

## Planning Board Minutes July 11, 2016

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A meeting of the Planning Board, Town of Yorktown, was held on July 11, 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  
John Kincart  
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 reviewed the correspondence.

### **Minutes:**

**Upon a motion by John Flynn, seconded by John Savoca, and with all those present voting aye, the Board approved the June 27, 2016 minutes by the Chair's corrected copy.**

### **REGULAR SESSION**

#### **Hanover Corner Inc.**

**SBL: 37.18-2-78**

#### **Decision Statement - SWPPP**

Location: 1803 Commerce Street

Contact: Site Design Consultants

Description: The property owner is proposing on-site parking to accommodate the existing two-story building.

Joseph Riina, project engineer from Site Design Consultants, Al Capellini, project attorney, and the applicant, Michael Dubovsky, were present. Riina stated that the applicant has submitted the final set of drawings and SWPPP for the project. The NYCDEP approved the SWPPP. We were waiting on the Lighting Plan which came in and was submitted late today. Quinn, stated that he submitted a memo to the Board today, which did not include review of the lighting plan. Tegeder stated that the lighting plan was requested as part of the site plan set and did not have any bearing on the SWPPP approval in front of the Board tonight. Quinn stated that the SWPPP was slightly revised from the one originally reviewed by the Board and the Engineering Department has no further comments. Quinn's memo lists the conditions recommended for the Boards approval of the SWPPP permit.

**Upon a motion by John Flynn, seconded by Kincart, and Fon, Flynn, Savoca, and Kincart voting aye, Tripodi abstained, the Board approved a Stormwater Pollution Prevention Plan Permit for the Hanover Corner, Inc. Site Plan subject to the conditions listed in the Town Engineer's July 11<sup>th</sup> memo.**

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### **Village Traditions**

**SBL: 15.16-1-32**

#### **Reapproval – Site Plan**

Location: 1821 East Main Street

Contact: Tim Mallon

Description: Applicant is seeking site plan reapproval. Applicant has not built the proposed new barn.

Tim Mallon, property owner, was present. Mallon stated that he had been in front of the Board last month to discuss shifting the proposed barn building. Tegeder stated that he met with Mallon and his architect/engineer subsequent to that meeting. Relocating the proposed barn building can be discussed at a later date. Quinn asked if this project was in progress. Tegeder stated that the site plan was approved, the front building was renovated, site improvements were made, and the site is operational. Mallon never built the barn in the rear.

**Upon a motion by John Kincart, seconded by John Savoca, and with all those present voting aye, the Board reapproved the Village Traditions Site Plan.**

### **Chase (JPMorgan) Bank**

**SBL: 37.14-2-66**

#### **Public Hearing**

Location: 1975 Commerce Street

Contact: Gibbons, P.C.

Description: Proposed 4,632 sf bank with one drive-thru lane and one bypass lane, with parking and related site improvements.

Jennifer Porter, project attorney, stated the applicant is in front of the Planning Board for a site plan approval for a 4,632 square foot bank and related site improvements. At the request of the Board, the applicant reached out to the Wallauer's property by certified letter. They did not respond so Porter called and spoke with Peter Iannace, their attorney, today. Iannace stated that the Wallauer's did not wish to be involved with the Chase plan. They had no objections to the development and would not be coming to the meeting tonight.

Matthew DeWitt, project engineer from Core States Group, described the proposed site plan. Since the original application, the ATM vestibule was moved from the front of the building to the side near the parking lot. Two more parking spaces were added in the southwest corner of the site. The Town's streetscape details have been incorporated including bench and street light specification. There is one trash enclosure located in the southeastern corner of the site. The dedicated tree at the front of the site will be preserved. The retaining wall along the frontage, will be replaced. The applicant will saw cut 2 feet into Commerce Street to create a clean cut for the site work with all new streetscape improvements as specified by the Town. Quinn stated he is satisfied with the applicant's stormwater plan and only has minor comments. His memo from today mainly lists many items already agreed upon. Preservation of the tree should be included in the Board's resolution. DeWitt described the stormwater plan. The current site has no treatment. The proposed design captures and treats all the paved areas. Flynn asked Barber about his concern regarding the proposed Jellyfish filter. Barber stated the Jellyfish filter is a proprietary practice used in this situation, however the NYCDEP typically only approves of their use where there is no additional impervious surface. This project proposes so little new impervious area that the NYCDEP may still approve, but it is up to them. There are other alternatives should it not be

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approved. DeWitt emphasized that the entire driveway in front is being treated as new impervious even though most of it is already impervious.

Richard Pearson, the traffic consultant from John Meyer Consulting, summarized the traffic study. The project is a consolidation of two existing banks in town. The analysis concluded that there would be no changes to the levels of service at the intersections studied. At the Board's request, a sensitivity analysis was performed. The applicant did take manual counts of trips generated by the Wallauer's site, which resulted in about 2 trips per hour at most. Pearson did not believe there is a need to restrict full movement at the two proposed curb cuts. Pearson recommends pruning the lower branches of some trees to improve site distance. Any queueing would occur inside the site. Those vehicles could choose to make a right turn and go around to get to their destinations. Quinn stated that there is Level of Service and then there's wait time to leave the bank. One of the conditions Quinn recommended in the memo is to do post-construction counts, when the bank is open, to ensure there isn't any traffic impacts. Porter objected to this condition stating the applicant performed a traffic study and then performed a sensitivity analysis. Requiring this condition post-occupancy is a problem because it leaves the issue open-ended and subject to change. Chase cannot agree. Fon asked about the other two existing Chase Banks. Porter stated that Chase intends close the two existing banks. Tripodi asked about staffing at the new bank. Tom Moffatt, Chase Vice President, Northeast Region Area Manager of Construction, stated the proposed bank is larger than both the two other banks and will accommodate the staff of both with some room to grow. Quinn stated the current site has only one driveway and the applicant wants two curb cuts. Because the applicant is asking for the second entry/exit, it does require extra scrutiny. Fon asked what if the Wallauer's changed to another business. Kincart stated that the Friendly's could be reoccupied as well. The bank has handled the traffic circulation and the proposed plan shows the safest plan. It is difficult getting into the existing bank located up Crompond Road. Flynn stated that the other two bank buildings will be reoccupied.

### **Ann Kutter – Old Crompond Road**

Kutter asked if there had been any discussion of opening up the rear of the site to the Turco's site for pedestrian traffic. Fon stated that this had not been discussed. Flynn stated the condition of the alleyway behind the Turco's building is unpleasant and doesn't invite pedestrians.

### **Dan Strauss – 3176 Woodfield Court**

Strauss concurred that the site plan is fine with the work the applicant is proposing. There is a gas station up the street where traffic backs up on Tuesdays and Wednesday on their sale days. It backs up there and compounds the traffic situation on Commerce Street. This bank isn't going to cause this type of problem. Friendly's will be reoccupied. In Strauss' opinion, people tend to make right turns and the Board shouldn't be concerned about left turns in or out of the site.

The applicant requested to be on the next meeting. Tegeder stated the Board typically reviews a draft resolution and will continue the discussion on the traffic.

Tripodi asked what alternative there would be to the Jellyfish filter practice. Quinn stated a sand filter or more natural practice are alternatives to the proprietary device. Tegeder stated that regular maintenance is required for the Jellyfish filter and that is the reason why the NYCDEP does not typically prefer it.

**Upon a motion by John Kincart, seconded by John Savoca, and with all those present voting aye, the Board closed the Public Hearing allowing a 14-day written comment period.**

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Upon a motion by Anthony Tripodi, seconded by John Kincart, and with all those present voting in favor, the Board closed the Regular Session.

### WORK SESSION

#### **Bonsignore**

**SBL: 36.05-2-57**

#### **Discussion – Wetland Permit and SWPPP**

Location: 2483 Hunterbrook Road

Contact: Site Design Consultants

Description: Proposed subdivision of 3.422 acre lot with an existing 2-story dwelling into 3-lots.

Al Capellini, project attorney, Joseph Riina, project engineer, and the applicant, Andrew Ryder, were present. Riina stated the applicant submitted a revised mitigation plan. In April a revised SWPPP was submitted that addressed Bruce Barber's comments. Capellini stated the applicant is in contract on the existing home and the buyer has moved into a hotel. Quinn stated that Barber has no other comments on the SWPPP. His office did not pull together the permit conditions yet, however they will be the standard conditions; erosion and sediment control bond, etc. Tegeder stated the permit was approved as part of the Board's subdivision resolution, subject to the conditions of Barber's memo. Quinn will issue the conditions this week.

#### **Staples Plaza Redevelopment**

**SBL: 36.06-2-76**

#### **Discussion – Site Plan and SWPPP**

Location: 3333 Crompond Road

Contact: Robert Aiello, P.E.

Description: Applicant is proposing a gas pump facility in connection with BJs Wholesale Club.

Rob Aiello, project engineer from John Meyer Consulting, was present. Aiello stated the site plan was approved last May. The project recently received SWPPP approval from the NYCDEP. Aiello highlighted the elements on the plan that changed pursuant to the DEP's approval. Quinn stated that he met with Rob and was comfortable with the SWPPP as revised. The Planning Department will circulate a memo that the SWPPP as revised is the SWPPP of record for the approval.

#### **Spark Steakhouse**

**SBL: 26.18-1-7.29**

#### **Discussion – Amended Site Plan and Outdoor Seating Special Use Permit**

Location: 3360 Old Crompond Road

Contact: MAP Architecture

Description: Proposed 274 square foot addition, relocation of the trash enclosure, and outdoor dining for 40 seats.

Michael Piccirillo, project architect, and the applicants, Elvis Cutra and Klevis Tana, were present. Piccirillo stated that he did not have time to write a memo to the Board responding to the public comments, however would respond to the comments now. There will be no live music outside. Only soft background music. The restaurant maintains standard hours Sunday-Wednesday from 12 noon - 10:30 pm and Thursday-Saturday closing at 11 pm. The restaurant will provide valet parking, by a

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professional valet company, during all hours. The restaurant requires 71 parking spaces and 80 total spaces are available with the shared parking when the Best Plumbing site is closed. The original site plan for the site required a shared parking agreement which is already in place. The restaurant will be open for lunch and dinner, as well as, brunch on weekends. The Board asked if Best Plumbing is open on Saturdays. [Best Plumbing is open Saturdays 9:00 am – 5:00 pm and closed on Sundays.] Tegeder stated the applicant cannot count parking on the street because the code requires off-street parking be provided. Stacked valet parking will help the site, but does not change the required parking to be provided. Piccirillo stated the applicant is preparing a submission to ABACA for a backlit sign on the building.

The only other remaining issue is Catch Basin #6 (CB #6). Neil Deluca, the property owner, was present. Deluca explained that CB #6 was intended to catch runoff from the parking lot. There is an enclosure that the restaurant would like to keep. Even though the catch basin is not catching any water, it should be relocated outside the enclosure. Tegeder stated Catch Basins #5 & #6 serve this side of the site. On the plan it appears that CB #6 was to receive very little runoff, but in fact the calculations in the SWPPP show CB #6 was indicated to receive the majority of the runoff and CB #5 less. Deluca's solution provides the connection to CB #6 as intended and therefore reinstates the original design, whether or not it takes a significant amount of runoff or not. Quinn, stated that he, Deluca, and Barber had a conference call to discuss this issue this afternoon and did not come to a conclusion. What was built doesn't match the plan. The easy solution is to get the original engineer to reconcile the plan. CB #5 and CB #6 go to separate practices. This has to be resolved. It is the applicant's responsibility to solve the problem and show how the numbers going to CB #5 and CB #6 still work. Quinn also stated that the enclosure area was supposed to be a loading dock that trucks would back into. Now the applicant is proposing it as a small addition, which can't have storm drain pipes going under the building. Deluca stated he is not using the original engineer. He is working with Kevin McManus, professional engineer. Tana stated that the addition is for walk-in coolers. Tegeder stated that the pipes must then go around the addition to connect to CB #6. Barber stated another alternative would be for the applicant to show that CB #5's existing piping to the basin and the basin is able to handle the additional flow. The Board was comfortable with the plan either way, provided Quinn is comfortable with the design verified by the applicant's engineer.

Fon asked if there were any other issues that need to be reviewed. Tegeder stated no. Piccirillo requested a Public Hearing be scheduled. The Board scheduled a Public Hearing for the August 8, 2016 meeting.

### **Fieldstone Manor**

**SBL: 15.11-1.17**

#### **Discussion – Subdivision**

Location: Strawberry Road

Contact: Albert A. Capellini, Esq.

Description: A 21-lot cluster subdivision on 22.94 acres in the R1-20 zone that received Preliminary Subdivision Approval by Res #14-02 on February 10, 2014.

Al Capellini, project attorney, and Joseph Riina, project engineer from Site Design Consultants, were present. Capellini stated that staff felt that the ownership of the mansion should be connected to the ownership of the conservation area, the roads, and the tower. Therefore, the plat has been revised to show these areas as one large lot. The applicant has reviewed the proposed Declaration with staff and Georgiou. The Board asked the reasoning behind the consolidation of the lots into one. Georgiou stated

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the thinking was that there would be responsibility and a presence on the site if the owner of the mansion was also responsible for these other areas. The Board scheduled a Public Hearing for the August 8<sup>th</sup> meeting and asked the Planning Department to draft a resolution for final approval. Tegeder asked about the recreation component of the subdivision. Capellini stated the applicant wants to remain with the originally proposed recreation as shown on the preliminary approval.

### **Faith Bible Church**

**SBL: 15.16-2-50,53, 54 & 15.16-2-9,10**

#### **Discussion – Site Plan**

Location: 3448 Sagamore Avenue

Contact: Albert A. Capellini, Esq.

Description: Approved Special Use Permit, Site/Parking Plan, Stormwater Pollution Prevention Plan Permit, Wetland Permit, and Tree Removal Permit for an 8,000 sf, two-story church and parking granted by Resolution #14-08 dated May 5, 2014.

Al Capellini, project attorney, Joseph Riina, project engineer from Site Design Consultants, and Rev. Carmine Zattoli, were present. Capellini stated the supreme court of New York State upheld the Board's decision. The case is now with the appellate division. It will take about 8 months to have the oral argument. In the meantime, the applicant would like to undertake some of the site work. In the approved wetlands permit, there is a condition that there is no construction on the site until a building permit is issued. The applicant would like to generate interest in the project by showing movement; doing site work and demolition. The applicant has obtained a NYS DEC permit. Capellini stated the applicant is therefore requesting the Board amend the wetland permit to eliminate the no work provision. The proposed site work would include demolition of the yellow building, construction of the sewer line, and possibly the parking lots. Quinn stated his one concern was for work going on while the existing church was still being used. Barber stated the demolition does not have any measureable impact to the wetland buffer. Riina stated that because of the yellow building's proximity to the main building, the building has to be pulled from the rear. This requires an access around the back of the building and then, once removed, the basement must be filled. Riina submitted a demolition plan to the Building Department that shows a 6 foot high fence and erosion and sediment controls. The existing asphalt parking lot will remain. No members of the Board objected to demolishing the yellow building. The Board requested the Planning Department send a memo to Building Inspector clarifying that the reference to no work in the wetland permit was to address the wetland and stormwater related work. The only additional site work allowed should be what is necessary to demolish the building. Zattoli stated that removing the building is a safety issue.

### **Town Tree Ordinance**

#### **Town Board Referral**

Description: A local law to repeal Chapter 270 in its entirety of the Code of the Town of Yorktown entitled "Trees," and replaced with a new Chapter 270 of the Code of the Town of Yorktown entitled "Tree Ordinance."

Fon stated his concerns are with the definition of a protected tree and the tree survey. Barber stated that the proposed ordinance states a protected tree is a tree which has a 12 inch diameter at breast height (DBH) and a specimen tree has an 18 inch DBH. In the existing tree ordinance, protected trees are those that are greater than 6 inch DBH. Barber stated that regarding the tree survey requirement, the issue, for example with the Featherbed application, was that the tree survey was costing more money than any other part of the project. This Board generated the discussion of only looking at trees in the

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proposed limit of disturbance. The proposed ordinance allows the approval authorities to be more flexible in the mitigation options. And finally, there are a few more “mays” than “shalls” in the current draft ordinance.

Fon stated that he did not feel appeals should go to the Town Board. Appeal of the Planning Board’s determinations should be by Article 78. Fon stated that the actions that this Board has taken with respect to the tree ordinance have not been an issue. Fon questioned how this chapter affects any other sections of code. Fon stated that the term “may” gives the Board more flexibility for interpretation. The Board finds this helpful because they can leave it up to the experts. Barber stated the proposed ordinance also gives the Tree Conservation Advisory Commission (TCAC) more work by tasking them with identifying sites to receive off-site mitigation.

Flynn stated that in his opinion the language in the existing ordinance is clearer than the new proposal and questioned why many definitions were eliminated. Flynn asked Barber if there are species of trees that should always be recommended to be cut down, like Locust trees which are invasive, and should they be exempt from the tree ordinance. Tegeder stated that the existing ordinance had protected trees and invasive trees that were not to be included. Barber stated that there are other tree ordinances that do identify invasive species so this could be looked at to add. Flynn stated the ordinance should be clear about if the town is subject to the ordinance. Bernard asked if having a permit helps protect any trees. A tree permit has never been denied. Flynn stated that the purpose of having a permit is not to deny, but so that a project is reviewed before commencing.

Barber asked the Board if they had any comments on the proposed buffers. The proposed ordinance requires the same buffer no matter the size of the property. Tripodi asked what the purpose of the buffer was. Barber stated that it requires trees between properties to be retained. Fon asked if that issue would ever come in front of the Planning Board. Barber stated that it would not because the buffers are on single lots only. Fon stated that the Board should be reviewing the ordinance in terms of how it affects the Planning Board.

Bernard asked what the Board did before 2010 when the existing tree ordinance was adopted. Tegeder explained that the Board could request a tree survey and would try to save larger trees that had value. The Board has always looked to design the site plan or subdivision around them when possible. The Board might not always need to request a tree survey.

Barber stated that other codes include a public health and safety zone around homes to allow homeowners to maintain this area clear should they want to; keep limbs away from their roof or deck, etc. Flynn stated that trees also provide runoff and flood control.

Kincart stated the town should contribute to the preservation of my trees if they are requiring me to preserve them. Bernard stated that many town-owned properties need to have forest management plans. Kincart stated the town should help owners complete forest management plans so canopy trees are cut and maintained. The town should put their focus there instead of trying to control people’s trees.

Resident Dan Strauss asked what the reason was for proposing a new tree ordinance. Bernard stated that the Town Board puts their thoughts out there and wants feedback. The Board doesn’t want to have property clear cut or cut down trees unnecessarily.

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Tegeder stated the draft ordinance includes an exemption for Planning Board approvals from the ordinance. The approval should encompass everything. Chapter 195 gives the Board the ability to modify the standards if needed. There may be times when you want a tree survey and times when you don't. There may be times when a specimen tree should be protected and times when it doesn't make sense. However, if the law states you have to protect the specimen tree, then your hands are tied. Kincart agreed that sometimes maybe the specimen tree has to go and the stand of 6 inch healthy trees should stay. The tree law should educate and help people understand the benefit of trees and how they can be maintained.

Bruce Kellner of the TCAC stated the existing law differentiates between permits that go to approval boards and permits that are administrative. The current law also requires referral to the Conservation Board and this should be included. Barber asked if there should also be referral to the TCAC required. Kincart stated he would prefer a professional review a site and write a report on the benefits of the trees. Better than identifying or preserving trees only by diameter. Barber stated the TCAC could help review these reports.

Tegeder stated that Chapter 195 does require a tree survey of trees 8 inch DBH or greater, however there is a section that allows the Board to vary those requirements and the Board has in practice.

The Board summarized the issues and agreed their memo to the Town Board should include:

- Appeal by Article 78
- Tree survey language should allow the ability to have a survey based upon ecological value and not by diameter (more of an environmental resource inventory); what is the benefit of an area and what generally does it contain.
- Ability to request an arborist at the expense of the developer to do this study.
- Add an educational component to the ordinance.
- Want to ensure that the Planning Board retains the flexibility to review sites as they do now. Don't want the tree ordinance to supersede Chapter 195.
- Post site plan or subdivision approval, the Board has no comment on tree permits on individual lots.
- The ordinance should use the term "fewer than" instead of "less than."
- The Board wants flexibility to require the appropriate mitigation (i.e. include plantings and/or removal of invasive species).
- Recommend forest management plans for town owned properties that can receive off-site mitigation.
- Let the Town Board legislate protection of residential lots.

**Upon a motion by John Kincart, seconded by John Savoca, and with all those present voting aye, the Board closed the meeting at 10:30 pm.**