani@freepressmedia.com, news@northcountrynow.com, newstips@wptz.com, rrockstroh@mychamplainvalley.com, pbradley@wamc.org, nate@suncommunitynews.com, jlotemplio@pressrepublican.com, McKenzie Delisle <mdelisle@pressrepublican.com>, Emily Russell <emily@ncpr.org>, Syl Beaudreau <beaudrsm@gmail.com>, Blucollarbistro <Blucollarbistro@gmail.com>, Scott Allen <scottallen@aesnortheast.com>, "Penny Gaudreau (pennyalinehouse@gmail.com)" <pennyalinehouse@gmail.com>, Terry Broderick <terrycb12901@yahoo.com>, Ed Darrah <eddarrah@charter.net>, "Frank Zappala (fgzappala@hotmail.com)" <fgzappala@hotmail.com>, Kevin Farrington <kevinfarrington@aesnortheast.com>, "bobcatgb1@aol.com" <bobcatgb1@aol.com>, "Danielle Erb (danirae11683@gmail.com)" <danirae11683@gmail.com>, Hometowncable@yahoo.com, "Jermiah Ward (jeremiah.ward@gmail.com)" <jeremiah.ward@gmail.com>, Christina Nori <mnori0810@gmail.com>, "Jon Schneiderman (jons202@charter.net)" <jons202@charter.net>, "timothy palkovic@plattsburgh. edu" <timothy.palkovic@plattsburgh.edu>

On Sun, Apr 19, 2020 at 11:58 PM Plattsburgh Citizens Coalition <plattsburghcitizencoalition@gmail.com> wrote:

PCC_ZBA Ltr 482020.1.pdf
82K

10 City Hall Place
Plattsburgh, NY 12901
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Incorporated 2019 Under Section 402 of the Not-for-Profit Corporation Law
Plattsburgh Citizens Coalition Inc. is a community-based organization created to advance the interests of businesses, service providers, employees, residents, and visitors of downtown Plattsburgh, NY. PCC advocates and promotes smart growth that enhances and improves the quality of life for all.

April 18, 2020

City of Plattsburgh Zoning Board

RE: Durkee Street Development – GENERAL CHARACTER, HEIGHT AND MASSING OF THE STRUCTURE.

Dear Zoning Board Member:

The Prime Development Project as proposed does not meet the criteria required for Zoning Board approval and, therefore, cannot possibly be approved in good conscience. We are prepared to demonstrate why.

As you know, in order to be approved the application must clearly demonstrate that the proposed project will safeguard the public health, convenience and preserve the general character of the neighborhood using five standards the first of which is **General character, height and massing of the structure**. This letter will demonstrate that the proposed 5 story building is massive in size and height in relation to the surrounding buildings made up almost entirely of 2-3-story buildings (plus two 4-story buildings) and falls short of the criteria for approval.

An Incomplete Application.

We respectfully submit that the application is incomplete as it does not include simple scaled elevation drawings clearly showing the comparative difference between existing buildings on both Durkee Street and Bridge Street relative to the proposed building. These types of elevation drawings are a standard requirement of ANY site plan application or PUD. Arguably the application should not be considered complete and, therefore, should not have been placed on the agenda without it. But an incomplete application has been placed on the agenda repeatedly over the past months. After being insisted upon by the ZBA at a recent meeting, the applicant finally included a single elevation drawing, however, this drawing is incomplete and flawed.

A series of Deceptive Drawings.

The first and only attempt at an elevation drawing has now been provided for the first time with the most recent application. However, the drawing provided is an extremely deceptive illustration (more on that later). It is curious why co-applicants Prime and the City Community Development office / Planning Department have been so evasive in providing relative elevation drawings that are standard for any development application? Until now, there has literally been no information provided in DGEIS nor in the application to the ZBA that could be considered sufficient for the Zoning Board and others to conduct a thorough objective evaluation on the question of general character and height of the proposed structure

relative to existing buildings. Only now are we finally provided with just one single, but very deceptive, elevation drawing provided for Durkee Street and still none provided for Bridge Street. Let's take a look at the single drawing provided.

Comparative Elevation Drawing submitted by Prime Companies

A few things to note:

1. There is no scale on the drawings. The reader really can't tell the height of anything or have any way of evaluating the accuracy of the figure.

2. The proposed building is depicted in the <u>background</u> rather than the <u>foreground</u>, which creates the illusion of making the buildings in the foreground appear larger and the building in the background appear smaller.

3. The image includes buildings on Margaret Street, which is a full story higher than Durkee Street and really not relevant to the question of compatibility with the Durkee and Bridge Street corridor. Comparing to the buildings on Margaret Street is not only irrelevant to the project, it is a deliberate attempt to deceive the Zoning Board.

4. The image ostentatiously includes the First Presbyterian Church Bell Tower located several city blocks away and at a much higher elevation. Clearly this is placed in the illustration to create the impression that the proposed building is not the tallest building along the Durkee Street corridor. This type of deceptive illustration should be not only rejected but also admonished.

5. Notice how the camera angle is shot from ground level looking up rather than a pure 2-diminsional silhouette comparison. Thus the roof lines of the buildings in the foreground diminish the view of the larger building in the background.

6. The figure doesn't show the first-floor level. The existing buildings are narrow row house style architecture with descending first floor elevations that descend with the grade going down the hill along Durkee Street. The First floor at the lower end of the street is a full story below that of the building at the top of the hill. The Prime building comparatively is a 300-ft long monolith in which the first-floor elevation remains constant along the entire city block.

7. No view is provided for Bridge Street corridor.

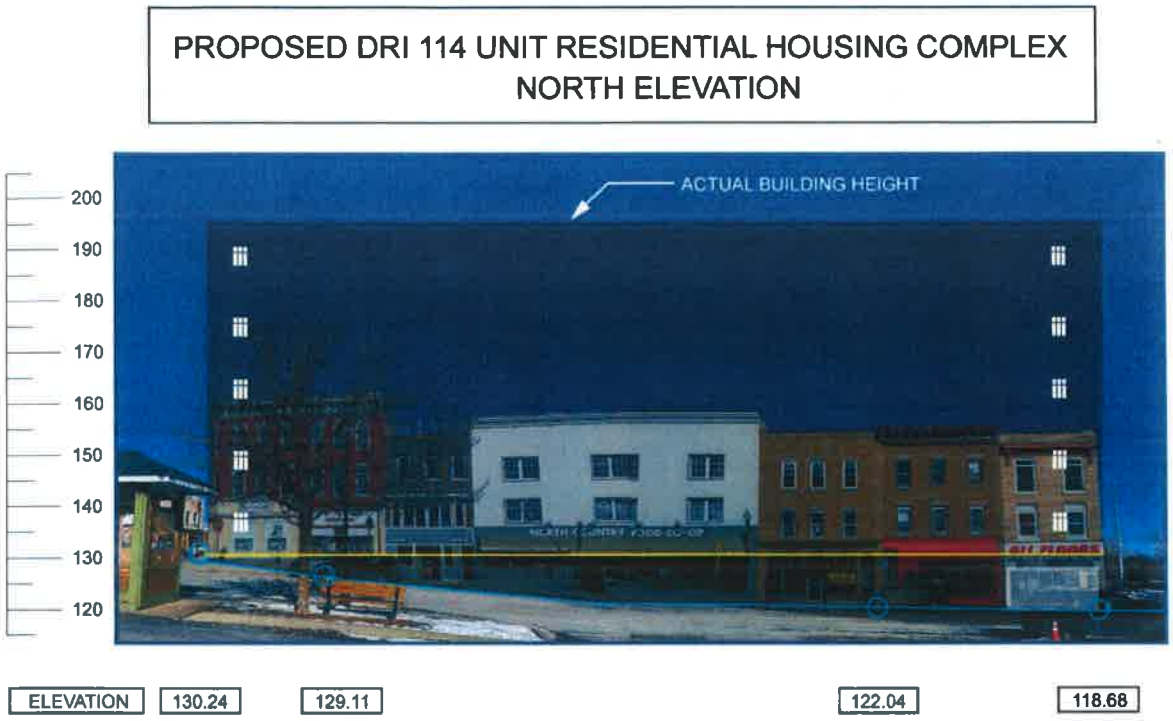
Typically, in nearly all development projects, especially one of this scale, simple drawings showing comparative views are provided. However, in this project both co-applicants have withheld such standard fare. Moreover, this information, including an inventory of existing building heights, was specifically asked for in the DGEIS during the public comment phase. The City and their co-applicant have suspiciously refused to provide them. Because of the fact these standard evaluation drawings are imperative for an objective evaluation of an SUP application by the Zoning Board and because they have never been provided by the City and their co-applicant, the Plattsburgh Citizens Coalition took it upon ourselves to prepare accurate scaled drawings.

But first, please allow me a brief clarification. The Plattsburgh Citizens Coalition's (PCC) sole purpose is to advance the interests of businesses, service providers, employees, residents, and visitors of the downtown area of Plattsburgh, NY. PCC advocates and promotes smart growth that enhances and improves the quality of life for all.

The PCC is committed to fair honest and factually correct presentation of information in advancement of our sole purpose. In the event that PCC becomes aware of having presented any information that does not meet our standard for fair, honest and factually correct then we pledge to promptly make any redactions or corrections. Such is the case in the elevation drawings that were initially introduced at a recent Zoning Board meeting. While we earnestly put forth a good faith effort to create an accurate scaled comparative elevation drawing, it came to our attention that the scale was incorrect. Immediately upon discovering this we made the necessary correction and promptly provided the corrected version to the Zoning Board. We believe the illustrations provided and contained herein to be true and accurate to the best of our knowledge and belief.

The following are two scaled 2-dimensional elevation drawings that are based on the proposed building height information contained in the application provided by Prime Corp. These two illustrations are meant to provide a simple comparison between the existing buildings on Bridge Street and Durkee Street to assist in the objective evaluation of whether the height of the proposed building will safeguard the general character of the neighborhood. We think you will find that it is plain to see that the massive size and height of the proposed building is NOT compatible with the surrounding neighborhood.

Comparative Building height along Bridge Street.



Disclaimer:
1. The information contained in this graphic is general in nature and should not be considered to be exact in scope, scale, or detail
2. Drawing is not to scale.
3. The proposal building length, width, and height are based on information provided in the Site Plan application Drawing Titled *LLC Durkee Street Mixed Use Conceptual Site Plan* by McFarland Johnson dated November 2019.

Comparative Building Elevations – Bridge Street

Please not the following:

1. The first is obvious: a simple straight forward scaled comparison of the proposed building (65-ft high according to the application) as it compares to the existing buildings. Clearly the proposed building towers by comparison to existing buildings.

2. Notice the slope of the road. On bridge street the grade changes almost 14-ft over the length of the block. But also notice the narrowness of each building all built with a rowhouse architecture with each building typically 20- to 30-ft wide. So as you go down the hill the ground floor door threshold drops lower and lower so that by the time you get to the bottom of the hill the ground floor is over a story lower than those at the top of the hill.

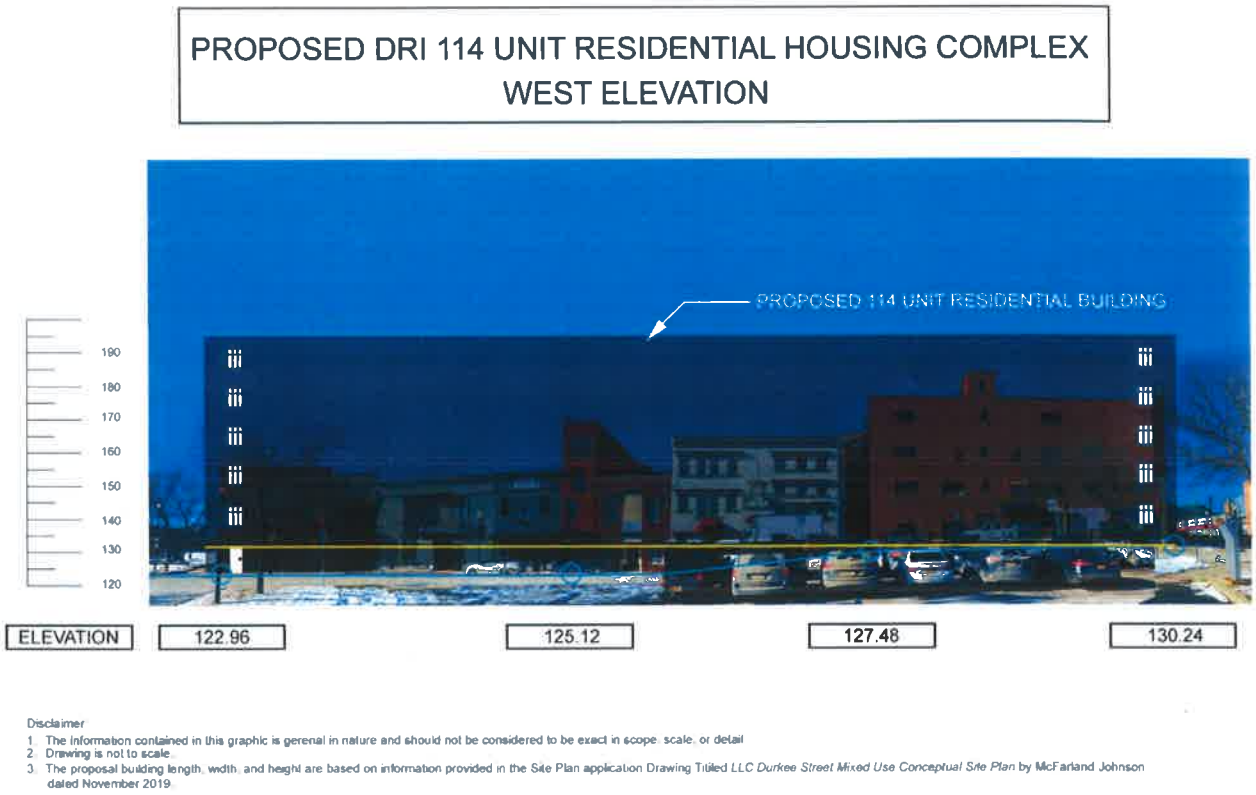
3. Now compare that existing rowhouse style architecture descending along the rolling hill to the proposed building where the first floor keeps the same level over its 200-ft length. Notice the yellow line that indicates first floor elevation of the proposed building. So at the top of the hill the proposed building is a good 35-ft taller than the existing building across the street, but at the bottom of the hill the existing building are getting lower, while the massive Prime building has the same floor elevation over the entire 300-ft by 200-ft monstrosity.

4. Notice the sun in this photograph shining on the south facing store fronts and in the apartment windows. The applicant did not provide a solar access analysis (as required by City Code for Site

Plan reviews) however, it is easy to see that the solar access to these store fronts will be almost entirely eclipsed by the proposed building.

5. This simple 2D elevation drawing makes it overwhelmingly clear that this proposed building absolutely does NOT meet the criteria of general character and height which will preserve the general character of the neighborhood.

Comparative Building Height along Durkee Street.



Disclaimer
1. The information contained in this graphic is general in nature and should not be considered to be exact in scope, scale, or detail
2. Drawing is not to scale.
3. The proposal building length, width, and height are based on information provided in the Site Plan application Drawing Titled *LLC Durkee Street Mixed Use Conceptual Site Plan* by McFarland Johnson dated November 2019.

Comparative Building Elevations – Durkee Street

Please not the following:

1. The first is the obvious: a simple straight forward scaled comparison of the proposed building (65-ft high according to the application) as it compares to the existing buildings. Clearly the proposed building towers by comparison to existing.

2. Notice the slope of the road. On Durkee Street the grade changes about 10-ft over the length of the block. But also notice the narrowness of each building all built with a rowhouse architecture while the Prime building would be 300-ft long. So as you go down the hill the ground floor door thresholds drop lower and lower so that by the time you get to the bottom of the hill the ground floor is about one whole story lower than the ground floor of the buildings at the top of the hill.

3. Now compare the rowhouse style architecture along the rolling hill to the proposed building. Notice the yellow line that indicates first floor elevation of the proposed building. The first floor

of the proposed building will be nearly a full story higher than the buildings at the bottom of the hill. The non-row house architectural style is incompatible with the neighborhood and the downtown and adds significantly to the incompatibility of the proposed building.

4. Notice the sun in this photograph shining on the east facing store fronts and in the apartment windows. The applicant did not provide a solar access analysis (as required by City Code for Site Plan reviews) however, it is easy to see that the solar access to these store fronts will be almost entirely eclipsed by the proposed building.

5. This simple 2D elevation drawing makes it overwhelmingly clear that this proposed building absolutely does NOT meet the criteria of general character and height which will preserve the general character of the neighborhood and therefore, the Special Use Permit cannot be approved.

Findings Statement.

Lastly, a comment regarding the SEQR / GEIS process. The Common Council made a Findings Statement in which they concluded the proposed building height is compatible with the surrounding neighborhood. However, they are not well versed in evaluating this criteria the way that you as a Zoning Board are. The Zoning Board not only has the authority to prepare your own Findings Statement, you are *required* to prepare your own Findings Statement. That is another example of where you are receiving some very bad advice and guidance from City Departments. The Community Development Department in their December 19th letter to the ZBA and PB is confusing the SEQR determination and an GEIS Findings statement and conflating the role of the Common Council as lead agency and diminishing the role of the Zoning Board of Appeals. Specifically, Mr. Miller, representing the City as co-applicant writes, *"Pursuant to the SEQRA regulations, the SEQRA Findings Statement will be binding on all involved agencies."* That is false. If the Zoning Board had its own unbiased Board Attorney rather than the co-applicant's attorney Mr. Schneller, he or she surely should have advised you of the falsity of that direction form the co-applicant.

What Does the SEQR Handbook Say. [The following is taken from the SEQR Handbook]

What is a GEIS Findings Statement.

A **Finding statement** is a written document prepared following acceptance of a final EIS. **All involved agencies *must* make their own findings statement**.

The finding statement made by the lead agency is most definitely NOT binding on involved agencies as Mr. Miller and Mr. Schneller would have you believe. Quite the contrary. **Each involved agency, not only the lead agency, *must* prepare its own SEQR findings following acceptance of a final EIS.**

The following is a verbatim excerpt from page 155 of the SEQR Handbook:

6. Who makes SEQR findings?
All involved agencies *must* make findings.

7. May an involved agency rely on the lead agency to make the required findings?
No. Each involved agency is responsible for preparing its own findings. However, if an involved agency concurs with the completed findings of the lead agency, and those findings

respond fully to the environmental concerns of the involved agency, then the involved agency may adopt all or a portion of the lead agency's findings within the involved agency's findings.

Therefore, if the Zoning Board feels that any review criteria, such as the building height, will have an adverse impact on the neighborhood, then it is incumbent on you to not only disapprove the SUP application, but also to reflect that in your Findings Statement.

Conclusion.

In conclusion, it is clear to see through objective comparative evaluation that the proposed building is not compatible with the surrounding neighborhood. The GEIS and the SUP do NOT not provide adequate inventory, analysis or visual depiction to properly evaluate this concern either and therefore, must be disapproved on this criteria as well as others criteria. It is the burden of the applicant to demonstrate that the proposed project will preserve the general character of the neighborhood, which they have clearly not done. **Therefore, the only conclusion that can be reached is that this monstrous building, given its size and height relative to the neighborhood, does not satisfy the SUP standard that the general character, height and use will preserve the general character of the neighborhood.** Perhaps if the proposed project were scaled back to 3 stories, then a modest development could be built that is in keeping with the general character and height of the community and that is less disruptive to parking and leave more room for public space, access to the waterfront and safe bicycle and pedestrian travel. But the current application simply does not meet the criteria for SUP approval and must be denied.

Respectfully,

Kevin R. Farrington

Kevin R. Farrington, P.E., Vice President
The Plattsburgh Citizens Coalition

MEYER, FULLER & STOCKWELL
PLLC ATTORNEYS AT LAW

LAKE GEORGE
TITLE AGENCY

April 20, 2020

City of Plattsburgh Zoning Board of Appeals
c/o Ron Nolland, Chairman
City of Plattsburgh Planning Board
c/o Jim Abdallah, Chairman
City Hall
41 City Hall Place
Plattsburgh, New York 12901

Re: Prime Plattsburgh, LLC Special Use Permit Application

Dear Mr. Nolland, Mr. Abdallah, ZBA and Planning Board members:

I understand that the ZBA tabled the above application for Prime Plattsburgh, LLC/City of Plattsburgh. I thank the board for its actions in this regard.

Further to our stance in our April 3, 2020 letter to the Planning Board and ZBA, I note that Governor Cuomo issued Executive Order 202.14 yesterday, April 7, 2020. A copy of that executive order is provided with this letter. As we noted in our April 3, 2020 letter, it was, and remains, our opinion that Governor Cuomo's earlier Executive Orders, including Executive Order 202.13, required the cancellation of all but essential municipal meetings. You may recall that the City's Building Inspector Office and Community Development Office released a "Response to Comments on Special Board Meetings" dated April 3, 2020 which called into question in the first bullet of that memo, our stance relative to ZBA and Planning Board meetings. Governor Cuomo's Executive Order 202.14 should erase all doubt about the correctness of our opinion here: "*By virtue of Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, and 202.13 which closed or otherwise restricted public or private businesses or places of public accommodation, and which required* ***postponement or cancellation of all non-essential gatherings of individuals of any size for any reason*** *(e.g.*

parties, celebrations, games, ***meetings*** *or other social events), all such Executive Orders shall be continued, provided that the expiration dates of such Executive Orders shall be aligned, such that all in-person business restrictions and workplace restrictions will be effective until 11:59 p.m. on April 29, 2020, unless later extended by a future Executive Order*." Emphasis added.

We did not state our opinion relative to planning board and ZBA meetings in an attempt to delay the Prime Plattsburgh, LLC application. To the contrary, we believed quite firmly that all non-essential municipal meetings were cancelled under Governor Cuomo's "Pause New York" Executive Orders. In any event, Executive Order 202.14 lays this discussion to rest and it is clear that only essential meetings can take place. We offer, once again, that with all due respect to the pending Prime Plattsburgh, LLC, or what should be the Prime Plattsburgh, LLC application that is currently being brought by the City, is not an essential application. Anecdotally, we also note that DEC has cancelled all public hearings. See email from April 7, 2020 attached.

Lastly, we also question again the ethics behind the Community Development Office, which is bringing this Prime Plattsburgh, LLC applications before the Planning Board and ZBA, yet also offering guidance on whether or not these meetings should even take place. It should come to no surprise that the City, as an applicant, would try to convince the ZBA and Planning Board that the City's own application is "essential". This is precisely why you need your own advice. This is an undeniable conflict of interest and the Planning Board and ZBA should be and remain above this sort of conflict, particularly with a controversial project that, again, is being brought forward by the City on behalf of a private, for profit limited liability company.

Thank you.

Sincerely,

Matthew F. Fuller, Esq.
mfuller@meyerfuller.com

cc: Plattsburgh Citizens Coalition, Inc.

Beebie, Lisa

From: City Info <cityinfo@plattsburghcitygov.com>
Sent: Monday, April 20, 2020 1:37 PM
To: Beebie, Lisa; McMahon, Joe
Subject: Fwd: Comments for Tonight's Zoning Board Meeting- Please forward!!!

---------- Forwarded message ---------
From: **Kathy L. Baumgarten** <foofusdotcom@aol.com>
Date: Mon, Apr 20, 2020 at 1:23 PM
Subject: Comments for Tonight's Zoning Board Meeting- Please forward!!!
To: <cityinfo@plattsburghcitygov.com>

I am writing in advance of the zoning meeting this evening.

Especially during this pandemic, it seems like all Downtown Revitalization Initiative monies should go toward helping currently existing downtown businesses, but I understand that you may have limitations on what you can do. If it is at all possible, please table this entire project for a time more advantageous for the economic good of the city. You do not need concern yourselves for how this will economically affect the companies behind Prime, as they are out of town and not in your jurisdiction.

As I have said at previous meetings, my objections to the Prime development are as follows:

- It will affect county tourism by limiting parking (the best and cheapest support we have to offer!), especially for our biggest regional events- the Battle of Plattsburgh, Fourth of July and Mayor's Cup. If the Mayor intends to relocate these events, he would have said so to relieve the criticism, so we can rightly assume he intends to discontinue city support of them.

- Pull-in parking is the most popular of handicapped accessible parking; no amount of parallel parking the city has suggested can replace it. Speaking of parking, at NO TIME has City Hall broached the topic of where snow emergency parking will be relocated to once the Durkee lot is removed. The City of Burlington allows free parking in its three parking ramps to facilitate clearing its streets. Plattsburgh seeks to end it, demonstrating utter contempt for apartment dwellers and their landlords in downtown Plattsburgh.

- I spoke with an official at Community Bank on Margaret St. At no time has the city invited any conversation about the business aspect of the bank parking lot and the Pavone lot being constructed next door. They told me that their parking is only for their customers, so customers often park at Durkee so they can walk to other shops after the bank, and that during snow, folks park in there all night. Which would be okay except that their own plow can't get in in the morning, nor can their own employees. This speaks to a greater meed for snow parking than is acknowledged. This is not some little detail the city can figure out later. Like all good emergency planning, it needs to be done well in advance. Frankly, if they break ground in summer, it will be utter mayhem during peak weather and no one will know what to do come snow. People in our area can be economically devastated by one tow ticket.

- The edifice will block from view the Saranac River and prevent for all future generations any enjoyment of this *priceless natural wonder.* THAT is the nature and character of our downtown! Additionally, the edifice will be built within inches of the very bridge where the Battle of Plattsburgh was fought . That the bridge and its surroundings are not currently considered to be valued as they deserve in this context is irrelevant. But, IMO

Beebie, Lisa

From: City Info <cityinfo@plattsburghcitygov.com>
Sent: Monday, April 20, 2020 2:14 PM
To: McMahon, Joe
Cc: Beebie, Lisa
Subject: Fwd:

---------- Forwarded message ---------
From: **TENZIN DORJEE** <tenzinformayor@gmail.com>
Date: Mon, Apr 20, 2020 at 1:46 PM
Subject:
To: <cityinfo@plattsburghcitygov.com>

To: The Plattsburgh City Planning Board
The Plattsburgh Zoning and Appeals Board

From: A Concerned Plattsburgh Citizen

Re: Dean Schneller, Esq. Conflict of Interest

I am a taxpayer in the City of Plattsburg, New York and want to alert you to the conduct of the Dean Schneller, Esq. the attorney who represents the Mayor Colin Read and the City Council of Plattsburgh. The City of Plattsburgh presently has a SEQR application pending before the Planning Board and the Zoning Board. As a taxpayer I am greatly concerned of the multiple parties he is representing.

The Planning Board and the Zoning Board are independent of the City Council and the Mayor.

New York State General City Law authorizes municipalities within the State of New York to have a Planning Board and a Zoning Board of Appeals. Each of these Boards has the authority to hire their own legal counsel to assist in reviewing application before them. In fact, the City Charter under section 360-61 allows each Board to hire their own attorney.

Mr. Schneller is in violation of the sections listed below of The New York State Rules of Professional Responsibly

DR 5-105 (a) and (b) (22 NYCRR 1200.24 [a], [b]) — failing to decline proffered employment and continuing multiple employment if the exercise of independent professional judgment on behalf of a client will be or is likely to be adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests, and a disinterested lawyer would not believe that he could competently represent the interest of each client and each client did not consent to the representation after full disclosure of the implications of the simultaneous representation and the advantages and risks involved; and

DR 5-105 (c) (22 NYCRR 1200.24 [c]) — representing multiple clients with differing interests without disclosing the implications of the simultaneous representation and without obtaining the consent of the clients to the representation.

The Planning Board and the Zoning Board are required by law to approve, disapprove or require modification to the City Council's application. As stated, Mr. Schneller client is the City Council, so how can he represent the Boards when they have different interests then his client. This is a clear conflict of interest.

His loyalty is to his client, the applicant, the City Council. He cannot represent the applicant before the independent Boards.

Recently, a New York State Court stated in a decision the following:

DR 5-105 (A) and (B) (22 NYCRR § 1200.24) of the Code of Professional Responsibility provides:

A lawyer shall decline proffered employment if the exercise of independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve the lawyer in representing differing interests.... A lawyer shall not continue multiple employment if the exercise of independent professional judgment on behalf of a client will be or is likely to be adversely affected by the lawyer's representation of another client, or if it would be likely to involve the lawyer in representing differing interests....

Nevertheless, DR 5405 (C) provides that an attorney may represent clients with potentially adverse interests if "... a disinterested lawyer would believe that the lawyer can competently represent the interest of each and if each consent to the representation after full disclosure of the implications of the simultaneous representation and the advantages and risks involved."

Given the conflicts inherent in simultaneous representation, a prima facie rule of disqualification applies where there is an existing attorney-client relationship on behalf of a client whose interests are adverse to the interests of another current client (Cinema 5, Ltd. v Cinerama, Inc., 528 F2d 1384 [2d Cir 1976]). Under this standard, where the attorney-client relationship is a continuing one, adverse representation is prima facie improper, (Matter of Kelly, 23 NY2d 368, 376 [1968]), and the attorney must be prepared to meet the very high standard that there will be no actual or apparent conflict in loyalties or diminution in the vigor of representation (Cinema 5, Ltd. v Cinerama, Inc., 528 F2d 1384 [2d Cir. 1976]; Thaler v Jacoby & Meyers Law Offices, 294 AD2d 230, 742 NYS2d 241 [2002]). The prima facie rule of disqualification applies, even though the simultaneous representation occurred unknowingly and inadvertently (see, e.g., Cinema 5, Ltd. v Cinerama, supra). An attorney must avoid not only representing clients who have actual conflicts but also must avoid representing client whose interests appear conflicting (Cardinale v. Golinello, supra; see also, Kassis v. Teacher's Ins. & Annuity Assn., 93 N.Y.2d 611 [1999]). And, an attorney must avoid not only the fact but even the mere appearance of impropriety (Tekni-Plex, Inc. v Mayner & Landis, 89NY2d 123,130-131 [1996]). Where there is a conflict of representation,

Email Sent 5:48pm
4-20-20

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Incorporated 2019 Under Section 402 of the Not-for-Profit Corporation Law
Plattsburgh Citizens Coalition Inc. is a community-based organization created to advance the interests of businesses, service providers, employees, residents, and visitors of downtown Plattsburgh, NY. PCC advocates and promotes smart growth that enhances and improves the quality of life for all.

April 20, 2020

Zoning Board Members

RE: DURKEE STREET DEVELOPMENT
PROVISION FOR AUTOMOBILE PARKING

Dear Zoning Board Member:

The purpose of this letter is to provide review comments regarding the ZBA criteria for review of a Special Use Permit found in Zoning Ordinance Section 360-31 B.: More specifically to address the fourth criteria, which is:

Standards. Such special use permits, however, may be authorized by the Zoning Board of Appeals ***only*** *upon satisfaction of each instance of such conditions* ***as to the provision for automobile parking or storage;*** *as may be necessary to safeguard public health, convenience and as may be required for the preservation of the general character of the neighborhood in which such building and/or structure is to be placed or such use is to be conducted.*

Caution Against Segmentation.

This project is unique and more complex than most SUP applications. In most applications, the Zoning Board need only look at the parcel of land which is the subject of development. However, this project involves the removal of the City's largest public parking , conversion of this public asset to private development and the creation of replacement parking at a number of other locations to compensate for the loss of public parking at the Durkee Street municipal parking lot. The Zoning Board, therefore, has the unusual and more complex task of evaluating the provision for automobile parking not only on the development site, but also the compensatory parking throughout the downtown.

Corrections to the City Parking Plan (GEIS Table 39).

There City's proposed alternative parking plan provides some alternate parking to compensate for the loss of the Durkee Street Parking Lot. However, the plan falls far short of providing adequate compensatory parking. The numbers provided in the proposed parking plan and documented in the GEIS, which is currently under ZBA review includes serious errors and numbers that are simply

incorrect, untrue, or misleading. Those errors and omissions are summarized in the table below. You will note in the following summary, that the proposed parking plan, which the City claims a net change of +6 parking spaces is deceiving and actually results in a net decrease of 123 parking spaces. See details and explanations in the table below:

Corrections to GEIS Table 39 Public Parking Projects

	Existing Public Spaces		Proposed Public Spaces		Net Change		
Location	City Claims	Actual	City Claims	Actual	City Claims	Actual	
APMPP	0	0	109	109	109	**109**	
DLMUD	289	289	50	19	-239	**-270**	The GEIS finally acknowledges what the PCC has stated for a long time: The DLMUD does NOT provide adaquate onsite parking. It is deficient by 31 spaces (See GEIS Table 35)
County Govt Center	0	44	65	60	65	**16**	The City neglects to recognize that this lot had 44 Visitor Parking Spaces BEFORE the reconfiguation. It also neglects to factor in the 5 on street spaces lost as a result of the reconfiguration.
Bridge st parking	32	32	38	32	6	**0**	Short-term on-street parking is not an acceptable substitute for long-term off-street parking. Also this number is inflated and includes spaces that would block existing driveways, too close to crosswalks,
BSMPL	59	59	81	81	22	**22**	
Durkee St parking	15		58	15	43	**0**	Short-term on-street parking is not an acceptable substitute for long-term off-street parking. Also this number is inflated and includes spaces too close to crosswalks, hydrants, etc.
TOTAL	395	424	401	316	6	**-123**	**CITY PARKING PLAN CLAIMS TO CREATE A NET INCREASE OF 6 SPACES, BUT IN FACT IS DEFICIENT BY 123 SPACES!**

Abbreviations
APMPP - Arnie Pavone Parking lot (former Glens Falls Bank)
DLMUD - Durkee Lot Development
BSMPL - Bridge St Municipal lot

Parking at the Proposed Durkee Street Development

The GEIS finally acknowledges what the PCC has stated for a long time: The DLMUD does NOT provide adequate onsite parking. The GEIS acknowledges a parking deficiency at the proposed site development of 31 spaces and a net decrease in of 235 spaces. That is incorrect. The actual net decrease is 270 spaces (See GEIS Table 35).

Replacement of Long Term off -street parking with Short Term On-street parking.

The City's Parking Plan relies heavily on the removal of long-term off-street parking with short-term on street parking. This is not conducive to the downtown business operations, employee parking or snow removal necessities. The City's plan calls for converting Durkee to one-way traffic with angled parking to add 49 parking spaces. Mr. Michael Bessette, Deputy Director of City DPW sought the opinion of the NYSDOT Regional Traffic Safety Engineer regarding the safety of angled parking. The response (see attached) was a warning that "angled parking causes an increase in accidents" and is more dangerous for vehicles, bicycles, and pedestrians. In his response to Mr. Bessette, the NYSDOT Regional Traffic Safety Engineer gave the following advice, "I can tell you that based on the concept and its traffic safety implications, I would use the strongest language possible to discourage the institution of this change."

Therefore, the current application and associated parking plan **clearly does not meet the SUP criteria as to the provision for automobile parking to safeguard public health.**

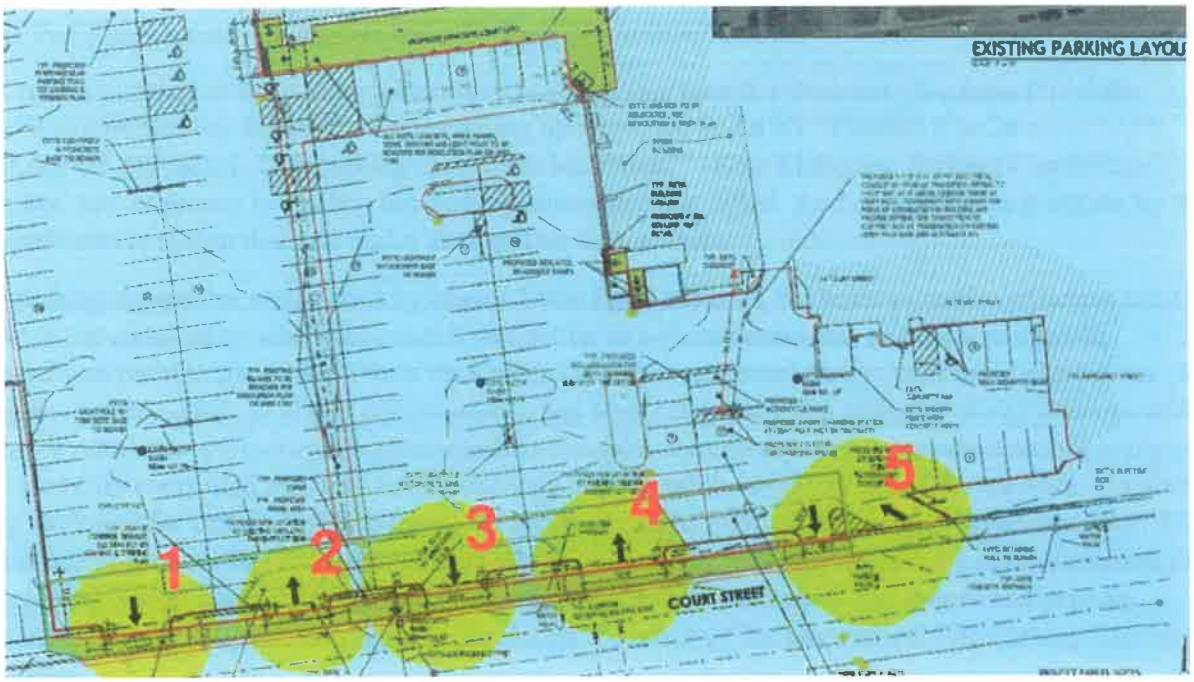
Clinton County Government Center Parking Lot.

County parking lot is the 2nd largest location of compensatory parking in the City's parking plan. The plan claims 65 new off-street public parking spaces are created at this location. This is false. First, the plan fails to consider that the new total of FIVE driveways results in the loss of 5 public parking spaces on Court Street, therefore the 65 public spaces are actually only 60. Secondly, the plan fails to recognize that the County parking lot previously had 44 visitor / public parking spaces BEFORE the lot was paved renovation. So, the net increase of public parking spaces is not 65, the net increase is actually only 16. This is significant because after the Glens Falls Bank Parking lot, this is the largest component of the City's compensatory parking and, as you can see, it is filled with error and a blatant attempt to deceive. This is especially important to the ZBA who job it is to evaluate whether adequate compensatory parking is provided elsewhere throughout the downtown. Clearly it is not.

Clinton County Parking lot and the degradation of pedestrian safety. The ZBA is required to review all compensatory parking throughout the DRI zone. While it is not the ZBA's role to review the parking lot design, it is the ZBA's role to consider whether the compensatory parking is safeguards public health and the character of the neighborhood. Therefore, you should be aware of some issues with the parking lot renovations that are of grave concern, such as:

- The parking lot design violates State Highway Design guidelines for limited access control on local roads, that is limiting the number of access points (driveways) to a facility, which are intended to protect pedestrian safety. The guidelines limit the number of driveways to a commercial facility such as the County Government Center to 1 or 2. This highly questionable plan increased the number of driveways to 5, some of them as wide as 44-ft. In addition, the renovation destroyed the pedestrian walkway from street to building, something that is a City code requirement for Planning Board review – they just made the parking lot non-code compliant.

FIVE Driveways at renovated County Government Parking Lot:



- The City participated in the funding of the County parking lot project, claims it as a major site of compensatory parking, yet did not include the parking lot in the GEIS, the project did not receive a City Building permit and did not undergo Site Plan Review by the Planning Board.

- This County Government Center design was never reviewed by a professional engineer; if it had it would have without a doubt been rejected. It was submitted to the Planning Board for Site Plan review; if it were, it would have no doubt been disapproved. It was never included in the GEIS for ZBA consideration; if it had it had been, it would have no doubt been rejected as unsafe.

Interim Parking During Construction.

The application to the ZBA is mute about temporary interim parking during construction. That is a critical factor that must be addressed, illustrated in detail, and reviewed by the Zoning Board. The application has failed to provide any viable interim parking plan during construction other than a mention of using the Waterfront Parking Lot. That lot is a 3,200-ft walk and hardly a complete or viable

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City Info <cityinfo@plattsburghcitygov.com>

Zoning Comments 4/20/20 - Kim Ford

1 message

Kim Ford <klmousseau@aol.com> Mon, Apr 20, 2020 at 9:50 AM
To: cityinfo@plattsburghcitygov.com, ron.nolland@gmail.com
Cc: KLMOUSSEAU@aol.com

Good morning,
I am submitting the attached comments for tonight's Zoning Board Meeting.

Thank you
Kim Ford
Lifetime City Resident

Zoning Board Comments - Kim Ford.pdf
1091K

This message is for all Zoning Board members in regards to the Prime/City application for the April 20th meeting. *(from Kim Ford, City resident and local real estate developer)*

Simply put, this project is too MASSIVE for our downtown. It may fit into a downtown of a larger City, but not this City. This project is a classic example of "putting all your eggs in one basket." What happens if it fails? Wouldn't a smaller development on this site or subdividing the parcel into even smaller parcels and opening them up to re-bid as small downtown row-style buildings be more suitable? What about altering the PUD to exclude the former Farmers Market building to retain for Civic use along the new City Riverwalk?

I understand why City Hall is grasping onto this project, it has been grasping onto the idea of the development of the Durkee St lot for decades and finally they have State money to put towards it.
I understand why they think this might be "the answer" for bringing in more business and people into our downtown. (even given the lack of real world experience the Council members have in real estate development).
I understand this is a great ribbon-cutting event for the State and local governments.
I also understand that this project provides great risk and potential financial loss for tax payers of this City. The negative aspects and potential pitfalls for our Community far outweigh the potential for possible economic gain.

The size of this project reminds me of the massive Broad Street Commons building that has continuous vacancies and was also allowed a sizeable tax assessment reduction - will Prime request an assessment reduction after their potential 18 year PILOT?

OPTIONS:
1) Vote NO to the project all together. The $4.3 million dollars could be reallocated just as the funds for the downtown food incubator/kitchen were re-allocated to the new Farmer's Market Building at the former MLD site.
2) Recommend a smaller building/project - scale the project down to 43 units as originally put forth in the final approved DRI project. Or at the very least, require the project to adhere to the REQUIRED SETBACKS and HEIGHT RESTRICTIONS, paying close attention to the blank walls on the City Riverwalk and the underground parking egress on Bridge St.
3) Alter the PUD to EXCLUDE THE FORMER FARMERS MARKET BUILDING and retain that as PUBLIC CIVIC SPACE along the CITY RIVERWALK.

According to Section 360-31 SPECIAL USE PERMITS – PART B – STANDARDS. There are 5 conditions that must be met – THIS PROJECT DOES NOT MEET AT LEAST 4 OF THESE CONDITIONS

1) **GENERAL CHARACTER, HEIGHT, & USE OF STRUCTURE**
a. This project does not fit the character of our downtown because of the sheer MASSIVE size, scale and aesthetics. It would be the tallest and largest scaled habitable building downtown.
b. The proposed project exceeds height restrictions for the District

c. Use of the structure – residences on the 1st floor was not allowed for other downtown projects and does not fit with the character of our downtown.
d. looking at the side elevation renderings, the riverfront side of the building is a blank wall facing the public walkway – no windows or bump-ins or other architectural relief from the blank wall. In the rendering from Saratoga Associates for the City's Riverwalk, the Riverwalk looks like an alleyway between the massive wall and the riverfront.

2) **Provision of surrounding open space and the treatment of grounds**
a. This project is DEFICIENT in Front, Side and Rear setbacks
b. DEFICIENT in open space – according to the application they are including the river walk in the calculation of open space – THIS PUBLIC OPEN SPACE SHOULD NOT BE INCLUDED WITH THIS PROJECT. If the riverfront walkway is removed from the open space of this project, then they are severely deficient in open space

4) **Automobile parking** – this project is DEFICIENT in parking spaces and does not meet City Code for the district and use. According to City Code as specified on Prime's application, they are providing 286 spaces and 319 spaces are required – their aisle widths are also deficient, they are proposing 24', 25-26 is required. Their "comparable" project of the Hamlet in Saratoga is not a good comparison example, it is NOT in the heart of downtown Saratoga. This would set a precedence of parking reduction for future projects in the City.

5) **Street Capacity and Use**
a. This project would greatly increase traffic along Durkee & Bridge Streets and increase pedestrian traffic
b. The exit for the underground parking is right on the sidewalk OF BRIDGE ST with no visual for pedestrian safety. I understand they've added Mirrors and striping, but that is not sufficient enough for the safety of the heavy pedestrian use along that sidewalk – increased by the new riverwalk. **THE BUILDING SHOULD BE STEPPED BACK AT THIS CORNER TO BE WITHIN REQUIRED SETBACKS FOR SAFETY.**
c. It is proposed that Durkee St be one-way with on street parking – this plan blocks access to garage bays of an existing downtown business – blocks loading and access to all other existing businesses along Durkee st.
d. The dumpster location is adjacent to the PUBLIC WALKWAY, odor will be an issue.

THIS IS A NEW PROJECT, I'M NOT HERE TO DISPUTE THE DEVELOPMENT OF THIS SITE, BUT THIS IS NEW CONSTRUCTION, A BLANK SLATE AND SHOULD NOT REQUIRE VARIANCES, A BLANK SLATE SHOULD ALIGN WITH ALL CITY CODES AND ZONING...PERIOD

There are reasons why NO LOCAL DEVELOPERS put forth proposals during the RFP period for this site:
1) The RFP period was a mere 3 week time period (Prime had their proposal waiting in the wings for it). This time period is ridiculously short for any quality proposal to be put forth by a local developer.
2) Local developers knew this site would be controversial
3) The site is TOO BIG with TOO MANY PARKING ISSUES

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City Info <cityinfo@plattsburghcitygov.com>

Zoning Board of Appeals Comments 4/20/2020

2 messages

Plattsburgh Citizens Coalition <plattsburghcitizencoalition@gmail.com> Mon, Apr 20, 2020 at 8:44 AM
To: cityinfo@plattsburghcitygov.com, Joe <mcmahonj@cityofplattsburgh-ny.gov>, beebiel@cityofplattsburgh-ny.gov, Sylvia <parrottes@cityofplattsburgh-ny.gov>
Cc: Amanda Dagley <amanda@wnbz.com>, estigliani@freepressmedia.com, news@northcountrynow.com, newstips@mynbc5.com, rrockstroh@mychamplainvalley.com, nate@suncommunitynews.com, jlotemplio@pressrepublican.com, pbradley@wamc.org, McKenzie Delisle <mdelisle@pressrepublican.com>, Emily Russell <emily@ncpr.org>

PCC Letter to ZBA.pdf
151K

Terry Broderick <terrycb12901@yahoo.com> Mon, Apr 20, 2020 at 11:53 AM
To: cityinfo@plattsburghcitygov.com, Joe <mcmahonj@cityofplattsburgh-ny.gov>, beebiel@cityofplattsburgh-ny.gov, Sylvia <parrottes@cityofplattsburgh-ny.gov>

I'd like to, as briefly as possible, submit my reasons why the ZBA should not approve the Prime Plattsburgh project as proposed.

I am almost 54 years old and was born in the City of Plattsburgh. I went to school, grew up, started my family, and currently work in the City of Plattsburgh at the Department of Social Services (although I've been living in the TOP for the past 23 years). From a very young age my father would take my sisters and me to various historical locations in the City and would explain how the City's founding fathers started roots in the City, and how it grew to what it is today. The battle on our lake, the monuments erected and their stories, we climbed the stairs of the "Eagle Monument" back when I was only 10 years old during the country's bicentennial celebrations. Downtown, in it's current glory, holds much history and significance to those that actually live and/or grew up there.

That said, I would like to relate how I believe the Prime development project will adversely affect the City of Plattsburgh as we know it.

First of all, the location that the City has proposed for this development is wrong for. The perfect location would have been at the "parking lot to nowhere" by the marina. To say that the railroad is a safety issue is not a valid reason. That very location, further back in the old, dilapidated MLD building, is where the City has proposed the Farmers Market move. If the railroad posed a danger, then why put the Farmers' Market there? Why is the boat launch/marina down there? Why is a bar/restaurant (Naked Turtle) down there? This reason is a terrible excuse.

Secondly, the Durkee St. parking lot (hereinafter DSPL) is on the banks of the Saranac River. You cannot legally use this land without special approval from the community and/or state. It is public land, therefore the City has no rights to it. Actually, with all the monies collected by the City from the Special Assessment Tax (hereinafter SAT) it imposes on the many property and business owners located in the downtown district, one would argue that the DSPL belongs, collectively, to those property and business owners and NOT the City! Giving away this land for the $1 fee offered to Prime is a slap in the face to the people that have been living, working and dying in this district for 30 (give or take) years!

Third, the DSPL, which is paid for through the SAT, is used by all those loyal and hard working property and business owners, along with their tenants and employees! Proposing less parking, angled parking, and metered parking is not adequate, and it's certainly not ok! The SAT currently pays for parking, therefore, imposing metered parking as an alternative, and in my opinion, is a way for the City to fleece more money from that district, and is not only double dipping but despicable. Historically, metered parking was abandoned due to business that was lost to the nearby town because the town offers FREE parking for its patrons! Metered parking has already failed for the City, so the City should learn from that mistake! Additionally, angled parking has been attempted at several locations in the City and failed. It was tried on Miller St., across from the Post Office and it failed. It was tried by the Senior Center (formerly MAI High School) on Court St. and it failed! Angled parking has proven ineffective and dangerous, so to propose this AGAIN is a ridiculous suggestion. Lastly, to suggest that those living and working downtown walk to their home or office from a location not conducive to that home or office is not why the SAT is paid to the City. The SAT ensures that the lot remains open and

maintained for downtown tenants and workers.

Fourth, aesthetics! Any person who walks the streets of downtown (Margaret St., Bridge St., Clinton St., City Hall Pl., etc.) can look and admire the historic architecture of those beautiful buildings. The proposed Prime monstrosity would not fall in line with those aesthetics! It's going to tower over those buildings and literally cast a shadow over part of Durkee and Bridge St. Any requests for improvements to its appearance have been minimally addressed. It does not fall in line with the architecture and appeal of historic Downtown Plattsburgh!

Fifth is the reduction to some street size as well as decrease in walkability and bike-ability. Sidewalks are being reduced in size and Durkee St. is being proposed as one way. This is not safe and it will discourage residents and even tourists from visiting that part of downtown. The proposed angled parking on Durkee St combined with making it one way and one lane will cause great disruption in the way businesses receive their deliveries, the way customers pick up their orders from said businesses, and make travel, whether via car, bike, or foot, precarious at best. Students from the Middle School use downtown to walk and bike home and this project will make that dangerous for the children in the City.

Sixth, the City of Plattsburgh is literally the County seat. All types of governmental transactions are conducted by those throughout the county happens there! Reducing accessibility via less parking and ore walking for the disabled and elderly in our County is reprehensible. It would appear that none of this has been considered throughout this project.

Lastly, we are currently facing a depression, lay offs, and God knows what else due to the COVID-19 pandemic. It would be unconscionable to proceed with this project when so many loyal and hard working members of the downtown district are facing possible bankruptcy and/or closure of their businesses. The money should be repurposed for those businesses/owners, perhaps at the cost of a low interest loan, so those that have been the heartbeat of the City can continue to thrive and keep Plattsburgh the great Lace City it is, and should remain. Additionally, the cost that Prime will charge for one of their tiny apartments will no longer be affordable with the current pandemic and loss of employment by many nationwide (not that $1000-$1200/month was in any way affordable to begin with!)

I ask you to remember that your reviews, opinions, assessments, etc. are independent of the Mayor and Council. Listen to the citizens of Plattsburgh. Listen to the citizens in the County that do business in Plattsburgh. Listen to the people that live, work, and play in Plattsburgh. They, not the Mayor or Council, are for whom you're making these decisions.

Thank you, and stay well,

Mrs. Terry Broderick
former citizen and current downtown employee