

Planning Board Minutes May 9, 2016

A meeting of the Planning Board, Town of Yorktown, was held on May 9, 2016, at the Yorktown Town Hall Board Room, 363 Underhill Avenue, Yorktown Heights, NY 10598. The Chair, Rich Fon, opened the meeting at 7:00 pm with the following members present:

John Flynn
John Savoca
Anthony Tripodi

Also present were: John Tegeder, Director of Planning; Robyn Steinberg, Town Planner; Tom D'Agostino, Assistant Planner; Michael Quinn, Town Engineer; Anna Georgiou, Planning Board Counsel; Bruce Barber, Town Environmental Consultant; and Councilman Gregory Bernard, Town Board Liaison.

Correspondence: The Board did not receive any additional correspondence.

Minutes:

There was not a quorum of the board to review and approve the April 11, 2016 minutes. These minutes will be held over to the Board's next meeting.

Upon a motion by Savoca, seconded by Flynn, and voted in favor by Fon, Flynn, and Savoca, the Board approved the April 25, 2016 minutes by the Chair's corrected copy.

Fon said thank you to Darlene Rivera who is no longer with the Board. Introduced Anthony Tripodi as new member. Fon announced the Board will hold an advice of counsel session after the work session.

REGULAR SESSION

Little Sorrento's Restaurant

SBL: 36.05-1-15

Decision Statement – Outdoor Dining

Location: 3565 Crompond Road

Contact: Gina DiPaterio

Description: Proposed 20 seat patio measuring approximately 300 square feet.

Upon a motion by Rivera, seconded by Flynn, and with all those present voting in favor, the Board approved the site plan for Lot 6.2 of the Arrowhead Subdivision.

Paul and Gina DiPaterio were present. The Board and the applicants reviewed the revised resolution.

Upon a motion by Flynn, seconded by Savoca, and with Fon, Flynn, and Savoca voting in favor, Tripodi abstained, the Board approved a Special Permit for Outdoor Dining at Little Sorrento.

322 Kear LLC aka Marathon Development

SBL: 37.18-2-51

Decision Statement

Location: 322 Kear Street

Contact: Site Design Consultants

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Description: Proposed three story commercial/residential building with associated parking and walks. The building is approximately 13,000 square feet.

Al Capellini, project attorney, was present. John Savoca stated for the record that with respect to this application he has decided to recuse himself. It has come to his attention recently that he may have a possible pecuniary interest in the project. Therefore as a result of that potential conflict he will no longer be participating in any further discussion or voting on this project.

Capellini requested the project be moved to the work session. Fon agreed and stated the project would be discussed in the work session later tonight.

JCPC Holdings, LLC

SBL: 48.07-2-2

Decision Statement

Location: 1560 Front Street

Contact: Ciarcia Engineering, P.C.

Description: Proposed new 5,000 sf building for an engine building shop and off-site wetland mitigation.

Al Capellini, project attorney; Joseph Riina, project engineer; Steve Marino, project environmental consultant; and John & Patty Cerbone, the applicants; were present. Capellini stated that Riina is filling in for Dan Ciarcia on this project. Riina attempted to address many of the straight forward comments on the project. The landscape Plan has not been addressed. The applicant would like to meet with staff to review the details. The photometric plan is being prepared. The sign has been relocated 5 feet inside the property line. The applicant has asked that it be a little closer to the driveway than shown on this plan. The yard setbacks have been modified in response to the determination by the Building Inspector. The zoning schedule has been modified to reflect these changes. The grading for the detention pond was relocated onto the property. Tegeder asked if the detention pond was moved away from Front Street as much as possible. Riina stated that he is still working on the SWPPP (Stormwater Pollution Prevention Plan) and will try to do that as much as possible. This afternoon Riina received the memo from the Town Engineer. Regarding the Environmental Assessment Form, Marino will explain next. In response to #3, the dimensions of the parking spaces are now shown on the plan as well as the backup aisle width. In response to #4, the SWPPP is in progress. In response to #5, the setback issue was clarified. In response to #6, the lighting plan is in progress. In response to #7 regarding the rock outcrop and details of the wall, Riina does not have a response at this time. As part of preparing the SWPPP, an erosion & sediment control plan will be prepared as well as more detail on the grading & utilities, tree removal, and landscaping. #9 will be addressed in the SWPPP. In response to #10, the applicant will obtain additional standard other permits necessary to complete the project.

Marino met with Quinn and Barber a week ago Friday and discussed the wetland issues. Barber was concerned about water when it first comes into the mitigation area. Barber suggested a flow splitter system to separate low and high flows into the site. Marino and Riina met on the site and came up with a gabion containment area to separate the flows and make sure that the area is not washed out. This plan has not yet been reviewed by the Town Engineer or Town Environmental Consultant. The concept is the same as before however, there is no longer an excavated basin in the wetland. Now it is a structure at the inlet to the site. The gabions will be set at different elevations set by Riina. The low flow will go through the new wetland area. The higher flows will be directed into an area for overflow

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and into the existing channel. The ½ inch storm (first flush) is the low flow. Marino presented the original concept plan that was never submitted to the Board. This plan shows 12,000 square foot wetland creation area, a forebay area, area where debris is to be removed, the existing stream channel area to be cleaned up and banks reestablished, an area to place removed sediment, and the creation of a berm, which still allows access for machinery for maintenance and for the future EOH (East of Hudson) project. Marino provided a discussion to be added to the Full Environmental Assessment Form, essentially a Part 3, discussing the function of the existing wetland and the proposed function of the off-site wetland mitigation project. Fon confirmed that the wetland mitigation is proposed off site. The on-site wetlands is approximately 11,000 square feet in size. It is a shallow depression that allows water to collect during storm events and qualifies as a town wetland. A drainage pipe on site is clogged. The runoff runs through the site and to a stream connects directly to the Croton Reservoir. There are DEC wetlands on the town property. The purpose of the mitigation project is to make a better functional wetland to treat the watershed before it enters the stream. Fon confirmed the EOH is the East of Hudson that may complete a larger project in the future. Marino stated that was correct and this project would be the first part of that larger project. Nothing being done now would prevent the future project. Fon stated that the two projects; the applicant's mitigation and the East of Hudson are not connected. The details of all the work proposed by the applicant is not yet complete.

Flynn stated he thought that progress is being made on the project. The off-site mitigation will be a big improvement for the area. In his opinion however, he is not ready to approve a resolution tonight because, aside from the off-site mitigation that has not yet been reviewed, there are many items that are still incomplete. Fon read through the items listed in the draft resolution that have not yet been completed and are listed as conditions.

Capellini requested if the item could be heard at a special session at the next meeting. The Board has approved resolutions with conditions before. Flynn stated that is correct, however the Board has approved site plans conditioned on a few loose ends being completed. There are many items that need to be submitted for this project. Tegeder stated the applicant did submit a preliminary landscape plan and a lighting plan, though it does not include the photometrics. Flynn stated he thought there were still too many uncertainties. The property is adjacent to residential properties and providing a buffer is important. Georgiou suggested the Board indicate what conditions the Board would be comfortable leaving as conditions of an approval. Flynn stated that he would like the mitigation plan a little further along and that it be reviewed by Quinn & Barber, the landscape plan in final form, and a lighting plan that is complete. Quinn stated a stormwater plan has not been submitted at all at this point. A preliminary plan should be submitted prior to a decision. The applicant and staff must at least agree on the approach and then receive the numbers later.

Fon asked if the Board can set up a special session for the May 23rd meeting. Tegeder stated the Board can hold a special session at the work session. Riina stated he was not sure he could submit a stormwater plan in 2 weeks. If the plan needs to be amended, we will come back. The applicant is supposed to be on the ABACA agenda tomorrow night. Flynn stated he had no objection to the project itself, but felt the plans need to be more finalized before the Board could vote.

Blumberg Subdivision

SBL: 47.15-1-21

Public Hearing

Location: 1305-1307 Baptist Church Road

Contact: Kellard Sessions, P.C.

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Description: Proposed two lot subdivision to result in a 30.852 acre parcel which includes the main residence and a 12.749 acre parcel which includes farm structures and a residence. No new improvements are proposed.

Al Capellini, project attorney, John Kellard, project engineer, and the applicant, Leda Blumberg, were present. Capellini described the existing property. The land has been a farm since the 1930s. The owners wish to divide the property into two portions; one for the farm itself and the second a residential structure that has been the home site since the 1950s when they started the alpaca farm. Both lots will have single family homes on them. The subdivision is for estate purposes. No work on the property is proposed. The Zoning Board of Appeals granted setback variances for several of the existing structures. Kellard stated the site is 44 acres in size and is the Faraway Farm on the south side of Baptist church Road. The subdivision includes a 31 acre parcel with the main house and a 13 acre parcel with another home, the farm, paddock, and accessory farm buildings. The proposed lot line was drawn around these buildings. The plat shows potential septic system expansion areas. Testing has been completed with the health department. The systems were moved to comply with the NYCDEP memo that stated they must be more than 200 feet from a water course.

No one from the public came forward to comment on the application.

Upon a motion by Savoca, seconded by Flynn, and with Fon, Flynn, and Savoca voting in favor, Tripodi abstained, the Board declared Lead Agency.

Upon a motion by Flynn, seconded by Savoca, and with Fon, Flynn, and Savoca voting in favor, Tripodi abstained, the Board adopted a Negative Declaration.

Upon a motion by Savoca, seconded by Flynn, and with Fon, Flynn, and Savoca voting in favor, Tripodi abstained, the Board closed the Public Hearing.

Upon a motion by Flynn, seconded by Savoca, and with Fon, Flynn, and Savoca voting in favor, Tripodi abstained, the Board approved the plat for the Blumberg Subdivision.

Ianuzzi Resubdivision

SBL: 47.15-1-14, 15, & 16

Public Hearing

Location: 1189 Baptist Church Road

Contact: Site Design Consultants

Description: Proposed resubdivision of 3 lots into 4 lots under the Town's Flexibility Standards.

Al Capellini, project attorney, and Joseph Riina, project engineer, were present. Capellini stated this is a four lot subdivision on Baptist Church Road. The application is a resubdivision of 3 lots into 4 lots. There are 3 existing dwellings. One existing dwelling will be removed and 2 new houses will be built. The Town Board authorized the Planning Board to use Flexibility. Primarily the Flexibility was focused on the preserving the common driveways and not building a 700 foot long town road to access the lots. A new town road would only service these four lots and would therefore not be useful for any future development. Riina stated the total site acreage is 20 acres. There are currently three homes on the three existing lots; (1) a 1 acre lot with existing residence, (2) second parcel contains the main residence and two accessory garage structures; (3) third parcel with existing residence. The location of

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the septic on the 1 acre lot is unknown. The main residence is accessed through a driveway to Baptist Church Road that has a permanent access easement over the aqueduct. The two southern lots are accessed through the common driveway. The main residence has an auxiliary driveway that connects to the common driveway. A wetland delineation was completed for two wetland areas. They have been confirmed by the town wetlands consultant. The lots do meet the bulk regulations for the R1-160 zone. The site was reconfigured and designed to maintain the existing infrastructure, minimizing disturbance, and leave the existing main structures. All the existing driveways will remain. The only new driveway will be to access Lot 1 and the short piece of driveway added to access proposed Lot 4. The Town's fire board requested the gravel driveway be widened, a pull off area was added, and a gravel area was added to allow turnaround of a fire truck on Lot 3. All lots will be served by existing or proposed wells. Once approval is granted from the Planning Board, the applicant will be applying to the Westchester County Board of Health. The site development does not meet any thresholds that would require NYCDEP approval.

Quinn stated the Engineering Department is still completing a technical review of the application. One concern is that the shared driveways all need easements for access. Capellini stated there will be a Declaration filed at the time the map is filed that will impose upon the three lots using the common driveway to maintain and replace the common driveway. Riina stated that the common easements are shown on the plan.

Flynn asked if the septic system locations have been approved. Riina stated yes, all testing has been completed with the health department for the two new homes. After meeting with the Conservation Board, the septic area proposed on Lot 4 was very close to the 100 foot buffer on that property. This septic system has been moved. Tegeder asked whether clearance is required between the well and septic area on Lots 3 and 4. Riina stated that there is a dip in the topography so the separation shown is allowed. The Board of Health has approved this location. Flynn asked if a tree survey was completed. Riina stated he thought the Board had discussed the requirement for a tree survey early on and it was decided that a tree survey for this property was not going to be prepared. The Board agreed that they had made a site visit. Riina suggested a tree survey be required prior to the building permit for each lot. Tegeder reminded the Board that the tree permit approval is the Planning Board's approval. Quinn stated that in order to complete the subdivision, the road upgrade will have to be completed. The common driveway is being widened and improved for fire department access. Riina stated the common driveway will be a consistent 12 feet wide for its entire length. The driveway will remain gravel. The additional gravel between Lots 3 and 4 could be grass pavers because the only use of the area is for if a fire truck had to turn around.

No one from the public came forward to comment on the application. Capellini requested the Board close the hearing.

Upon a motion by Savoca, seconded by Flynn, Tripodi abstained, The Board closed the Public Hearing and left a written comment period open for 10 days.

Upon a motion by Savoca, seconded by Flynn, and with all those present voting in favor, the Board closed the Regular Session.

WORK SESSION

322 Kear LLC aka Marathon Development

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SBL: 37.18-2-51

Decision Statement

Location: 322 Kear Street

Contact: Site Design Consultants

Description: Proposed three story commercial/residential building with associated parking and walks. The building is approximately 13,000 square feet.

Savoca recused himself from the discussion. Al Capellini, project attorney; Joseph Riina, project engineer; and the applicant, Mark Beida were present. Riina stated that since the last meeting a full set of drawings and a stormwater plan were submitted. Riina met with Quinn on the stormwater plan and an additional meeting is necessary. Quinn stated that there are some fundamental disagreements on the stormwater plan. Quinn stated he does not think the applicant has enough stormwater retention on the site. In the rear of the site, there is a depressed curb, so overflow would runoff onto the adjacent property. Once a site is developed, it is the property owner's responsibility to deal with the water on the site. Capellini stated in his opinion, the responsibility should not go beyond the current condition on the site. Riina stated the applicant could propose a little more, however his approach is an acceptable listed practice in the NYSDEC Design Manual. The grass pavers have a gravel reservoir underneath that will accommodate the 100 year storm on the site. Riina conceded that the entire storm is not contained, but that the stormwater plan does not increase the peak rate of runoff from existing conditions. The increased flow rate is 2 cfs (cubic feet per second), which is a very low flow and this only happens under the 100 year storm condition. There is a slight increase on Kear Street side as well, however the applicant is showing many streetscape improvements and there is not much room for any other treatment. Again the increase is a very small increase only for the 100 year storm. Quinn stated he agrees that the post-construction site runoff must not exceed the pre-construction site runoff, however he does not agree with numbers used in the report. More underground storage is needed. Any overflow should go into an existing storm sewer in Kear Street and not onto another site. Tegeder asked where runoff goes now. Riina stated that runoff from the site overflows into the parking lot behind the old Food Emporium building, then it runs out to Commerce Street. This runoff does not flow into the larger drainage system underground on the neighboring site, however both drainage systems connect to Commerce Street and then into the Hallocks Mill. Riina stated that under the Town Stormwater Ordinance, the site does not meet the threshold requiring issuance of a Town SWPPP Permit. Tegeder stated that the site was in the NYCDEP watershed therefore the Town should be aware of the stormwater plan even if we are not approving a permit.

Barber was concerned that both green infrastructure and standard practices should be used in concert. Pavers and gravel can fill over time leading to less and less voids in the practice over time. In addition, water in the voids can freeze in winter. Barber asked if snow storage was proposed to be on the east side of site where the landscaping buffer is also proposed in the same 10 foot strip. Barber stated his concern with the increase in flow towards the Food Emporium is because the drop curb creates a design point and changes the concentration of flow to the trench drain at the Food Emporium loading dock. On Kear Street side, Barber was concerned with even the very low increase post-construction because the two catch basins on Kear Street flood during large storms. Barber is not asking the applicant to fix this problem, but the development should not exacerbate the situation.

Riina stated that maintenance is the underlying key to making stormwater systems sustainable. Maintaining a surface practice is easier than maintaining an underground practice. The applicant has agreed to add infiltrators to handle the roof runoff. Riina is against the idea of bringing the drainage collected in the rear to the front of the site against gravity. This would require raising the back of the

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site and it doesn't make sense to add more flow to this system when Barber just stated the Kear Street basins flood in large storms. Capellini asked if the plaza can be removed. Barber asked if the plaza can be permeable instead. Quinn stated that any improvement in the town right-of-way needs to be to town standard. Tegeder suggested a strip drain be added to hold the water long enough. Riina stated a strip drain would be in the town right-of-way between the sidewalk and the grass next to the road.

Capellini stated a SEQR determination is the critical path for this project. Fon requested to look at the other plans the applicant submitted. Riina showed the Landscape Plan. Quinn asked if there would be any street trees. Riina pointed out the trees on the sides of the site, which are on the site, not in the right-of-way. ABACA will review the plan tomorrow night. Riina stated the double yellow can be relocated and allow for 11.5 foot travel lanes. Tegeder asked between which points on the road the double yellow line would be moved. Riina pointed out where the modification would start and end, but stated the Highway Superintendent would make the final determination. Quinn suggested angling the on-site parking since one-way access. Riina stated that he did try to angle the parking, but doing so did not work well. The Board viewed the Lighting Plan. All LED wall-packs are proposed. The Board noticed dark areas in the corners of the site and suggested the applicant investigate using bollard type lights instead of pole lights to light these areas without spilling onto the neighboring property.

The Board discussed the on-site parking. The proposed plan is short by 9 parking spaces. A total of 37 parking spaces are required and 28 parking spaces are shown. The applicant is requesting the Board waive the 9 parking spaces. Flynn stated that if the retail spaces will not be used in the evenings, the applicant does have a minimum of 2.2 spaces for each of the 12 apartments. Tripodi asked how the shared parking would work on Saturdays. Riina stated that Saturdays would not be significantly worse than any other peak hour on the site. Flynn asked if the apartments would have dedicated or assigned spaces. Beida stated that the parking spaces would not be assigned. Tripodi asked how many bedrooms per apartment. Capellini stated there would be both one and two bedroom apartments. Riina gave a quick summary of the analysis the applicant performed for parking, including a study of the Underhill Apartments site located on Underhill Avenue and also owned by the applicant. Capellini stated the applicant did not consider the on-street parking on Kear Street available spaces when conducting the traffic analysis. Flynn asked if the apartment leases would specify the number of automobiles allowed on the property per unit. Beida stated that there would not be a set limit of vehicles per apartment. Flynn asked if the Board could set a maximum number of vehicles per unit in the resolution. Georgiou stated that such a condition would be unorthodox. One and two bedroom apartments typically do not generate as much parking as three or four bedrooms. There are also occupancy restrictions on the apartments pursuant to the county affordability program. In addition, such a condition would be difficult to enforce. Flynn thought the town had rules like that multifamily complexes cannot wash cars in parking lot. Flynn stated he lives in a complex that is also made up of one and two bedroom apartments and there are a lot of cars. Capellini stated that the town's parking lot next to the highway department would be open at night should there be overflow, however Beida's study at the Underhill Apartments showed 1.5 spaces per apartment would provide enough parking.

Capellini stated the applicant is concerned about timing and losing funding and requested the Board declare a Negative Declaration on the next work session. Georgiou asked if the EAF was complete, if the Board had conducted a coordinated review, and if the involved agency comments were received and addressed. Tegeder stated yes, the EAF is complete and letters have been received from outside agencies. The applicant and staff will work towards an agreement on the approach to handling the stormwater before next meeting.

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Brophy, Stephen

SBL: 35.08-1-17

Discussion Site Plan

Location: 3787 Crompond Road

Contact: Site Design Consultants

Description: Proposed to convert existing building into a restaurant with a patio for outdoor seating and associated parking.

Joseph Riina, project engineer, and the applicant Steve Brophy, were present. Brophy is looking to convert the used car dealership into a sandwich shop. Riina stated the proposed plan does not add any new impervious area. There will be a reduction in the amount of impervious area. There is an existing outdoor storage area in rear. The property owner has made an application to the Zoning Board of Appeals to have this expired permit reapproved. A landscape contractor uses the outdoor storage area. Tegeder requested background paperwork for the site be submitted to the Planning Board. Currently there are two curb cuts from the site onto Route 202. Riina stated the property owner does not want to close either of the curb cuts. Tegeder stated that there is a long standing effort to limit curb cuts and asked what the second curb cut is used for. Riina stated keeping the curb cut is the property owner's request. Riina stated the applicant would be willing to make the second curb cut not easily useable or close it temporarily with planters. The curb cut is not needed for the proposed use. Though narrow, the access around the building is safe, but not used on a regular basis. The home in the rear of the property is a two-family home that is rented and not used by the landscaping contractor. Tegeder stated that if the Planning Board is approving a site plan then they are blessing the entire site, not just the front. Savoca asked the Riina how left turns going north towards Peekskill would be handled. The site will be busier than it is now. Georgiou requested a history of the site from the Building Inspector. The uses seem to be pre-existing non-conforming uses, but there is a lot happening on the site. Georgiou asked if the residence has been consistently occupied. Riina requested the Public Informational Hearing be scheduled. Quinn asked what other application materials have been submitted; an existing site survey, drainage, etc. Flynn stated the proposed sandwich shop would be a beneficial use for the site. D'Agostino stated his memo had listed several questions regarding the submitted EAF. Riina stated he will be submitting a revised EAF. The Board scheduled a Public Informational Hearing for the June 13th meeting.

Town Board Referral

Proposed Local Law amending Chapter 245-5 of the Code of the Town of Yorktown entitled "Solid Waste."

Tegeder summarized the draft local law stating the purpose is to require refuse enclosures for all sites, includes existing built out sites. If a site received a violation, the property owner would have to come to the Planning Board. Councilman Bernard stated that the genesis of the proposed law was the nuisance of open dumpsters with trash blowing out. The DeCicco's site has been the main concern. Garbage comes out of the dumpsters and blows across East Main Street. The DeCicco's dumpsters are all enclosed. It is all the other uses in the strip that are mostly food related businesses that generate a large amount of trash. The law would apply to commercial and residential complexes. As proposed, the law currently does not include a waiver provision. Fon asked if multiple dumpsters at strip plazas could be consolidated and a compacter be required for all to use. Councilman Bernard responded that compacters would make sense, but then all tenants would need to use a certain contractor even if there is a cheaper alternative. Fon stated the proposed law was an excellent idea and needs to be done,

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however the Planning Board might have to deal with the loss of parking spaces, whether recycling now needs to be added, any new environmental issues that may arise during the review, hearing and notice requirements, the costs of an amended site plan application, etc. Tegeder stated that the way the law is written, when the property owner comes to the Planning Board, the box gets opened. It will depend on the extent of the changes, whether an amended site plan would be needed. Councilman Bernard stated hoped most sites will not require removal of parking spaces. Fon stated there needs to be plan on how to pick up violations once the law is in place; town wide or certain areas at a time. Enforcement cannot be selective. Flynn asked if the law addressed damage to enclosures. Bernard stated damage and disrepair would be part of enforcement. The Planning Department will draft a memo to the Town Board for the Board to review at the next meeting.

Upon a motion by Savoca, seconded by Flynn, and with all those present voting aye, the Board voted to go into an advice of counsel session with the Board's attorney.

Upon a motion by Savoca, seconded by Flynn, and with all those present voting aye, the Board closed the meeting at 10:15 pm.