

# Planning Board Meeting Minutes – May 20, 2019

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A meeting of the Planning Board, Town of Yorktown, was held on **Monday, May 20, 2019 at 7:00 p.m.** in the Yorktown Town Hall Board Room located at 363 Underhill Avenue, Yorktown Heights, NY 10598.

Chairman Rich Fon called the meeting to order at 7:00 p.m. with the following Board members present:

- John Savoca, Vice Chairman
- Bill LaScala
- Aaron Bock

Also present were:

- John Tegeder, Director of Planning
  - Robyn Steinberg, Town Planner
  - Tom D’Agostino, Assistant Planner
  - Nancy Calicchia, Secretary
  - John Buckley, Esq. – Oxman Law Group, PLLC
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## **Correspondence / Liaison Reports**

- There were no liaison reports.
- Chairman Fon stated that he and Aaron Bock attended the Yorktown Landmarks Preservation Commission symposium - “*Preserving Our Architectural Legacy: A Call to Action*” which was held on May 9, 2019 and coordinated by Lynn Briggs, Chair of the Landmarks Commission. He said that not only was it informational but it was a very well organized event. He suggested that the Planning Department invite Lynn Briggs to a future Board meeting.
- The Board reviewed all correspondence. Chairman Fon noted the DEC response letter dated May 3, 2019 with respect to Envirogreen. Mr. Tegeder stated that the applicant can be placed on the next meeting agenda for review and discussion.

## **Motion to Approve Meeting Minutes**

The Board did not review the April 22, 2019 and May 6, 2019 meeting minutes because there was not present a quorum of members that attended the meetings.

## **Motion to Open Regular Session**

Upon a motion by Bill LaScala and seconded by John Savoca and with all those present voting aye, the Board opened the Regular Session.

## **REGULAR SESSION**

### **Hearthstone Minor Subdivision**

SBL: 17.18-1-8

Discussion: First and Second 90 Day Time Extensions

Location: 3138 Hearthstone Street

Contact: Jack Karell, P.E.

Description: Approved 2-lot subdivision 0.98 acres in the R1-20 zone.

Comments:

William Besharat, property owner was present. Mr. Besharat is requesting a first and second 90 day time extension and would also like to discuss a condition in the resolution regarding the 280-A variance allowing the property access onto an improved road which was done initially with the Zoning Board. He stated that the NYS consolidated law which controls this section for the approval indicates that once you have the the approval, the property does have the legal access to the road and the 280-A variance runs with the property. He stated that there is no reason for it to be modified and wanted to bring it to the attention of the Planning Board and legal counsel for their opinion before they go through

the process with the Zoning Board again. He said that the Building Department is in agreement with him. The location has not changed. He stated that the previous owners received the 280-A variance about 3 or so years ago.

Mr. Tegeder explained to the Board that the owners obtained a 280-A variance for the single lot that existed before they came for the subdivision. The question is whether or not the 280-A variance is now adequate for both lots. The Board asked Mr. Buckley, Planning Board Attorney, if he had any comments. Mr. Buckley responded that he will research the issue. Mr. Tegeder stated that the resolution still stands and the condition can be removed when clarified by Mr. Buckley. Chairman Fon asked if there were any other comments of which there were none.

**Upon a motion by Bill LaScala and seconded by John Savoca, the Board approved the request for a first and second 90 day time extension for the Hearthstone Minor Subdivision.**

**Ricciardella Estates, LLC**

SBL: 59.14-1-18  
Discussion: Decision Statement – Special Use Permit  
Location: 702 Saw Mill River Road  
Contact: Site Design Consultants  
Description: Approved site plan by Planning Board Resolution #13-21, dated September 9, 2013. Under new ownership, the Applicant is applying for a Special Use Permit to allow Residential Dwellings in the Country Commercial Zone.

Comments:  
Joseph Riina, P.E. was present as a follow up to the May 6, 2019 meeting. He has reviewed the resolution and has no comments. Chairman Fon asked if there were any other comments of which there were none.

**Upon a motion by Bill LaScala and seconded by Aaron Bock, the Board approved a resolution approving an amended site plan and special use permit for Ricciardella Estates, LLC fka Dubovsky site plan.**

**Fiore Subdivision**

SBL: 26.15-1-69  
Discussion: Decision Statement – Minor Subdivision  
Location: 2797 Carr Court  
Contact: Site Design Consultants  
Description: Proposed 2-lot subdivision on 1.14 acres in the R1-20 zone, where one residence is currently.

Comments:  
Joseph Riina, P.E. was present as a follow up to the May 6, 2019 meeting. He has reviewed the resolution and has no comments. Mr. Bock stated that he does not see any mention of the stormwater maintenance agreement within the draft resolution and is requesting that it be specifically referenced as discussed previously with the agreed language. Mr. Buckley agreed that the maintenance agreement should be referenced in the resolution. The Planning Department will amend the resolution as noted.

**Upon a motion by Bill LaScala and seconded by John Savoca, the Board adopted the Negative Declaration dated May 20, 2019 for the Fiore Subdivision.**

**Upon a motion by John Savoca and seconded by Aaron Bock, the Board approved a resolution approving a stormwater pollution prevention plan, tree permit, and subdivision plat titled Fiore Subdivision as amended.**

**Fusco Subdivision**

SBL: 16.14-1-10  
Discussion: Decision Statement – Minor Subdivision  
Location: 3477 Stony Street  
Contact: Ciarcia Engineering, P.C.  
Description: Proposed 2-lot subdivision on 2.72 acres in the R1-20 zone.

Comments:

Dan Ciarcia, P.E. and Laura DiGiovanni, applicant were present as a follow up to the April 22, 2019 meeting. Mr. Ciarcia stated that he has reviewed the resolution and has no comments. Mr. Bock noted that the Negative Declaration should be corrected on page 2, item 1 from short form EAF to full EAF. Chairman Fon asked if there were any other comments of which there were none.

**Upon a motion by Bill LaScala and seconded by Aaron Bock, the Board adopted the Negative Declaration dated May 20, 2019 for the Fusco Subdivision as amended.**

**Upon a motion by Aaron Bock and seconded by Bill LaScala, the Board approved a resolution approving subdivision plat titled Fusco Subdivision.**

**Anderson Subdivision**

SBL: 58.09-1-20

Discussion: Decision Statement - Minor Subdivision

Location: 1695 Croton Lake Road

Contact: Ciarcia Engineering, P.C.

Description: Proposed 2-Lot subdivision of 15.72 acres in the R1-80 zone, where one residence currently exists.

Comments:

Dan Ciarcia, P.E. was present as a follow up to the May 6, 2019 Board meeting. Chairman Fon stated that they have received a memo from the Conservation Board dated May 16, 2019 stating that they are in favor of moving the project forward. Mr. Ciarcia requested that the Conservation Board memo and various correspondence received be noted in the resolution under the recitals. He also stated that the applicant has paid all the required fees for the MS4 permit and wants to ensure that they will not have to pay again when they return to the Board for the SWPPP. Ms. Steinberg asked if the fee was paid directly to the Engineering Department and Mr. Ciarcia responded it was. She noted that the Planning Department did not receive a copy. Mr. Tegeder stated that they would be liable for the fee only once.

Mr. Tegeder noted that in page 5 of 5 in the draft resolution under “further resolved” the paragraph beginning with “*satisfaction of the Planning Board*” should be changed to “*approved by the Planning Board.*” He also stated that the resolution should not state “*approving the SWPPP*”. Chairman Fon asked if there were any other comments of which there were none.

**Upon a motion by Bill LaScala and seconded by John Savoca, the Board adopted the Negative Declaration for the Anderson Subdivision dated May 20, 2019.**

**Upon a motion by Aaron Bock and seconded by John Savoca, the Board approved a resolution approving subdivision plat titled Anderson Subdivision as amended.**

**Unicorn Contracting Corporation**

SBL: 37.18-2-73, 74, & 85

Discussion: Decision Statement – Approved Amended Site Plan

Location: 355 Kear Street

Contact: Ciarcia Engineering, P.C.

Description: Approved site plan and minor subdivision to construct a three story, 40,000 square foot building with a mix of retail and office uses.

Comments:

John Savoca recused himself from this item. Dan Ciarcia, P.E. was present as a follow up to the May 6, 2019 meeting. Chairman Fon explained that there were minor changes to the site plan as discussed at previous Board meetings. Mr. Ciarcia stated that he reviewed the resolution and has no comments. Chairman Fon asked if there were any other comments of which there were none.

**Upon a motion by Bill LaScala and seconded by Aaron Bock, the Board approved a resolution approving amendments to the site plan for Underhill/Kear Retail-Office Development.**

**Motion to close Regular Session and Open Work Session:**

Upon a motion by Aaron Bock and seconded by Bill LaScala and with all those present voting aye, the Board closed the Regular Session and opened the Work Session.

**WORK SESSION**

**Town Board Referral – 39 Somerston Road**

SBL: 17.11-1-31  
Discussion: Wetlands Permit  
Contact: Danielle and Paul Kilkenny  
Description: Request for an above ground pool on the property that consists of wetlands.  
Comments:

Paul Kilkenny was present. The applicant was referred to the Planning Board by the Town Board with regards to the request for a wetlands permit application for the purpose of the installation of an above-ground pool on his property. John Savoca noted that the wetland is 3 feet behind and the wooden shed is in the buffer. Mr. Kilkenny stated that it is 22 feet from the pool to the wetland. Mr. Savoca stated that the pool is in the buffer and Mr. Kilkenny responded it was and that his house is in the buffer as well. Mr. Tegeder asked if the town inspected and verified the wetland. Mr. Kilkenny responded that the DEC flagged the wetland over a week ago, but the town has not verified them. Mr. Kilkenny said that he met with the Conservation Board and he received comments to show the wetlands and buffer marking on the drawings. Mr. Kilkenny stated that he is not moving a lot of ground, and there will be some grading. Mr. Savoca stated that they need something more definitive. Mr. Tegeder said that a survey should be submitted with the wetland boundary on the map.

The Board requested that the Planning Department send a memo to the Town Board requesting more information as per the Conservation Board. The applicant is to respond to the Conservation Board with the appropriate paperwork and coordinate a site visit with them. The Town must verify the flags. Chairman Fon advised the applicant to be his own advocate and follow through on all the paperwork. There will be no need for the applicant to return to the Planning Board.

**Town Board Referral – 1550 Journeys End Road**

SBL: 69.06-1-10  
Discussion: Stormwater Management Permit  
Contact: Site Design Consultants  
Description: Request for construction of a single-family home, driveway, and septic system.  
Comments:

Joseph Riina, P.E. was present. Mr. Riina stated that the applicant, Mr. Conte, was referred to the Planning Board by the Town Board with regards to the request for a stormwater management permit application and tree removal permit application for the purpose of the construction of a single family home, driveway and septic system located at 1550 Journeys End Road. The building lot is 9 acres in size and is zoned for R1-200. The plans were shown to the Board. The watercourse and wetlands were identified on the plans. The plans showed the house location and septic system outside of the wetlands buffer. They have the Health Department approval for the septic, the well was shown along with a series of retaining walls. They were before the Zoning Board to push the house forward which would allow room for a backyard and does not encroach into the wetland buffer. He stated that the Town Engineer is satisfied with all. Mr. Tegeder asked what the threshold on the stormwater is, if any. Mr. Riina responded none, but he is providing level spreaders. There are no other requirements.

The Board had no issues. The Planning Board requested that the Planning Department send a memo to the Town Board stating that there are no objections to this request.

**Town Board Referral – Con Edison**

Discussion: Wetland Permit/Tree Removal Permit  
Contact: Gabe Horton (Con Edison)  
Description: Request for the removal of “Danger Trees” threatening 345 kV transmission infrastructure on properties abutting lots owned and operated by Con Edison Inc.

Comments:

Gabe Horton, Christopher Peterson and Brian Mastalong of Con Edison were present. Mr. Horton stated that they were referred to the Planning Board by the Town Board with regards to the request for a wetland permit application and tree removal permit application for the removal of dangerous trees threatening transmission infrastructures on multiple properties. The following locations of trees to be removed were discussed with the Board.

1. SBL: 16.12-1-15,30,31 W/O Hill Blvd/S/O Main Street
2. SBL: 70.14-1-6 S/O 134, N/O Private Road, W/O 100
3. SBL: 37.05-1-30, 34 W/O Vista Dr, N/O Viewland Dr
4. SBL: 48.18-1-2 W/O 118, N/O Locke Lane

Mr. Horton stated that the goal is to cover all state regulated wetlands in one application. Mr. LaScala asked what constitutes a danger tree. Mr. Horton responded that there are three components – target (*near the power lines*), defect (*dead or declining trees*) and event (*potential to cause power outage, fall potential.*) Mr. Horton stated that they have a standard resolution in place but not in this location. Chairman Fon asked about the invasives creeping in after the trees are removed and if they have plans to deal with this. Mr. Horton responded that they have a Best Management Practice in place that Con Edison follows while working on transmission rights-of way, however, they do not have anything in place for eradicating invasives. Chairman Fon asked for a copy of the Best Management Practice for his review. Mr. Tegeder reviewed the Tree Law and Wetland Law with the Board in relation to this application and discussion followed. Mr. Horton stated that they do not transport wood nor do they chip the wood. They will leave the branches and rough cut pieces of wood in the location to deteriorate on its own. Mr. Tegeder asked how many trees in total are to be removed and the response was 43 trees among all the sites.

The Board had no concerns. The Planning Board requested that the Planning Department send a memo to the Town Board stating that there are no objections to this request.

**Town Board Referral – The Weyant**

SBL: 37.14-2-32  
 Location: 2040 Crompond Road  
 Contact: Site Design Consultants  
 Description: Petition to rezone the 2.62 acre property from the R1-10 Zone to the Transition Zone to construct 23 rental apartments in 4 one and two story buildings.

Comments:

Aaron Bock recused himself from this item. Joseph Riina, P.E. was present. Mr. Riina stated that the Negative Declaration was adopted by the Town Board and he is here to finalize the commentary to the Town Board. Mr. Tegeder advised the Board for informational purposes that the Town Board is not inclined to the 90 degree access from Hamblin proposed by the Planning Board. Discussion followed with reference to the access and concerns that were addressed at previous Board meetings. The Board members reviewed the draft of the response memo to the Town Board and had no issues. The Board requested that the Planning Department send their comments to the Town Board.

**Town Board Referral – Solar Power Generations and Facilities**

Description: Proposed Town legislation to allow the use of solar power arrays for both residential and commercial properties. It is proposed that projects under this legislation would go through a Special Use Permit and/or the Site Plan application process.

Comments:

Joseph Riina, P.E. and John Miller were present. As a follow up to the May 6, 2019 meeting, the Board continued their discussion regarding the proposed solar law. Robyn Steinberg distributed a map to all identifying all the vacant residential properties over two acres (*highlighted in yellow*) that could be used for solar array installation. Mr. Bock asked if this would be considered for main use. Mr. Tegeder responded yes but by special permit. Solar would only be allowed in the commercial zones as an accessory use, also by special permit. Discussion followed regarding commercial

use and whether it was appropriate or not. The impact of the view sheds on commercial frontage as an accessory use was discussed.

Lockwood Site – It was noted that the applicant proposing solar on this site would not be utilizing the entire property as the previous subdivision application had proposed. However, tree removal is still clearly an impact. Mr. LaScala asked if there were any trails on the site. Walt Daniels, Open Space Committee, stated that there were not, but there is a town parcel on the other side of the street. Mr. Bock stated that we need to discuss what is best on these two pieces of the property. Chairman Fon asked if the proposed tree law allows flexibility with trees for solar installations. Mr. Tegeder stated that any development will need to adhere to the tree law, existing or new, but that neither currently has any different mitigation requirements for solar as a use. Discussion followed regarding a potential trail.

Mr. Bock stated that the Board needs to explain to the Town Board what tools are needed for when an application comes before the Planning Board. He noted that there are 5 conditions in a special use permit which need to be complete in order to get the use and is questioning if there could be a similar process with conditions (*i.e. – glare, etc.*) for evaluating a solar application. Mr. Bock thought that there should be a preference for already disturbed properties. Mr. Tegeder responded that all impacts for any special use can be studied under the SEQRA law, however, a list of standards to balance would be useful.

Chairman Fon stated that the Board needs more specific tools to allow reasonable development and the ability to apply numerous mitigation techniques. All solar arrays should be screened. This is highly important in residential areas of the community. There is also a concern about the visual impacts of roof installations especially when they are low and flat on the roof.

Mr. Tegeder stated that the law was modeled after portions of 5 or 6 laws. Walt Daniels distributed a copy of the North Castle solar law to the Board for their review. Mr. Bock stated that in his opinion, the minimum acreage should be increased. Chairman Fon agreed and stated that research will need to be done in terms of solar installation and whether 2 acres is viable.

Mr. Tegeder stated that we need to be careful with non-residential use as a main use. He noted State Land Corp. on Route 202 as an example. It is 100 acres and commercially zoned. The land slopes up from the highway, providing screening would be challenging. This is something that would not enhance the town.

Mr. Miller stated that he saw lots of yellow on the map provided to the Board, however, solar cannot just go anywhere, adequate power needs to be available. He will submit to the Board his company criteria for selecting land to develop for solar. His company provides the option to buy solar to the residents who cannot afford solar on their roof, or are renters, etc. Mr. Miller stated that they have a solar farm location in Greenvale (Orange County) for a potential site visit as requested by the Board previously. *Chairman Fon requested that he provide a video or google map of the site to the Board in place of a site visit.* Mr. Miller will offer contacts from other local towns where solar farms are installed to the Board. He stated that the visual assessments are under way for the two sites and will be provided to the Board when complete. He discussed the landscaping with the Board. Mr. LaScala asked if their company was nationwide. Mr. Miller responded that it was and that they have project headquarters in Colorado and projects in Massachusetts, Connecticut, Texas and New Jersey. They are national, however more projects occur in states where solar is allowed and encouraged with incentive programs.

The draft memo will be prepared for the Town Board and can be finalized by the Planning Board at the next Work Session.

#### **Additional Agenda Item – Popeye’s Restaurant**

Mr. Bock requested to open a Special Session to discuss the Popeye’s application with the Board.

#### **Upon a motion by John Savoca and seconded by Bill LaScala, the Board opened a Special Session.**

The Board discussed the memo drafted by the Planning Department with respect to the approved Popeye’s Restaurant application. The Board approved the memo for release to the Town Engineer.

**Upon a motion by John Savoca and seconded by Aaron Bock, and with all those present voting aye, the Board endorsed releasing the memo with reference to the Popeye's Restaurant application stating that the Board is in agreement to not re-open the review process.**

**Upon a motion by John Savoca and seconded by Bill LaScala, and with all those present voting aye, the Board closed the Special Session**

**Motion to Close Meeting**

Upon a motion by Bill LaScala and seconded by John Savoca, and with all those present voting aye, the Board voted to close the meeting at **8:31 p.m.**