

Planning Board Meeting Minutes – May 8, 2023

A meeting of the Town of Yorktown Planning Board was held on Monday, May 8, 2023, at 7:00 p.m. in the Town Hall Boardroom.

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

- Aaron Bock
- Rob Garrigan
- Bill LaScala
- Bob Phelan
- Bob Waterhouse, Alternate

Also present were:

- John Tegeder, Planning Director
 - Robyn Steinberg, Town Planner
 - Nancy Calicchia, Secretary
 - James Glatthaar, Esq.
 - Councilman Sergio Esposito, Town Board Liaison
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Correspondence

The Board reviewed all correspondence.

Motion to Approve Meeting Minutes of April 24, 2023

Upon a motion by Bill LaScala, and seconded by Aaron Bock, and with all those present voting “aye”, the Board approved the meeting minutes of April 24, 2023.

Discussion of item not on agenda:

Bird Bus Sales & Service (Planning Board Resolution #21-26) - Mr. Tegeder informed the Board that Bird Bus will be on the May 10th Town Board agenda for a temporary certificate of occupancy (TCO). They were originally asking for a permanent certificate of occupancy and it was circulated inter-departmental for comments. The Planning and Engineering Departments conducted site visits and both concluded that no site work has taken place. A memo was submitted to the Building Department suggesting different solutions such as a cash bond. Mr. Garrigan asked what the intent was. Mr. Tegeder responded that it was to occupy the building to begin utilizing it as a bus sales lot. He noted that there are always concerns with TCOs and they have been used sparingly. He cited BJs as an example which operated under a TCO for over 10 years until there was an issue internally and were then required to fulfill their conditions. Mr. Bock asked about the approving resolution’s conditions. Mr. Tegeder responded that it included landscaping, construction of a median, fence and striping which is modest in scope, but recommended a bond for the site improvements. Mr. Bock stated that they want to encourage businesses to open and noted that the building is existing and the improvements do not appear to be safety related, however, they want to ensure that they are done. Mr. Phelan thought a bond would give them leverage to complete the site work and added that the TCO should have a time limit so the site improvements get done. Mr. Waterhouse noted that the area is unsightly and agrees that a bond and completion date would make sense. Chairman Fon questioned how difficult it would be to call a bond once the TCO is in place. Mr. Glatthaar stated that in his opinion, calling bonds are difficult, however, TCOs are different as the building cannot be occupied once the TCO expires. Mr. Tegeder noted that it is difficult and undesirable once they occupy the building and is why they often require bonds. Mr. Garrigan asked about the site lighting. Mr. Tegeder responded that they are compliant with the lighting and noted that the light poles will not be utilized. They will need to pay attention to the operation of the site. The Board requested that the Planning Department submit a memo to the Town Board requesting a cash bond and expiration date for the TCO.

Motion to Open Regular Session

Upon a motion by Chairman Fon, and with all those present voting “aye”, the Board opened the Regular Session.

REGULAR SESSION

Home & Hearth

Discussion: Decision Statement
Location: 15.12-1-2; 1750 East Main Street
Contact: Site Design Consultants
Description: Proposed demolition of two existing buildings to construct a new 5,500 SF showroom/warehouse and 4,500 SF storage building on 1.99 acres in the C-4 zone.

Comments:

Bob Phelan recused himself from this agenda item. Ed Enea, property owner was present. Chairman Fon asked Mr. Enea if there were any issues with the draft resolution and there were none. Chairman Fon asked the Board and Counsel if there were any planning issues and there were none.

Mr. Bock informed the Board that he had two comments that had nothing to do with the current application but is more of a procedural issue for the Board to consider. He recommended adding two additional clauses to all resolutions going forward to include wording to the effect as follows:

1. No other changes to the resolution or the plans on which it is based shall be made without further express written permission of the Planning Board.
2. Any agency to which this underlying application has been referred, and which agency has not commented on that application, shall be deemed to have accepted that application as presented and approved by this resolution.

The Board had no issues with this recommendation.

Upon a motion by Bill LaScala, and seconded by Rob Garrigan, and with all those present voting “aye”, the Board delared themselves Lead Agency.

Upon a motion by Aaron Bock, and seconded by Bill LaScala, and with all those present voting “aye”, the Board adopted the Negative Declaration.

Upon a motion by Bill LaScala, and seconded by Rob Garrigan, and with all those present voting “aye”, the Board approved the resolution approving site plan, wetland permit and stormwater pollution prevention plan permit for the Home & Hearth site plan with changes as discussed.

IBM Battery Energy Storage

Discussion: Decision Statement
Location: 69.16-1-1; 1101 Kitchawan Road
Contact: Powerflex
Description: Proposed 1 MW AC battery energy storage system to support solar canopy.

Comments:

Rudy Albrecht of Powerflex was present. Chairman Fon asked Mr. Albrecht if there were any issues with the draft resolution and there were none. Chairman Fon asked the Board and Counsel if there were any planning issues. Mr. Tegeger suggested adding a requirement that the emergency response plan be produced to the satisfaction of the Board and noted that this can be worked on subsequent to the resolution between now and when the site plan is signed. He added that he spoke with the Dennis Phayre of Powerflex and he had no issues with this requirement. He also informed the Board that there was some late breaking correspondence with respect to the application. The applicant is requesting that the Negative Declaration does not have a limit of 1MW since battery systems change over time and they may end up having a unit that is a little bit larger. He added that if they do change the size, they will have to return to the Board for review but the SEQRA will remain closed. The Board had no planning objections.

Upon a motion by Bill LaScala, and seconded by Rob Garrigan, and with all those present voting “aye”, the Board delared themselves Lead Agency.

Upon a motion by Bill LaScala, and seconded by Rob Garrigan, and with all those present voting “aye”, the Board adopted the Negative Declaration as amended.

Upon a motion by Bill LaScala, and seconded by Rob Garrigan, and with all those present voting “aye”, the Board approved the resolution approving a special use permit for a Tier 2 Battery Energy Storage System at

the IBM TJ Watson Research Center with changes as discussed.

Motion to close Regular Session and open Work Session

Upon a motion by Aaron Bock, and seconded by Bob Phelan, and with all those present voting “aye”, the Board closed the Regular Session and opened the Work Session

WORK SESSION

Underhill Farm

Discussion: Proposed Project

Location: 48.06-1-30; 370 Underhill Avenue

Contact: Tim Miller Associates, Site Design Consultants, Colliers Engineering

Description: Proposed mixed use development of 148 residential units, 11,000 SF commercial space, and recreational amenities proposed on a 13.78 acre parcel in the R1-40 with Planned Design District Overlay Zone authorization from the Town Board. Original main structure to remain and be reused.

Comments:

Mark Blanchard, Esq.; Beth Selig of Hudson Cultural Services; Paul Guillaro and Michael Guillaro, property owners; and Sara Mascia of Historical Perspectives Inc., were present.

Mr. Bock asked the applicant when the revised expanded EAF will be submitted. Mr. Guillaro responded that it will be delivered to the Planning Department tomorrow.

Ms. Selig stated that she is here this evening to answer any questions as a follow-up to the April 24th meeting with the Board and the Town’s historical consultant. Chairman Fon stated that they have reviewed the historical aspect of this project in detail and appreciates all the discussion. He noted that all the comments and concerns appear to have been addressed and it seems that the applicant and the town’s consultant are on the same page. Ms. Selig responded that this was her impression and added that all the consultant’s comments will be addressed with the exception of the trenching behind the house. As discussed previously, there is a septic system with buried tanks and utilities back there. Ms. Saunders (Historical Perspectives, Inc.) asked if the field map was updated to include this information. Ms. Selig responded that it was not but will do so.

Chairman Fon stated that the real gem on the property is the main structure that is proposed to be preserved along with the look and feel of the approach that includes the pond and surrounding area. Additionally, there will be documentation of the site’s history. Ms. Selig responded that there is a structure documentation packet that is a standard NYS requirement that would include photographs and historical narratives for all the structures as it exists today prior to any work being done. In addition to the photos, they will try to see if they can find the original site plans and floor plans to develop a comprehensive narrative. There will also be an exhibit with the history of the site for visitors to the property.

Chairman Fon stated that there was talk about an underground railroad at the site and it is his understanding that this is a hands-off topic. Ms. Saunders responded that this is very difficult to prove so they usually take a step back as you wouldn’t want to make a claim without proof. Ms. Selig noted that there are sites in NYS that are part of the underground railroad and cited an old hotel in Niagara Falls that people went through as they crossed over the border into Canada. There are ledgers and primary documentation of the number of people who crossed, etc. To make the statement that a site is associated with the underground railroad you would need that primary documentation. Ms. Saunders agreed and noted that as of now there is no such documentation.

Chairman Fon stated that the plan was revised to soften the front of the property. There was also discussion about the condition of the existing structures and offering them to the town or salvage companies. Ms. Saunders responded that there would be some type of public dispersal prior to the salvage companies. Ms. Selig responded that they would need to understand the structural conditions of the buildings to evaluate whether they can be disassembled and reassembled. She added that a lot of time the materials are so far gone and noted that the beams in the cellar of the carriage house are covered in white mold. Salvaging the architectural details is a standard step in most mitigation measures, but offering to relocate buildings is something that can also happen. Chairman Fon noted that most of the existing buildings are in poor condition and added that the bonus was the preservation of the mansion. He asked the town’s consultant if she agreed with the applicant’s assessment. Ms. Mascia responded that she agrees for the most part as long as all the items discussed are covered. Ms. Selig responded that they have addressed those items. An addendum document was

prepared as suggested and the field map will be updated to show the disturbance behind the house with. She added that other than those items, there are no other areas where they disagree because all the documentation and suggestions about research and history goes into the structure documentation packet that is part of the LOR as a mitigation measure.

Mr. Phelan stated that there have been public comments and letters to the editor with respect to the reuse of the older buildings that will not be kept on the site. He is doubtful that it is possible to take an older building to reuse offsite without meeting building codes. The materials could be used but he is not aware of anything in the code that would allow you reconstruct that building as it exists now on another site and questioned if they are left with basically donating the materials. Ms. Selig responded that it would be donating the material. She added that any building that would need to meet local building codes would have to do adaptive reuse work to meet the code and it could then lose some of its integrity in the process in addition to being cost prohibitive. Mr. Phelan added that they would also lose the historic benefit of having to meet the current codes other than the materials used and questioned if it made sense for someone to consider those materials if the applicant is willing to donate them to whoever is interested. Ms. Selig responded that there are all sorts of different uses for the materials that could be incorporated into other projects and cited some examples. Mr. Waterhouse noted that there were some posts and beams that could be salvageable. Ms. Selig noted that there are a number of barn companies that could be interested and added that the biggest issue with salvaging is the condition of the material. Councilman Esposito noted that White Oak Farms in Yorktown uses reclaimed wood and could possibly be interested. Mr. Phelan asked if it was possible to leave this discussion with a determination of what will happen to those materials. Ms. Selig responded that based on the consultant comments, they will offer the buildings to the Yorktown community and Yorktown Historical Society as a first measure. If there is no interest, they will then reach out to the historical salvage companies. Mr. Waterhouse questioned if there would be any issues with offering it to the public who may not be experienced in the process. Mr. Tegeder informed the Board that at some point they will need to discuss what goes into the approval with respect to the historical regulations on their end to ensure that the LOR requirements are complied with as it is a huge part of their approval. He asked Ms. Selig about the LOR execution process with respect to the site and what is necessary. Ms. Selig responded that in her experience there is usually a date requirement for submission of documentation to the state of their salvage attempts for review before demolition can occur but within six months of execution of the LOR. She stated that based in her past experience with salvage companies, there have been times when much of the material is taken and other times when nothing is taken. It is basically what they are looking for and able to take on. She added that time constraints are built into the LOR which is something that could be added to the approving resolution in terms of updates at certain benchmarks throughout the process. Mr. LaScala asked if there was a hold harmless agreement for protection of the property owner during this process. Ms. Selig responded that there is usually a consultation with the representative from the salvage company to view the buildings and if there is interest, they then invite the company to come in with all the insurances and documentation in place.

Mr. Bock asked if the Cultural Resources section of the expanded EAF will be revised. Ms. Selig responded that it will be revised for the final submission. Mr. Bock asked Ms. Mascia if the applicant has satisfactorily ruled out other resources that are not there such as the possibility of a revolutionary war encampment. Ms. Mascia responded that she hasn't read the addendum yet but assumes it has been ruled out as she has reviewed various correspondence in pieces. She added that she has not seen any direct evidence that contradicts any material that the applicant has provided. Mr. Tegeder asked if the shovel tests produced any revolutionary war artifacts. Ms. Selig responded that they did not find any artifacts and after researching the property her conclusion is had there been anything associated with the revolutionary war period at the site it would have most likely been lost in the process of turning the site into the Underhill estate. There is no evidence that she has come across in the historical document record, texts, or maps to indicate that there was something there and they did not identify any archaeological potential for it.

Chairman Fon noted that there have been finds in Yorktown. Mr. Tegeder agreed and stated that there have been finds along the incline up to the crest of French Hill from Freyers Nursery such as lead balls, coins, etc. Chairman Fon noted that Yorktown is rich in history and need proof positive with respect to the encampments. Ms. Mascia responded that she had not seen any direct evidence. Ms. Selig stated that they didn't find anything associated with a revolutionary war encampment such as musket balls or buttons and added that they also didn't find any other materials from that period such as teacups or bottles so her interpretation of the data they have is that there was no occupation at this site during that time. Mr. Tegeder asked Ms. Selig if she reviewed the French army maps that showed where the

encampments were. Ms. Selig responded that she did and she also performed an in-house GIS overlay to line up the roads and topographical features for verification and there was nothing found in the vicinity of this property. Ms. Mascia noted that the property was much larger and could be the reason for the misinterpretations. Mr. Tegeder stated that this is at the toe of the slope of French Hill and as he recalls on the map it is clear that there are encampments at the top of the hill, towards Hanover Road near the present firehouse, and some other places, and he believes that one can make an apt comparison to today's maps and physical features. His belief is that what is shown on the French maps does not show encampments on this property. Ms. Selig concurred and pointed out that when you are talking about revolutionary war camps of that size, they would need to be near a large fresh water source for latrines, drinking and cooking. Her understanding is that before Underhill built the pond, this parcel was mostly swamp. In her research for the revolutionary war, particularly the Saratoga Campaign, soldiers were penalized for abandoning their posts because of mosquitoes so she doesn't think they would camp next to a swamp. Mr. Tegeder stated that the camp was along or near the Hallocks Mill brook and stated that there is a historical account of that. Ms. Selig noted that the state has that location identified as an archaeological site in their system.

Chairman Fon asked Ms. Mascia if the town missed anything on their end. Ms. Mascia responded that she didn't think so based on all the documentation submitted and reviewed and added that the historic documentation is important and will be done as part of the LOR. Councilman Esposito asked if the documentation submitted was extensive. Ms. Mascia responded that it was quite extensive. She noted that there are different levels to cultural resources examination and most people assume that archaeological testing is complete excavation of an entire site which it isn't. You start with shovel testing and move on to larger units only if you find something that requires you to do so. If nothing is found, then you don't continue.

Mr. Bock asked Ms. Mascia if they were missing anything from their record to complete this portion of their review. Ms. Mascia responded that with her recommendations and the LOR stipulations she feels that they have a complete record and have gone as far as they could go.

Mr. Garrigan asked if any of the buildings were listed or registered as historic. Ms. Mascia responded that they were not listed as eligible on the national register until recently. Mr. Garrigan noted that there was a letter to the editor this week that put forward as a truth that any new development plan would be required to restore the house and questioned if the mansion could be torn down since it is privately owned and not registered. Mr. Tegeder responded that any redevelopment plan, in his view, would not necessarily require that the house be retained and renovated. With respect to removing the house, the owner could decide to demolish the house and noted that without any designation he doesn't think there is any strong protection for that structure. Ms. Selig stated that outside of an agency permit application a landowner can go to the building department and apply for a demolition permit. She noted that what is protecting this house and the property is that there is a permit in front of the state agency in addition to review by the Planning Board. Generally speaking, any landowner can pull a demolition permit and take a building down that's not on a local landmark list. Mr. Garrigan noted that the reason he brought this up is to make the public understand and appreciate the fact that the mansion will be preserved and integrated into the development plan. Mr. Bock questioned if there was a way to provide permanent protection for the mansion. Mr. Tegeder noted that although Yorktown has a local landmark law it requires the owner's consent. Mr. Bock stated that he recognized the fact that the situation is entirely voluntary on the part of the homeowner and questioned if they would consider landmarking it to protect the building. Discussion followed with respect to the legislation. Mr. Garrigan stated that the challenge with this building is that it consists of many different materials and designs and noted that he didn't think it was even listed in Yorktown's Houses of Historic Distinction. Ms. Mascia stated that it could be landmarked for its importance to the community over time but not the date of construction. Mr. Blanchard stated that the beauty of this plan has been the voluntary nature of the preservation. He added if they were required to submit an application, they would then run into issues with the certificate of appropriateness for any future changes that might occur to the house as well as possible unforeseen problems down the road. He noted that the approving resolution will provide adequate protection for the house with certain conditions. Mr. Bock stated that he wanted to ensure somehow that the mansion will not be removed at some point in the future as it will change the character of what they are trying to accomplish. Mr. Blanchard noted that any changes would trigger an amended site plan. Mr. Bock thought that this may be sufficient. Ms. Selig added that if a new development were to occur, it would likely trigger the state permit review as well as the Planning Board's review and she thinks it would be challenging to just pull a demolition permit.

Chairman Fon asked the Board if they felt that the historic portion of the proposal has been satisfactorily addressed. Mr. LaScala felt it was addressed. Mr. Tegeder stated they have collected a lot of data that was discussed in detail and he feels that they have enough information to make a determination. There are some questions with respect to the execution of the LOR and the public historic display at the site that can be discussed as they move forward with the project. Mr. Phelan agreed and noted that the restoration of the mansion could be part of the details. The Board agreed that from the Board's perspective this part of the review is complete.

Mr. Glatthaar asked Ms. Selig if she would be involved with the dismantling of the buildings and salvaging aspect. Ms. Selig responded that she would be involved to the extent of making certain that the stipulations outlined in the LOR as they pertain to the SHPO are being met. Mr. Glatthaar asked about the site plan approval conditions. Ms. Selig responded that this would not be under her purview. Her role is to coordinate this particular piece of the project with SHPO as part of the SEQRA process. Mr. Tegeder noted that the landscape plan will speak to the look and feel of the property that they are protecting and feels that there is more discussion to be had in terms of what happens in the resolution and approval. Chairman Fon agreed that the landscaping is an important part of the site especially with the historic aspect. Ms. Selig stated that there will be some crossover with some of the decorative species for native species to meet the environmental aspect and they would want to ensure they have similar representation so as not to lose the feel and setting.

Mr. Bock asked for a refresher from the Planning Department or attorney on the existing Overlay District law in terms of interpreting the statute with respect to the amount of flexibility they have in terms of visual, density, location of things and preserving aspects. He would like to see how it fits in with what the applicant is proposing versus where they could end up if they varied at all. If they find under SEQRA that the environmental impacts are dealt with and there are no adverse impacts will they still have other factors that they can look at.

Chairman Fon stated that they are still waiting for a report from the town's environmental consultant and added that it sounds like they are in a good place with the density as discussed at the previous meeting. He stated that the Overlay District was created by the Town Board which invited a certain amount of development and noted that the town has an intersection that needs attention. The applicant has agreed to fix the entire intersection not only for their project but future projects and is working with the Town Board. In his opinion, this will help the flow of traffic for the entire downtown area and feels that the mitigation is sufficient. Mr. LaScala stated that he had no issues with the traffic or density as proposed and reviewed. Mr. Waterhouse stated that the traffic has been addressed by the experts and feels that the Board has performed their due diligence. Mr. Bock asked if anything new was coming in on the traffic. Mr. Guillaro responded that there is nothing new on the traffic and will have his consultants return for the next meeting.

Chairman Fon asked about the next steps. Mr. Tegeder responded that they would review the traffic and environmental components at the next meeting. Once they receive the final expanded EAF, it will be referred out to all involved and interested agencies for comments and a public hearing could be scheduled around this time.

Mr. Garrigan stated that they are not doing anything different with this project compared to other projects. They review the same topics regardless of the size of the subdivision. They performed an extensive review and he hopes that the public is listening and understands what the Board is here to do. He noted that there are things out in the public or press that seem to be inaccurate and hopes that when they get to the public hearing it will not be more of the same. This has been an amazing process and they have learned a lot and hopefully educated a lot of people along the way and looks forward to the public hearing. Mr. Bock stated that he felt the process has been heavily influenced by public comments not necessarily in decisions but in identifying issues which helped to form some of the basis of what they have done since.

Mr. Phelan asked if they as a Board should address articles that have been written that he assumes are part of the public record. They also received many letters and continue to get them every week and some are completely inaccurate on certain topics. He doesn't know if they should be addressed as it demonstrates to the Board the lack of understanding of the development process and what this Board is obligated to do. He stated that they are not writing the laws but are using the laws to guide them and in this case the Overlay District regulations of which the public has a less understanding. He noted that there is an easily accessed public record for the project. He added that some of the letters

have provoked an inclusion during their review process and wondered if at the end of the process they should comment on them specifically.

Mr. Bock felt that they should respond in a general sense to the concerns raised which could be done around the time of the public hearing when they make their findings. Mr. Tegeder responded that they would address them in the broad sense and not individually. His experience is that they are here to intake those comments and use them to make their deliberations on a particular project and thinks this is enough. He doesn't think it is necessary to answer all comments. Sometimes it's a matter of remaining true to what they are doing and to not be distracted by a lot of the hyperbole that follows along with the comments. Councilman Esposito stated that they do want to address the concerns of the public but it should be informational, matter of fact and non-confrontational and feels that the Board is correct with a broad response. He added that the Planning Board typically addresses comments during their meetings. Mr. Glatthaar stated that he agrees with Mr. Tegeder's response in that the best way to respond is with a broad brush and factual findings based upon the record before them. He added that they now know that some of the comments heard during the PIH are not accurate. He added that personal attacks should be strongly discouraged and all are entitled to their opinions even if they don't agree. With that being said, everybody who has an opinion should be able to support that opinion.

Mr. Guillaro asked if they should provide a presentation with respect to the landscaping in addition to the traffic and environmental portion for the next meeting. Mr. Tegeder stated that it is important to have an understanding of the plan and suggested a staff level meeting.

The Board agreed to schedule a public hearing for June 8th with the venue to be determined.

Mr. LaScala stated that he would like to take a vote with respect to a time limit for public comment during the hearing.

Meeting closed

Upon a motion by Bill LaScala, and seconded by Aaron Bock, and with all those present voting "aye", the Board closed the meeting at 8:43PM.