

## Planning Board Minutes May 23, 2016

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A meeting of the Planning Board, Town of Yorktown, was held on May 23, 2016, at the Yorktown Community & Cultural Center, 1974 Commerce Street, Yorktown Heights, NY 10598. The Chair, Richard Fon, opened the meeting at 7:00 pm with the following members present:

John Flynn  
John Savoca  
John Kincart  
Anthony Tripodi  
William LaScala, Alternate

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

**Fon announced the signing of the Faith Bible Church site plan and environmental permit.**

### **Minutes:**

**Upon a motion by Kincart, seconded by Flynn, and voted in favor by Fon, Flynn, and Kincart, the April 11, 2016 minutes were approved.**

**Upon a motion by Flynn, seconded by Savoca, and voted in favor by Fon, Flynn, Savoca, and Tripodi, the May 9, 2016 minutes were approved.**

**Upon a motion by Flynn, seconded by Savoca, and all those present voting in favor, the Board opened a Special Session.**

### **SPECIAL SESSION**

#### **322 Kear, LLC aka Marathon Development Group**

**SBL: 37.18-2-51**

#### **Decision Statement**

*Location:* 322 Kear Street

*Contact:* Site Design Consultants

*Description:* Proposed approximately 13,000 square foot, three-story commercial and residential building with associated parking.

Savoca recused himself from this item. Al Capellini, project attorney; Joseph Riina, project engineer; Ed Vogel, project architect; and the applicant, Mark Beida, were present. The Board considered the SEQR determination. The Planning Board reviewed the Town Engineer's memo dated May 20, 2016 and it seems that he and the applicant are now on the same page. In reference to the ABACA memo dated May 12, 2016, the architect has addressed all comments, submitted revised plans, and will appear before them tomorrow night. Fon asked what the applicant was proposing as screening between the site and the gas station. Vogel stated the applicant has proposed a wooden fence in this location and submitted a catalog sample. The Board considered SEQR. Georgiou stated that at the last meeting the Board confirmed that the EAF was complete and comments from involved agencies have been addressed. Capellini stated the Applicant would like to hold a vote on the site plan until the additional new members of the Board are up to speed on the project. Tripodi stated that he had reviewed the record and felt comfortable voting on the SEQR determination.

## Planning Board Minutes May 23, 2016

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

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

### JCPC Holdings, LLC

SBL: 48.07-2-2

#### Decision Statement

*Location:* 1560 Front Street

*Contact:* Ciarcia Engineering

*Description:* Proposed 5,000 square foot building for an engine building shop.

Dan Ciarcia, project engineer; Joseph Riina, consultant engineer, Steve Marino, project environmental scientist; Al Capellini, project attorney; and the applicants, John and Patty Cerbone; were present. The Board reviewed the Town Engineer's memo dated May 23, 2016. Ciarcia questioned the additional conditions #11 and #12 listed in the memo. Ciarcia stated the development will not have an effect on any upstream pipes and asked to what extent the applicant should be responsible. Ciarcia questioned if there has been any evidence of flooding that there is a problem that needs to be found. The Board discussed these two conditions. The Board did not feel video inspection of existing town piping was necessary. Condition #12 requires the applicant to adhere to insurance requirements for the work on town land, which the Board agrees with, but also requires a five-year maintenance bond for the off-site wetlands work. Ciarcia thought five years is too long for an area that is so dynamic in nature. The applicant would agree to a one-year bond to ensure the planted species survive. LaScala had reviewed the project while he was on the Conservation Board and agreed one-year was sufficient. Tegeder stated that the Board usually does not require a bond for the regular landscape plan because there are enforcement capabilities with the site plan approval. Off-site mitigation is different. The town has taken bonds on mitigation work. Town Supervisor Michael Grace stated that this area may be changed by the East of Hudson. Grace also mentioned that the Town needs access, but not necessarily a driveway to the mitigation area. Marino stated the plans show access to the mitigation area available at several different spots. There is no permanent driveway proposed. Addressing the video inspection of existing town pipes again, Fon asked what would happen if the town's pipe was found to be in poor condition. If there was any damage found as a result of the video inspection, it would be the town's responsibility to fix. Ciarcia stated that the drainline runs through the industrial park. The water from this site gets there now. There isn't a problem now so there shouldn't be one in the future. Riina stated that the development will not be increasing the downstream peak flow. Flynn stated the Board needs to discuss video inspection of pipes before requiring an applicant to do that work. Ciarcia stated that if there was a problem the Town wanted to find, or if there was a significant increase in flow proposed, inspecting the pipe might be warranted, however neither of these is the case for this project. The Town Engineer's memo does not state any particular reason for this requirement. The Board agreed #11 should be the town's responsibility and not included as a condition in the resolution.

Flynn asked about ABACA's May 18<sup>th</sup> memo. #12 of their memo suggested a staggered row of five spruce trees instead of three trees shown. Marino stated that the change in grade is significant and that there are existing trees in between the ones proposed on the hillside that will remain. Adding two more trees is not going to improve the situation. There will be adequate screening. Tegeder asked if the three trees will grow together adequately to provide screening. Marino stated the proposed trees will be 10 ft high and at 16 ft

## Planning Board Minutes May 23, 2016

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spacing they will grow together. Flynn asked about #11 in the ABACA memo, which states the applicant is over representing the size of the trees. Marino stated that if that is the case, they will be adjusted accordingly. The Planning Board agreed with the conditions of the ABACA memo #3, 8, and 11 and these will be included in the draft resolution.

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

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

**Upon a motion by Flynn, seconded by Kincart, and with Fon, Savoca, Kincart, and Flynn voting in favor, Tripodi abstained, the Board approved the site plan for JCPC Holdings, LLC.**

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

### WORK SESSION

#### **Shaiken**

**SBL: 70.15-1-14**

#### **Lot-Line Adjustment**

*Location:* 363 Wooded Hill Court

*Contact:* Adam Wekstein, Esq.

*Description:* A lot-line adjustment in New Castle that affects property in Yorktown.

Georgiou recused herself from this item. Town Attorney Michael McDermott joined the Board. Adam Wekstein, project attorney, and Andrew Shaiken, property owner, were present. Wekstein described the plat that is the subject of the application. Mr. Shaiken will be purchasing a strip of land approximately 216 feet x 25 feet from the Chappaqua School District in the Town of New Castle. The Chappaqua School District made the determination that this land is excess land not required for educational purposes and issued negative declaration to authorize the application to the New Castle Planning Board. Unlike in Yorktown, a lot line adjustment is considered a subdivision and requires Planning Board approval in the Town of New Castle. The New Castle Planning Board has approved the application subject to any approvals required in the Town of Yorktown. Upon purchase, the property owners have the choice whether to send their children to the Chappaqua or Yorktown school district. The strip of land is subject to several conditions; it is not a building lot, no development can occur on it, and an existing shed must be removed. In addition, the strip of land noted as Segment 2A on the plat must be sold together with the property the Shaikens own in the Town of Yorktown (Lot 14 in the Wooded Hill Subdivision). The New Castle Planning Board was concerned with a subdivision of just the school district lot and the strip, without the Shaiken's property in Yorktown being shown, because it would result in the creation of a substandard lot in New Castle. Wekstein stated that this is the reason why the Shaiken's Yorktown lot is shown on the plat. There is no jurisdiction of the Yorktown Planning Board however, the Westchester County Health Department (WCHD) requires both municipalities shown on a subdivision plat to sign the plat. Tegeder explained to the Board that there was an uncoordinated SEQR review and so Yorktown is catching up on the process. In the beginning, the message we received was that the Shaikens were applying for a lot line adjustment that would add property to their lot in Yorktown. When staff met with Wekstein

## Planning Board Minutes May 23, 2016

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and the Shaikens, it became more apparent that this was not the case. The action was entirely in New Castle. McDermott stated that staff is concerned with the notes on the plat. Note #2 at the bottom states that the Shaiken's Yorktown lot and Segment 2A shall constitute a single lot. This cannot happen over town lines. Then in the label for Segment 2A there is a note that states the land is to be merged with the Shaiken's Yorktown lot. This also cannot happen. Kincart asked if the terminology "joined by deed" could be used instead. McDermott stated that if Yorktown states there is no jurisdiction then there should be no need to sign the plat. Kincart asked how the school taxes would be paid. The school taxes would be paid to Yorktown for the land in Yorktown and if the Shaikens choose to send their children to Chappaqua schools, then the money will be sent to Chappaqua School District. Shaiken stated that he is not looking to purchase the property and change his children's school because of any problems with the Yorktown school district. He and his wife are not happy with the excessive travel time on the school bus to the Yorktown's schools. Wekstein stated that New York Stated Education Law Section 3203 dictates how school selection is made when a school district line intersects property. Tegeder stated that staff does not think the Planning Board needs to sign the plat because there is no jurisdiction. However, if the WCHD does require signing of the plat, then changes need to be made to the notes on the plat that McDermott pointed out earlier. Kincart asked if the Planning Board could send a letter to the WCHD. Tegeder and McDermott have drafted a letter to the New Castle Planning Board outlining the issues discussed tonight. Wekstein will try to reach out to the WCBH again to confirm their position has not changed. Tegeder stated he spoke to the New Castle Planner and she requested a letter be sent to the Planning Board. Tripodi asked would happen if the Yorktown Planning Board took no action. Would a one-lot subdivision be created? McDermott stated there is no property affected in Yorktown. The new lot is in New Castle. The more important issue is the precedent set for other properties on the town border. McDermott stated that if the Planning Board does sign the plat it should be clear that the signature is for a limited purpose to appease the WCBH only and not to approve or bless anything shown on the plat. Wekstein stated that the lots in the Shaiken's subdivision are the only lots bordering New Castle school district property. There are only three other homes on Wooded Hill Court that a precedent could affect. The Board asked if any property owner on the town line could purchase property from their neighbor in the adjacent town in order to send their children to another school district. Wekstein stated that the New Castle school district must approve that and it would be different because they are only looking favorable on this purchase because of the public benefit that results from the purchase. Wekstein stated that he could draft the deed for Segment 2A if needed.

### **Hearthstone Minor Subdivision**

**SBL: 17.18-1-8**

#### **Discussion Subdivision**

*Location:* 3138 Hearthstone Street

*Contact:* 16 Lake Road, Inc.

*Description:* Proposed to subdivide a one acre parcel into two building lots both to be serviced by public water and sewer lines.

John Annicelli, project attorney, and the applicant, George Vignogna, were present. Fon stated the Board visited the site Saturday, May 21st. It looked like the proposed homes will fit into the area nicely. Sewer would be extended to accommodate the new houses. The official right-of-way/common driveway is only 16 feet wide. The applicant has no problem extending the right-of-way on his property 9 additional feet and then the other lots, if subdivided and developed, can also be asked to give an additional 9 feet.

The common driveway is gravel. The easement is 16 ft wide, however the improved width is not this wide. The Sarubbi Subdivision approved by the Planning Board several years ago, created the two lots on Homestead. There is one house on each of the other two lots on the common driveway. Tegeder asked if

## Planning Board Minutes May 23, 2016

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the applicant could get the additional width of easement from the other lots now. Annicelli did not think so, but reiterated that if they come in for a 2<sup>nd</sup> lot, the Board can request the widening then. The applicant has not asked the adjacent property owners about this. Kincart requested an opinion from the Fire Inspector. Tegeder stated the Planning Department would refer plans to the Building Inspector, Fire Inspector, and Town Engineer. The metes and bounds of easement are needed.

### **Orchard View Realty Subdivision**

**SBL: 36.06-2-78**

#### **Discussion Subdivision**

*Location:* 2425 Sherry Drive

*Contact:* Zappico, LLC

*Description:* Proposed 9 lot subdivision of a 9.2438 acre parcel in the R1-20 zone.

Jim, Brian, and Brendan Zappi were present. Fon read the six items listed at the end of the Planning Department memo dated May 23, 2016. Fon also read the Conservation Board's memo dated May 23, 2016. Jim Zappi reviewed the Planning Department's memo. To address #1, having surveyor certify the limits of the flood plain, will be done. To address #2, he had met with staff and scheduled with the NYCDEP to witness soil testing on May 31<sup>st</sup> and June 1<sup>st</sup>. A meeting with the Town Engineer is scheduled for tomorrow to look at alternative stormwater systems on individual lots and possibly at a surface basin. On #3, Zappi stated he was confused as to why this is wanted because it will cause more disturbance. Tegeder explained that the Planning Board needs this alternative to be able to make the determination about the best access to the site. Jim Zappi stated that a copy of the previous subdivision should be given to him so he can copy it and not go back and forth anymore. Kincart stated that the alternative requested would require a wetland crossing. Tegeder stated that the Board needs to balance the safety of the roadway alignment and the environmental impacts. The applicant was requested to calculate impervious surface, wetland and wetland buffer impacts, and estimate the required tree removal for the alternative. Jim Zappi stated the alternative layout is useless. Kincart requested Zappi submit the alternate layout as additional information for the Board, with a notation that the applicant is not proposing this layout. The applicant is completing a HEC-RAS analysis. To address #4, Zappi felt he needed to know which plan to develop before proposing mitigation. To address #5, the applicant has had some discussion with the Recreation Commission regarding building or contributing to the rehabilitation of existing recreation facilities on town owned property. Patrick Cumiskey from the Recreation Commission confirmed this statement. The Planning Department will solicit a memo from the Recreation Commission. To address #6, the affordable housing, Zappi asked what was needed. Tegeder stated that the threshold for providing affordable housing in the current law is 8 lots. This law is currently under review by the Town Board. Fon asked what would be built to meet the affordability. Tegeder stated that one of the home would be smaller more modest home. LaScala suggested the applicant only subdivide the property into 7 lots and not have to build an affordable unit. Jim Zappi stated that if there were a density bonus for building the affordable unit, it would make sense.

### **Ianuzzi Resubdivision**

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

#### **Discussion Subdivision**

*Location:* 1189 Baptist Church Road

*Contact:* Site Design Consultants

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

## Planning Board Minutes May 23, 2016

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Al Capellini, project attorney and Joseph Riina, project engineer, were present. Capellini submitted a draft Declaration for review. Fon stated the Board would have a decision statement at the June 13<sup>th</sup> meeting.

### **ZBA Referral #31/16 – Countryside Properties**

**SBL: 35.08-1-18**

*Location:* 3787 Crompond Road (Brophy Site Plan)

*Contact:* Fred Sannacandro

*Description:* This is an application for a special use permit for an Exterior Storage Yard per 300-44 of the Town of Yorktown Zoning Code. This property is located in a C-4 Zoning District.

Georgiou stated the property owner is in front of the Zoning Board to legalize the existing exterior storage lot at the rear of the property. The storage area is located behind the residence. Tegeder recommended the Board list any items that they feel will be affected by the Brophy site plan application. Kincart stated that truck access in and out of the site must go around the proposed parking for Brophy. The Board may consider keeping the curb cut and lane to the east of the proposed restaurant open for egress only. The Planning Board had no objection to the storage area, however the ingress and egress over the remainder of the site is subject to change. The Board decided to request the Zoning Board hold open this item until its next meeting.

### **ZBA Referral #33/16 – Saccente**

**SBL: 26.05-1-48**

*Location:* 3197 Rocky Place

*Contact:* Michael Saccente

*Description:* This is an application for a variance to allow an addition that will have a rear yard setback of 39.2' where 45' are required a decision of the Zoning Board of appeals on May 24, 2001. This property is in an R1-10 Zoning District.

Georgiou stated this application is to vary condition of approval for a previously approved variance for the Alfus subdivision. Tegeder was unsure whether the proposed addition would affect the drainage from the subdivision because no drainage is shown on the submitted plan. The Planning Department will review the Alfus Subdivision plans. The Board decided to request the Zoning Board hold open this item until its next meeting.

### **Town Board Referral**

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

LaScala commented on this ordinance as it relates to his building in Jefferson Valley. The containers for waste are all covered and lined up against the back of the building. To build an enclosure would require the use of at least three parking spaces. In addition, one of his tenants is the post office and they will not relocate their garbage, which is picked up by one company while two other companies service his other stores. There has to be allowance for site specific considerations and/or a waiver from the law. Alternatively, the law should provide that if parking is removed to build an enclosure, the site should be guaranteed a variance for the missing spaces.

The Board reviewed the draft memo written by the Planning Department. Flynn asked why oil storage tanks and reservoirs are under the compactor construction section. Bernard clarified the section was

## Planning Board Minutes May 23, 2016

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referring to hydraulic oil. There is no consideration for food oil included in the proposed law. Tegeder stated that the town has an unwritten standard for a masonry enclosure with diagram that we hand out to property owners. Masonry is more durable than fencing. The Board agreed to recommend the law require masonry and allow the Planning Board to waive that in specific conditions.

### **Spark Steakhouse**

**SBL: 29.18-1-7.29**

#### **Discussion Amended Site Plan and Outdoor Seating**

*Location:* 3360 Old Crompond Road (Crompond Crossing)

*Contact:* MAP Architecture

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

Michael Piccirillo, project architect, explained the proposed addition and outdoor seating, which was shown on the approved plan. The property owner is working with the Town to resolve the issue with catch basin #6. The Board had no issue with the proposed addition or requested permit for the outdoor seating therefore a Public Informational Hearing was scheduled for the June 13<sup>th</sup> meeting. D'Agostino asked about the proposed interior stairway to nowhere. Piccirillo stated that any second floor additions will be part of a Phase 2 project. More restaurant space will require additional parking.

### **Taconic Veterinary and Canine Kindergarten**

**SBL: 36.05-1-18**

#### **Discussion Approved Site Plat**

*Location:* 3655 Crompond Road

*Contact:* MAP Architecture

*Description:* Amendments to the approved site plan.

Michael Piccirillo, project architect, explained changes to the site plan that have been constructed in the field. The veterinary office needed to have more oxygen tanks for the hyperbaric chamber and this necessitated them being moved outside the building. Piccirillo added them to the area where the freezer was proposed and made this enclosure larger. The Building Inspector required bollards and a fence be installed. This reduced the travel aisle in the parking lot to 20 feet. Piccirillo stated there were memos from the Town Engineer and Building Inspector stating they were okay with the 20 foot aisle. The freezer was shown on the approved site plan. The other issue is with one of the air handlers on the west side of the building. In order to serve the 2<sup>nd</sup> floor veterinary office, it had to be moved outside the fence onto the sidewalk. The Building Inspector also requires bollards around it, reducing the adjacent parking space to 16.5 feet long. Fon asked why the air handler could not be on the roof. Piccirillo stated it was not possible. The zoning code does allow smaller compact spaces. Tegeder asked the Board if they felt a 16.5 foot space can be considered a compact car space. The Canine Kindergarten currently has a Temporary Certificate of Occupancy and is open. The Board decided to approve these changes by resolution at the June 13<sup>th</sup> meeting.

**Upon a motion by Kincart, seconded by Savoca, and with all those present voting aye, the Board voted to close the meeting at 9:50 pm.**