

Planning Board Meeting Minutes – September 23, 2019

A meeting of the Planning Board, Town of Yorktown, was held on **Monday, September 23, 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
- John Kincart, Secretary
- Bill LaScala
- Aaron Bock
- Rob Garrigan

Also present were:

- John Tegeder, Director of Planning
 - Tom D'Agostino, Assistant Planner
 - Nancy Calicchia, Secretary
 - John Buckley, Esq. – Oxman Law Group, PLLC
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Correspondence / Liaison Report

- There were no liaison reports.
- The Board reviewed all correspondence.
- Chairman Fon asked Mr. Tegeder if the traffic study for East Main Street that was prepared for the Shrub Oak International School was finalized. Mr. Tegeder responded that it was but will check with Dr. Grealy to see if there are any changes that still need to be made and will submit a copy to the Board at the next meeting.

Motion to Approve Meeting Minutes

Upon a motion by Bill LaScala and seconded by John Kincart and with all those present voting aye, the Board approved the meeting minutes of September 9, 2019 with corrections as noted.

Motion to Open Regular Session

Chairman Fon motioned to open the Regular Session and with all those present, the Board opened the Regular Session.

REGULAR SESSION

Mohegan Court

SBL: 15.15-1-22
Discussion: First One Year Time Extension
Location: 3574 Lexington Avenue
Contact: Phil Sanders
Description: Approved 8 unit townhouse development on 1.1 acres in the R-3 zone by Planning Board Resolution #18-12, dated August 13, 2018.

Comments:

Phil Sanders was present. Mr. Sanders stated that they are currently working on financing and plan to start construction in March of 2020. Chairman Fon asked the Board and the public if there were any comments of which there were none.

Upon a motion by John Kincart and seconded by Bill LaScala, and with all those present voting aye, the Board approved the request for a first one year time extension.

Envirogreen Associates

SBL: 15.16-1-30
Discussion: Negative Declaration
Location: 1851 ,1867,1875 East Main Street
Contact: Site Design Consultants
Description: Proposed redevelopment of a portion of the referenced property by removing one of the existing buildings and parking area, and constructing a new 6,000 sf and 10,000 sf retail centers with associated parking.

Comments:

Rick Cipriani was present. Mr. Cipriani is here as a follow up to the Work Session of September 9th. Chairman Fon asked Mr. Tegeder to give a brief history of the project. Mr. Tegeder stated that this project has been under review for quite some time. The traffic and road network in Mohegan Lake has been looked at for several decades dating back to at least the 80's. The Planning Board and the Town Board had been looking at the commercial properties in this area along with the condition of Route 6 and the difficulty of doing a widening project. The solution discussed and implemented was to connect parking lots so a user of that commercial area can maneuver safely from one set of stores to another without having to negotiate Route 6 and, as a result, this helped to reduce some of the traffic. This project is no exception. The two properties on either side of it, one that was approved back in the late 90's and one approved about 10 years ago have been planned for those connections. The project we are looking at in the middle here was looked at by the Planning Board to effect the connection between these three properties and beyond. When Mr. Cipriani's team went to DEC to start the permit process, DEC was not in favor of the wetland intrusion required for the parking lot connections. The DEC felt that without an alternative set of designs to be evaluated, they were not able to move forward and approve the project unless the Planning Board, during their evaluation, were able to look at all of the alternatives and select the one that preserves all of the needs of the community and also has the ability to protect the wetlands to the greatest extent possible. The Planning Board is adopting a Negative Declaration that selects the layout with the parking lot connections. It will require some filling of the wetlands and wetlands buffer but the Planning Board has looked at a mitigation plan as they are required to do. Once the Negative Declaration is referred to the DEC, the DEC can then move forward and make the final determination as to whether or not they will approve the permit applied for. Mr. Cipriani will then be able to move forward once this determination is made.

John Kincart noted that in addition there was an issue with the time period expiring for their comments to be received by the DEC. Mr. Tegeder reviewed the SEQR law with all. Involved agencies is defined as another agency that has approval authority over a portion or all of a project. In this case, DEC has approval over the wetland permit for this project, so they are considered an involved agency. Involved agencies under the SEQR law are required to give as much useful information to the Lead Agency, which the Planning Board is, in order for the Lead Agency to make a sound and informed decision. The NYSDEC took a long time to respond to resolve the issues with this plan.

Mr. Bock stated that he reviewed the Negative Declaration that was proposed and thinks it should be clarified to relate to a particular plan and to make sure that the impacts that the Board is considering are in fact mitigated by the documentation that has been filed and that they should be recited such as the traffic mitigation. He asked about the connection between the adjacent properties to permit traffic in-flow off of Route 6. His concern is that the traffic conditions on Route 6 are poor and does not want it made worse. Mr. Bock asked Mr. Cipriani to address the status of the adjoining property owners. Mr. Cipriani responded that the existing property owners had the cuts built in to accommodate the connection as it was in their approved plan to be tied in. Mr. Cipriani further stated that the proposed site plan reduces the curb cuts on Route 6 from a total of five to two. Mr. Kincart recited the note on the plan to the Board regarding the adjoining property owners. It was noted that one of the adjoining property owners is Tim Mallon and he is in agreement with the connection as it will expose more business for his tenants. Mr. Tegeder suggested that an easement may not be necessary and cited several examples of commercial parking lots in town. Once this connection is physically constructed it does not prevent any property owner from putting up a barrier preventing access through the property. He cited a few examples where some property owners temporarily did not allow access other than for the businesses in their own location. Generally, these connections remain open. Mr. Cipriani stated that there is another access on his property where you can enter and pull out through the property.

Mr. Cipriani noted that the boarding house that was located on this property was removed. There were three structures originally and will be three structures when complete.

The Board stated that the plan dated 11-6-17 with the buildings in the front and the parking in the back should be noted in the Negative Declaration. Chairman Fon asked the Board and the public if there were any other comments of which there were none.

Upon a motion by Bill LaScala and seconded by John Kincart, and with all those present voting aye, the Board adopted the Negative Declaration.

CVS-Crompond Road

SBL: 26.18-1-25

Discussion: Site Plan

Location: 3320 Crompond Road

Contact: Cuddy and Feder, LLP

Description: Proposed construction of a 14,700 sf CVS/pharmacy with a drive-thru on 1.96 acres in the C-3 zone.

Comments:

Upon a motion by Bill LaScala and seconded by Aaron Bock, and with all those present voting aye, the Board opened the Public Informational Hearing.

Lucia Chiochio, Esq. of Cuddy & Feder LLP; Dan Peveraro, P.E. of The Lauro Group and Dr. Philip J. Grealy, Traffic Consultant of Maser Consulting were present. Mr. Peveraro stated that they are here to discuss the proposed CVS Pharmacy to be located at Crompond Road and Stony Street. They are proposing to build a 15,000 sf building with a drive-through along the rear of the building. There are two proposed vehicular access points – one on Crompond Road that is right in and right out only and another on Old Crompond Road that is full access. They have worked with the Planning Board to limit the amount of parking down to what is necessary and increased green spaces throughout the lot. The entire lot was shown on the plans and it was noted that they are only working on a portion of the lot on the corner. They have increased the green space specifically along the Stony Street corridor which mirrors the landscaping along that street with the bank and will be visually appealing. The drive-through works with the vehicles entering the main parking field circulating counter clockwise around the building over to the upper right hand corner of the building as shown on the rendering. There is a window there where you can pick up your prescriptions. There is a pedestrian access point off of Crompond Road where you can walk onto the site and is ADA compliant. The landscaping was shown on the plans to all. There will be landscaping on each side of the entrance drive and throughout the parking lot. The lighting plan was addressed and it was noted that there will be minimal spill onto the neighbors.

Dr. Phil Grealy, Traffic Consultant, stated they have prepared the traffic study for CVS. The study was done at a time when the Lowes store was not opened yet. They had included projections based on the traffic studies from the Lowes project. Part of the traffic study had identified certain issues in terms of existing problems and operations so there have been several improvements that are being made in conjunction with this project. The site will have access as a right turn in and right turn out off of Route 202 but will also have access to Old Crompond Road. With respect to the improvements on the section of Stony Street approaching Route 202, in order to get three lanes exiting under current conditions heading toward BJ's, two lanes will be widened. There will be an additional lane constructed on the eastern side that will align with the BJ's driveway. This will allow a left, a left through and a through right coming from Route 202 toward the Old Crompond/Stony Street intersection which will provide some additional capacity. Another problem they have identified under existing conditions is traffic backup at the left turn heading into BJ's on a Saturday. The timing of the signal needs to be adjusted to reduce the traffic backup. He noted that the Town Engineer had requested to see actual numbers as opposed to projections from the Lowes project. Recent traffic counts were done in mid-September with the schools open. Those counts confirm that the projections for Lowes were actually high and is probably due to the fact that we are attracting more traffic out of the existing stream. The data shows that with their projections, they more than accounted for the traffic that would be generated

by Lowes and now that they have actual data they know how it is functioning. They will be making a submission to the Town Engineer to show the data. In addition, there will be sidewalk improvements and the existing signal pole and pedestrian signals in the northeast corner of the intersection will have to be replaced as part of the widening. There will be restriping and resurfacing of the area. There will also be some widening along the frontage on Old Crompond Road so that there will be three full lanes of traffic movement to allow for storage for left turn movements. The driveway will tie into that area. The entire area will be reconstructed and the sidewalk will extend along the entire frontage

Lucia Chiochio, Esq. stated there will be an easement for access from Route 202 as discussed at the previous Board meeting. There are two tax lots for this property which are owned by the same owner, but they will incorporate an access easement so that the access that is proposed from Route 202 will also be used for the balance of the property. The property is about 10 acres in size but the CVS portion is a little under two acres. She noted that the applicant is committed to making all the improvements mentioned by Dr. Grealy in his traffic analysis.

Chairman Fon asked the public if there were any comments. Public comments as follows:

- **Tim Zherka, Resident and co-owner of the Hudson Valley Steak House** – He asked if they could move the building further to the east so as not to block his restaurant. He is concerned with the height of the trees, although they will be small when planted they will grow to be much taller. He also asked how high the fence will be during the construction phase. His issue is that his restaurant has been blocked for quite some time with the construction trailers there currently and, as a result, the visibility to his restaurant has been reduced. His concern is that another construction site will affect his business. He thanked the Board and the applicant for hearing his concerns and hopes to work amicably with the applicant as they are neighbors.

Mr. Peveraro responded that they cannot move the development further east as there are wetlands. There is a line of trailers along the property line and a fence which will eventually be removed as part of this application. He said that four years ago, there was an additional building in the original submission which was removed from this application. He reviewed the plan with all and stated there is a good line of sight for those buildings with the new application. The trees to be planted are 2 ½ caliper which eventually will grow to about 30 ft high.

Chairman Fon stated that the widening of the road may help as well. He noted that the Board always tries to be sensitive to comments made. Mr. Tegeder stated that since we have not seen any architecture yet it would be helpful if a few photos were submitted to show the view to his building with the proposed CVS building in the photo to get an idea of what we will see. The photos will help to judge where the trees will be planted. Another possibility is to change the species of the trees to limit the height.

Mr. Savoca asked if signage could be an option. A sign could be placed on the northerly portion of the roadway to indicate that there are other businesses behind. Mr. Pervoraro responded that they can look into this.

- **Jay Kopstein, Resident** – Mr. Kopstein stated that with the new fast food restaurant going into the Staple plaza, can they get high visibility crosswalks and get DOT to adjust the light timing. He feels that there is no way a pedestrian can get across Route 202 with the way it is set up currently. He said that there have been a number of serious accidents.

Dr. Grealy responded that in terms of the permit process, that they are just starting with DOT and the timings will be modified. They have already identified pedestrian crossing requirements under the current standards. When this was done standards were a little different. The traffic study did include the traffic projections for the fast food restaurant at the Staples plaza. He noted that when they did their study they included everything for Lowes and this location along with several other projects and also looked at a longer term scenario if the rest of the triangle was developed. The improvements they are discussing here is the first phase of what will continue if and when other applicants come in with their projects for this area. In the study it does show all those longer term improvements and they have accounted for the fast food restaurant and pedestrian improvements.

Chairman Fon asked the Board and the public if there were any other comments of which there were none. The Board adjourned the Public Informational Hearing to the next meeting due to a notice issue.

Motion to close the Regular Session and open the Work Session:

Chairman Fon motioned to close the Regular Session and open the Work Session, and with all those present voting aye, the Board closed the Regular Session and opened the Work Session.

WORK SESSION

Battery Storage – Public Comments

- **Jay Kopstein, Resident** – Mr. Kopstein stated that he has concerns with respect to battery storage. The first is a public safety issue. He said that lithium batteries can be a fire hazard and questioned the fire suppression system and potential pollutants. He asked if the Fire Inspector is in favor of this. Second, are the developers willing to train our first responders on how to deal with high density lithium batteries. He asked the Board not to close out or make recommendations for approval until the Town Board reviews the Town Code and fire safety issue.
- **Stewart Glass, Assistant to the Town Supervisor** – Mr. Glass stated that they talked about the model ordinance and expressed concerns about the fire code being updated. He said that if you look through Appendix 2 of the ordinance, it references changes to the NYS building code. He noted that they are continuing to update this ordinance.

Town Board Referral – Imagine VR Studios at the Jefferson Valley Mall

SBL:

Location: 650 Lee Boulevard / Jefferson Valley Mall

Description: Proposed Outdoor Entrance for the VR Studios storefront at the Jefferson Valley Mall at 650 Lee Boulevard.

Comments:

Peter Petrov, applicant was in attendance. Mr. Petrov stated that he is the owner of a new virtual reality entertainment establishment located at the Jefferson Valley Mall that will cater to both children and adults. He described the business to the Board. He is proposing a new exterior entrance/exit from the facility to allow them to remain open outside of the hours of the Jefferson Valley Mall. The store will be open on Friday and Saturday until midnight. He said that the entrance would be functional and aesthetically pleasing. The new glass doors and side lights will match the existing mall's entrance. The Town Engineer's memo of 9-19-2019 was reviewed. The Board noted that the applicant is to confirm that they are ADA compliant. The store is next to Dick's Sporting Goods store facing Route 6. The Board had no issues with the plans. The Planning Department will prepare a memo for the Town Board.

Battery Storage Facility for Rooftop Solar System (Staples Plaza)

SBL: 36.06-2-76

Discussion: Decision Statement

Location: 3333 Crompond Road

Contact: Maziar Dalaeli, IPP Solar, LLC

Description: The Applicant is proposing a battery storage facility to support the rooftop solar energy system installation. The facility would take up three parking spaces along the west side of the Staples Plaza.

Comments:

Maziar Dalaeli of IPP Solar, LLC was present. Mr. Dalaeli is here as a follow up to the August 12th meeting. He was before the Board on January 14th to make the initial presentation with respect to this project. He stated that the rooftop solar project is completed and they are now ready to move forward with the proposed battery storage project. The proposal is for the installation of a battery storage facility to be located behind the Urgent Care.

Chairman Fon stated that they have had a few applications since then and that the Planning Board and the Town Board have concerns about the type of use for these applications. Fire safety is a major concern. He suggested that the Building Inspector and Fire Inspector be invited to the next Board meeting to review and discuss this application to ensure all are on the same page.

Mr. LaScala asked Mr. Dalaeli why they didn't file this application with the original application. Mr. Dalaeli responded that the NYSEERDA incentives were not available at that time. The battery storage came about when the incentive program came along.

Mr. Tegeder stated that his thinking is that this may be a stand-alone project and not related to the other two projects. The power that is stored here will be sold back into the grid. It is no longer an incidental accessory use, it is a main use. Chairman Fon asked if it was a permitted main use. Mr. Tegeder stated that there is nothing in the code other than the public utilities special permit that allows this usage. Discussion regarding the zoning code followed.

Mr. Dalaeli responded that the battery storage, solar and super charger share the same transformer which is located behind the Urgent Care. He said that they went to Con Edison to get the service and transformer. Stand-alone projects came at the same time and share the same infrastructure. The super charger is on site. This battery storage is to reduce the stress on the grid. To say it is completely independent from the property is not accurate. Once it goes into the grid, it is everyone's power. Mr. Tegeder asked if the battery storage generates income. Is the grid buying back electric? Mr. Dalaeli responded yes and no. He said that when the super charger is operating it is not pulling from the grid. The batteries are charged from the solar.

Mr Bock stated that if it's a not an allowed use, this could not happen. Mr. Tegeder stated that there is nothing in the zoning code citing it as an allowed use. The solar project would essentially serve the plaza, with the excess going into the grid, generating its own electricity for the plaza as an accessory use. The question is whether or not the electric and the purpose for this battery storage is to serve the property primarily or to sell the electric back into the grid.

Mr. Kincart stated that they like the idea of using solar power to support the super charger. His concern is safety and ensuring that our local professionals are properly trained for a potential fire hazard. Mr. Dalaeli responded that he addresses this in his letter of September 18, 2019 in item #3 which addresses how any hazardous instances can be avoided, such as battery overheating. Mr. Kincart asked if the "0" incidents cited under item #3 is accurate and Mr. Dalaeli responded it was verified.

Chairman Fon noted that the Town Attorney drafted a model ordinance law that deals with battery storage installation which is up for discussion. Mr. Dalaeli stated that this is not the first battery storage facility in the country. They have all that is required for the project including what is required by the state. He is not sure what will be achieved by meeting with the Building Inspector and Fire Inspector. He stated that he has filed all the paperwork with the Building Department and thought that this would fall under their purview. Chairman Fon responded that the Building Inspector checks for code compliance and the Planning Board allows where it is located. Chairman Fon responded that although this may not be the first in the country, it is new in Yorktown. The Planning Board wants to make sure that all our professionals are on board. The Town Board is looking at the model ordinance and the Fire Board needs to be trained for this.

Mr. Dalaeli stated that this is a new concept and understandably there are concerns. He said that the battery is the size of a refrigerator. The cooling system was discussed. He noted that a tank of propane is more dangerous than a tank of lithium. He said that he is very surprised as at the previous board meeting, he thought all the issues were addressed. He said that they have made plans accordingly for delivery, construction, etc. Mr. Savoca responded that he does not know where he got that implication and respectfully disagrees. The applicant needs to respond to the Board's concerns regarding safety. Mr. Bock referenced the minutes from the previous meetings that indicate these concerns.

Charman Fon stated that as this evolves, they have questions. The model ordinance is brand new and needs to be addressed. Mr. Dalaeli stated that this is the first battery storage facility his company is doing and is just learning the process. He noted that they are a small company. He said that these projects are a complicated process and getting the approval from Con Edison was extremely challenging. They are working hard to move forward. Mr. Savoca stated that the Board wants to be as comfortable as he is with his proposal.

The Town Engineer memo dated September 19th was addressed. Mr. Tegeder asked Mr. Dalaeli if the project was in the wetland buffer and if they were disturbing more than 5,000 sf and the response was no.

Chairman Fon reiterated that this is the first battery storage facility in our town and the Planning Board is charged with doing what is best for the community. Mr. Kincart stated that they like the concept. Mr. Bock stated that it is very progressive. Mr. Bock stated that the applicant will need to address the Board's concerns in an orderly manner in order to move forward with a public hearing and an application to amend the site plan.

The Board asked the applicant to coordinate a meeting with the Building Inspector, Fire Inspector and Planning Department to review and discuss the application further. The Board stated that the fire safety issue needs to be addressed. The issue of the permit also needs to be sorted out. In addition, it was noted that the Town Board is working on the draft of the model ordinance which will be used as a guide.

ZBA Referral – Yorktown Energy Storage Facility

SBL: 6.17-1-24

Address: 3901 Gomer Court

Description: Proposed Special Use Permit for a Public Utility Substation under Town Code Section 300-57.
This project is located at 3901 Gomer Court.

Comments:

Robert Gaudio, Esq. of Snyder and Snyder, LLP; Tyler Kiss and Melissa Samaroo of Borrego Solar Systems Inc. were present. Mr. Gaudio stated that they are here as a follow up to the September 9th meeting. He said that this application is before the Planning Board as a referral from the Zoning Board. They are scheduled for a public hearing on September 26th. The energy storage system will be in the southwest corner of the site near NYS Route 6. It will take up 18,151 sf (0.42 acres) of the 2.5 acre parcel and will be enclosed by a 7 foot tall shadowbox fence with a 20-foot wide vehicle gate for access. They have submitted additional information based on the comments made by the Planning Board at the previous Work Session. They showed the delineation of the Town's wetland buffer and submitted a wetlands permit application to the Engineering Department. They have provided a safety memo dated September 17, 2019 with information on safety features, code compliance, fire detection and suppression, commissioning plan and emergency response planning. The facility is UL listed and meets all the required criteria. Mr. Gaudio noted that Borrego will work with local fire authorities and first responders as required to ensure that they understand the risks and protections within the system as noted in their safety memo.

Chairman Fon asked Mr. Buckley if he had any feedback from the Zoning Board. Mr. Buckley responded that he did and that their position was similar to that of the Planning Board and that is why the applicant is going back for a Public Hearing. He is not sure if there was a discussion about the special use permit. Mr. Garrigan responded that there was a determination that a special use permit was required and referred to this Board by the Zoning Board. What has changed since then is the fence, wetlands information, safety information and first responder training as requested by the Planning Board.

Mr. Tegeder asked who the owner was and the response was Yorktown Energy Storage 1, LLC, a subsidiary of Borrego Solar Systems, Inc. Mr. Tegeder asked if this was a public utility substation. Mr. Gaudio responded that this is a public utility substation under the code and confirmed to him by the Building Inspector.

The Board asked if the Town Engineer submitted a response to the application. Mr. Gaudio stated that they received a memo dated August 8, 2019. Mr. Bock asked if all the work was being done in the wetland buffer. Mr. Gaudio responded not all of it. The plans were shown to the Board. Mr. Tegeder asked if there was a mitigation plan. Mr. Gaudio responded that it was filed with the Town Engineer. Mr. Bock noted that the four containers are within the 100 foot wetland buffer on strip footings and was concerned that if there was a spill out, how would they protect the wetlands buffer that feeds into the stream. Mr. Gaudio stated that it was not a functioning wetland. Mr. Bock asked if this application has been referred to the Conservation Board. Mr. Gaudio stated that he did not know if it was referred out to the Conservation Board as yet but may be as a result of the wetland application.

The Board asked about the safety issues. Mr. Kiss responded that the fire detection and suppression are characterized at 4 different levels of containment as noted in the safety memo. The levels were reviewed with the Board. With respect to level #3 for a thermal runaway event, the BESS is equipped with a gas detection system for early alarm with the use of clean agents. A clean agent fire suppression system is designed into the battery enclosure. This system complies with NFPA 2001 and uses approved means for alarming and discharging the chemical agent – Novec 1230 to apply cooling in the container to stop fire reactions.

Mr. Bock asked about the note regarding the identified aquifer in the EAF on page 11. Mr. Guadioso responded that it was based on the DEP mapper program. He also noted that there is no flood plain issue. They are waiting for an amendment on the flood map and the surveyor is working on it.

Mr. Kincart asked about the four large pads and if they are in one disturbed area. Mr. Gaudioso responded that they are on strip footings and concrete pads will be required for the installation of the electrical equipment as noted in the PV Engineer letter dated September 19, 2019. Mr. Tegeder asked if the containers are concrete. Ms. Samaroo responded that they are steel and concrete container enclosures on a strip footing. Mr. Tegeder asked what the parameters of the footings were. Ms. Samaroo responded that they are 4 feet deep and 18 inches wide and will be 6 inches above the gravel.

The Board questioned the use in light of the battery storage law. Mr. Gaudioso responded that he felt it was not appropriate. This application has been filed. He noted that he has not seen this item on the Town Board agenda. NYSEDA should not be asked or slowed down due to a possible ordinance. Mr. Kiss stated that Borrego would be willing to work with the town to understand how to get this into the law.

Mr. Guadioso stated that he did not have any objections to comments from the Board at the last two meetings and have made changes and provided documentation accordingly. He is respectfully asking the Board to submit their comments to the Zoning Board noting the changes made and additional comments from this evening as part of the special permit process.

The Board requested that the Planning Department submit a memo to the Zoning Board with comments discussed.

Motion to Close Meeting

Upon a motion by Bill LaScala and seconded by Aaron Bock, and with all those present voting aye, the Board closed the meeting at 8:55 p.m.