

Planning Board Meeting Minutes – January 22, 2024

A meeting of the Town of Yorktown Planning Board was held on Monday, January 22, 2024, at 7:00 p.m. in the Town Hall Boardroom.

Chairman Rich 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, Director of Planning
 - Robyn Steinberg, Town Planner
 - Ian Richey, Assistant Planner
 - Nancy Calicchia, Secretary
 - David Chen, Esq.
 - Councilman Patrick Murphy, Town Board Liaison
 - Councilman Sergio Esposito, Town Board Liaison
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Chairman Fon stated that this is the first meeting for the 2024 calendar year as the first meeting scheduled for January 8, 2024 was canceled due to the sudden passing of Supervisor Tom Diana.

A moment of silence was held in honor of Supervisor Tom Diana.

Chairman Fon welcomed Councilman Patrick Murphy and Councilman Sergio Esposito as Town Board co-liaisons for the Planning Board.

Correspondence

Nantucket Sound Sons, LLC, 385 Kear Street – John Tegeder informed the Board that the applicant is proposing an improvement to the orientation of the refuse enclosure and added that the Planning Department has no issues with this change. If the Board agrees, a memo will be submitted to the file documenting the change. The Board and Counsel had no issues and agreed for the Planning Department to submit a memo to the file and Building Department.

Motion to Approve Meeting Minutes of December 18, 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 December 18, 2023.

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

670 East Main Street

Discussion: Permit #T-FSWPPP-034-23 Permit Approval

Location: 16.08-1-34; 670 East Main Street, Jefferson Valley

Contact: Hahn Engineering

Description: Requested Tree and Stormwater Permit for an approved residential site plan to construct four two-story, three-bedroom townhouses and 12 parking spaces.

Comments:

Anthony Genovese and Thomas Racek, property owners were present. Mr. Genovese stated that they are here this evening with respect to the tree and stormwater permit for the property.

Chairman Fon asked the Board and Counsel if there were any issues. Mr. Tegeder informed the Board that the Town Engineer has signed off on the permit conditions and is ready for approval. The Board had no issues.

Upon a motion by Bill Lascala, and seconded by Aaron Bock, and with all those present voting “aye”, the Board approved the resolution approving a tree and stormwater permit for 670 E. Main Street.

Motion to close Regular Session and open Work Session

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

WORK SESSION

Town Board Referral - 3167 Lincoln Drive

Location: 25.08-2-20; 3167 Lincoln Drive

Contact: Gabrielle Salman Architect

Description: Construction of a 168 s.f. deck and landscaping within the wetland and wetland buffer.

Comments:

Gabrielle Salman, Architect was present. Ms. Salman stated that the applicant is seeking approval for a wetland permit to construct a deck and landscaping to the existing residence in the wetland and wetland buffer located in Mohegan Lake.

Chairman Fon asked if the application was referred to the Conservation Board. Mr. Tegeder responded that he believed it was. Ms. Salman responded that they are waiting to hear from the Conservation Board. Mr. Tegeder asked about the foundation of the deck. Ms. Salman responded that they are proposing sonotubes; the foundation details are in the plan set. Ms. Salman informed the Board that the project is separated into two permits as the deck will take longer; she added that the siding and roofing needs to be done immediately. Mr. Waterhouse asked about the proximity of the sonotubes to the water table. Ms. Salman responded that the closest to the water was about 60 to 80-ft.; if they should hit water they will then go with a pre-made elephant foot sonotube. Mr. Waterhouse questioned if this should be shown on the plans. Chairman Fon stated that this would be a Building Department issue. The Board agreed that there were no planning issues and would defer to the Conservation Board for input.

Lowe's Home Center

Discussion: Special Use Permit for Outdoor Service

Location: 26.18-1-19; 3200 Crompond Road

Contact: Lowe's Companies, Inc.

Description: Renewal of Temporary and Permanent Outdoor Storage & Display Special Permits approved by Resolutions #19-17 and #17-08 respectively.

Comments:

Sean Naley, Lowe's representative, was present. Mr. Naley stated that he is here this evening with respect to the expired special use permit. Mr. Tegeder informed the Board that the original permit had certain limitations and the discussion is for all of the outdoor sales and storage that is not within the limits of that area. He noted that there has been storage exceeding the areas originally approved. The Building Department did have discussions with Lowe's on occasion. During the Planning Department's site visit a few months ago, it was observed that there was material storage to the rear in all of the parking spaces to the north and east side of the building. If those parking spaces were available, the employees could then park there which would help the overall parking situation.

Mr. Phelan asked if they were seeking to renew what has expired or seeking to amend their approval. Mr. Naley responded that he is relatively new to Lowe's but noted that there was a violation issued as some material was stored in the fire zone which was corrected immediately. It is his understanding that when Lowe's first opened, they had stored mulch, etc. to about where Trader Joes is currently. Since then, they had a management change and the current manager is on top of this and in tune with the community. The left side of the building where they used to store products all the way up now stops at the building. They do have products that they place there during the Spring Season for about 60 days which will go up halfway to the building. On the right side of the building, facing the Taconic Parkway, there are a couple pallets of block. He noted that the direction given from Code Enforcement was that there should be nothing against the building. Currently, there is nothing against the building. He added that there is a storage area for a couple

of machines and a pile of salt that the landlord requires to maintain the parking lot. Chairman Fon asked if it was in compliance with the plan. Mr. Naley responded that from his understanding it is.

Mr. Bock noted that this matter was before the Board a while back and the concern then was the overall parking on the site. At that time, the Board requested an updated plan to show the actual parking count. The Planning Department showed the most recent parking plan submitted by the applicant to the Board. Mr. Naley responded that he was not familiar with the actual parking count. Councilman Esposito stated that there was prior mention of temporary lights currently occupying two parking spaces. Mr. Naley confirmed that there are currently two security lights in the middle of the parking lot that take up two parking spaces. Chairman Fon stated that this also needs to be shown on the parking plan.

Mr. Phelan asked if there were any physical markers at the site that would give their staff an indication of where the limits of storage are. Mr. Naley responded that there wasn't but would consider this. Mr. Phelan thought this would be a good idea as the mistakes may be honest on the part of the employees if they don't know what the limits are.

Chairman Fon stated that it was important to show any changes from the approved parking plan for the record. He advised the applicant to meet with the Planning and Building Departments at the site to go over the plans with respect to the parking plan, storage areas and fire code.

Bank of America

Discussion: Lighting Plan

Location: 37.16-1-23; 2 Triangle Center

Contact: Stonefield Engineering and Design

Description: Proposed lighting upgrades to the Bank of America parking lot.

Comments:

Zachary Chaplin, P.E. of Stonefield Engineering and Design was present. Mr. Chaplin stated that the lighting plan has been revised per the Board's comments during the meeting of 11/6/23. For background purposes, the Bank of America is seeking to upgrade their exterior lighting to meet the New York State ATM security lighting requirements. All newly proposed pole light fixtures have been lowered to 16' in height to conform with the Town's zoning code. As a result, an additional pole is proposed to account for the loss in light spread in order to meet the minimum state requirements. All perimeter fixtures are proposed to be shielded. All proposed exterior fixtures have been revised to be of 3000k color temperature with the exception of under the ATM canopy lighting which will be 4000k. The wall-pack fixtures along the rear alley have been identified to be under bank control and are now proposed to be replaced with downward facing sconce lighting.

Mr. Tegeder asked if all the fixtures were fully shielded. Mr. Chaplin responded that the poles are fully shielded and the wall packs will be down lit. Mr. Tegeder informed the Board that the changes will help the site. The Board and Planning Department had no issues with the proposed changes.

Upon a motion by Bill Lascala, and seconded by Aaron Bock, and with all those present voting "aye", the Board opened a Special Session.

Upon a motion by Rob Garrigan, and seconded by Bill Lascala, the Board approved the resolution approving an amended lighting plan for the Bank of America at 2 Triangle Center.

Upon a motion by Bob Phelan, and seconded by Rob Garrigan, and with all those present voting "aye", the Board closed the Special Session.

Atrac Recycling Facility

Discussion: Site Plan and Special Use Permit

Location: 6.18-1-37; 76 Route 6

Contact: Margaret McManus P.E.

Description: Construction of a 40,000 s.f. recycling center with 1,672 l.f. of road, associated parking and office space. The proposed accessory storage for the recycling facility requires a special use permit.

Comments:

David Cooper, Esq.; Margaret McManus, P.E. of Badey and Watson; Steve Marino, Wetlands Scientist of Tim Miller Associates; and Pat Cartalemi Jr., principal for Atrac were present. Mr. Cooper stated that he is representing Atrac

Recycling Center which is the owner of the 18-acre parcel located at 76 Route 6. The property is in the town's I-1 district. The proposal is to develop and operate a recycling facility at the site. The proposed facility would accept construction debris and co-mingled recycling waste from the operator's own fleet of dumpsters and containers, other carting companies, as well as municipalities. The site itself is a total of 18-acres with frontage along Route 6 and access off of Navajo Road. This site was approved in the 2000s for three office buildings with access off of Navajo Road. They submit that this is an appropriate location for this type of use and is a permitted use within the district. The area is currently developed with several industrial uses surrounding the property (contractor yard, truck storage, landscape supply and bulk material processing yard). They feel that there is an ample amount of room to screen the operations, and ensure that queuing could occur on site. There would be no back-up onto Navajo Road or Route 6. The proposal will require site plan approval as well as a special permit approval for accessory outdoor storage. Outdoor storage is proposed for some of the waste before it is brought into the building for sorting. A freshwater wetland permit will also be required as the road would be crossing the stream in two areas that would trigger DEC jurisdiction. He noted that these types of facilities are highly regulated by the DEC, both in terms of design and use but also with inspections, monthly reporting, annual reporting and even surprise inspections. Part of the DEC regulation is that a desk needs to be provided with internet connection for the inspector as they may show up at any time. They anticipate processing the applications for the Town's review and DEC permit simultaneously so as the design moves forward, both the Planning Board and the DEC will have input. As a result, they are asking for the Board to declare themselves Lead Agency. They believe as a local jurisdiction, the Planning Board should be the Lead Agency as well as any other steps that the Town needs to take such as engaging an outside environmental consultant, scheduling a site visit, and public input.

Ms. McManus stated that the site is proposed to have access off of Navajo Road. Upon entry, there will be a weigh station about 150 to 200-ft into the site. When the trucks enter the site, they will be weighed and will then proceed through the site to the building to deposit the recycling and construction debris. The trucks will be weighed again once they leave the site. Queuing would occur on site so there would be no back-up onto the roads. Twenty 14 x 50-ft bays are proposed for the outdoor storage to be located across from the building in the corner. A cul-de-sac turnaround is proposed that will accommodate a fire truck. A parking area is also proposed for the fleet of trucks and employee parking. There are two wetland crossings that they have to manage and are proposing culverts with a road above. The site has a 100-year flood plain but is not within the limits of disturbance so a permit is not required. They meet all the setback requirements for the adjoining properties. The road is proposed to be about 1,600-ft in length. A water main is proposed to bring water to the building as well as a fire hydrant that will be in close proximity to the building. The proposed building will have an office space, recycling area, construction debris area and garage for maintaining their vehicles. Everything is contained within the building; trucks enter to deposit debris and then exit.

Mr. Lascala stated that there is identical facility on Route 100 and asked if it was the same owner. Ms. McManus responded that it was not.

Mr. Bock asked for clarification with respect to the setback requirements for this zone. He noted that the town code requires a 200-ft setback from residential properties in the industrial zone and the applicant's position is that this doesn't apply because the residential zone that the law protects is in the adjoining town and not the Town of Yorktown. Mr. Cooper responded that the authority itself comes from New York State; NYS Town Law 261 limits the towns' jurisdiction to regulate zoning. Mr. Bock stated that this lot is within the Town of Yorktown. Mr. Cooper responded that the lot is within the Town of Yorktown but the jurisdiction to regulate setbacks ends at the property line because the property line on the other side is in another town; any town can't impose its regulations on another town's property. Mr. Bock was unclear as to how it was imposing regulations on another town. Mr. Cooper responded that it was a matter of interpretation as to where there is a residential district on that side of the property. He feels that there is an ambiguity in the code as it doesn't address this type of situation. Many other municipalities have similar issues where their setback regulations ends at their boundaries. The ambiguity comes into play because the zoning law is in derogation of the common law. Mr. Bock stated that he read the two cases cited in the memo and doesn't feel that they apply to this situation and feels that the Town Attorney should make the determination for this specific site. Mr. Cooper stated that the Law Department doesn't have the jurisdiction to make the determination, the determination is from the Zoning Administrator of the Town.

Mr. Lascala asked if the property was completely in Yorktown. Mr. Cooper responded that the property is the municipal boundary and they are submitting that the setback regulation would stop at the Town of Yorktown's jurisdiction. In this case, because there is no district on the other side, the 100-ft setback would apply. He feels that the ambiguity in the code does not address this situation with respect to the setbacks from an adjacent municipality. Mr. Tegeder stated that those are the setback minimums regardless of whether its 100 or 200-ft. The Planning Board, during their site plan review, will set what is appropriate according to the use and its impacts regardless of what the minimum is. Chairman Fon stated that before discussing this any further they would like input from their Town Attorney.

Chairman Fon asked if household garbage or food waste was part of the operation and the response was no.

Chairman Fon asked what the hours of operation were. Mr. Carlemy responded that the DEC will regulate the hours of operation with the guidance of the Planning Board but they are requesting for the hours of operation to be from 6:00AM to 6:00PM, Monday thru Friday; and 6:00AM to 2:00PM on Saturday.

Chairman Fon asked if the wetlands could be avoided if the access was off of Route 6. Ms. McManus responded that they would still have to cross it. Mr. Marino, wetlands consultant, explained that there are two watercourses that are regulated by the DEC as well as the Town. He noted that they have been through this process a number of times over the years with previous owners and are in the process of confirming the wetland delineation. The first stream on the western part of the site is actually a very narrow channel intermittent water course and there is every chance that they will be able to span the majority of that with the crossing in that area. As you go further into the site, the second crossing is a wider more perennial stream so the current plan is to install a number of culverts at the bottom of that stream to cross over. Starting at Route 6, the water coming from Yorktown Farms on the south side of the road comes under Route 6 onto this property and funnels out into that stream until it reaches the sports facility to the north where it actually goes into the much larger DEC wetland. Coming in from Route 6 at the first crossing it would not be necessary but the second crossing would.

Mr. Garrigan asked if the area below the access road was parking. Ms. McManus responded that between the two crossings was a parking area that would have an impervious surface.

Mr. Garrigan asked if this was the type of facility that was available to residents to drop off materials for payment. The response was that it was open to the public.

Mr. Phelan asked if there is a control measure for the scales. Ms. McManus responded that there was and showed the location on the plan.

The Board requested input from the Town Attorney with respect to the zoning before proceeding further with the application. The Board requested for the Planning Department to schedule a site visit with the applicant.

Mr. Cooper asked the Board to declare their intent to serve as Lead Agency and the Board agreed.

Upon a motion by Aaron Bock, and seconded by Bill Lascala, and with all those present voting "aye", the Board declared their intent to be Lead Agency.

Jacob Road Solar

Discussion: Site Plan and Special Use Permit

Location: 35.16-1-4; 1805 Jacob Road

Contact: Nicholas Vamvas

Description: Proposed site plan and special use permit approval to develop a 3.125 mega-watt AC solar facility on a 53-acre project site in the R1-160 zone. This property is the site of the Colangelo Subdivision.

Comments:

David Cooper, Esq.; Ryan Hutcherson, CEO of Freestone Renewables, LLC; Jamal Batar, VP of Freestone Renewables, LLC; and Nicholas Vamvas, P.E. were present. Mr. Cooper stated that Freestone Renewables is the contract lessee of a 15-acre parcel, that is zoned R1-160, and owned by Featherbed Properties. The proposal is to develop and operate a 3.125 MW AC solar facility at the site. The property is the rear parcel of the 53-acre subdivision that was approved by the Planning Board in 2021. They are seeking site plan and special permit approval to develop the proposed solar facility. They are currently working on finalizing the landscape and mitigation plan. The initial layout and line of sight analysis was submitted to the Planning Department for review. One of the benefits of the project is that the topography lends itself to the screening aspect for the proposal.

Ryan Hutcherson, CEO of Freestone Renewables, stated that they are a renewable energy developer. They partnered with their capital sponsor, Apollo Global Management in New York. They have experience in wind and larger utility scale solar projects. The core of what they do is community solar and distributed generation similar to what is presented this evening.

Jamal Batar, VP of Freestone Renewables, stated that they are here this evening to present a community solar project. Community solar is essentially a utility billing program that allows residents and businesses to obtain clean and renewable power at a discounted rate. Some of the benefits include allowing low income residents to obtain clean, reliable power at a discounted rate.

Nicholas Vamvas, P.E. stated that the site is bound on the north by Jacob Road, to the west by residential properties in the neighboring town, to the east by some wooded areas, and to the south by some additional wooded areas. The site is proposed to have access from Jacob Road which is the same road approved as part of the subdivision. The solar facility would access off of the cul-de-sac. The proposal includes the construction of a driveway, fencing for security to comply with the code, and a series of electrical components to be mounted on concrete pads, and other components that would be post mounted. The proposed solar panels will be mounted to posts and elevated off the ground. The topography of the site was discussed; the highest point of the site is in the northwest corner. The site will require some tree clearing to facilitate the project. Evergreen trees are proposed along the property boundary for screening purposes so the sight will be fairly well hidden; it was noted that the topography of the site also helps with the screening aspect. The line of site photos were shared with the Board.

Mr. Garrigan asked what type of fencing is proposed. Mr. Vamvas responded that it was not decided as yet but they are open to the Board's comments.

Chairman Fon informed the applicant that the facility needs to be fully screened. Mr. Bock asked about the neighbors to the south. Mr. Vamvas responded that there is a significant amount of existing trees to remain that will help with the visibility. Mr. Garrigan asked how close the nearest residence was to the south side of the array. Mr. Vamvas responded that he didn't have that information presently. Mr. Garrigan asked how far the array was on the west side to the neighboring town. Mr. Vamvas responded that this site is in the R1-160 zone and this use has a setback of 100-ft from the property line. He noted that they took a more conservative approach. The proposed fence is at the minimum 100-ft setback, and the solar panels are proposed to be 10-ft away from the fence.

Mr. Bock stated that the proposal goes down into the Hunterbrook Preserve and noted that this is an important consideration for the Board. Mr. Vamvas responded that since there is more than an acre of disturbance with a change in the cover type and hydrology, they are bound to comply with the State's regulations related to stormwater management. Furthermore, because they are in the DEP watershed, they will be coordinating the NYCDEP for the SWPPP. He added that a small amount of impervious area is proposed. Mr. Bock mentioned that level spreaders were used to catch run-off for another solar project that was before their Board. Mr. Vamvas responded that his concern with level spreaders is that it often creates additional points of discharge that can lead to further erosion down the line, however, they will adhere to all the requirements instituted by the DEC and DEP. He added that the site will be grassy so the run-off after construction will be well mitigated.

Walt Daniels, Trail Commission, asked about the proposed trail as part of the subdivision approval. Mr. Vamvas responded that there is a trail planned to run from the north to the south of the site that will remain in place. Screening is proposed along the trail to mitigate visibility to the solar array.

Mr. Lascala asked for clarification with respect to the community solar benefits for low income residents. Mr. Batar responded that this is a solar project where a lot of the renewable energy benefits would give the low income community the opportunity to sign up to receive a discounted rate on their electricity bill of up to 20%. He added that the community solar is open to all, but the low income residents would receive the highest benefits of up to 20%, all others would receive up to a 10 to 15% discount.

Chairman Fon reiterated that the Board is always concerned with the visual aspect for the surrounding areas and added that the site needs to be fully screened as required per the code. He advised the applicant to meet with the Planning and Engineering Departments to review the plan. He also requested that more detail be provided such as cross sections, view points, photo simulations, visual renderings, etc.

The Board requested for the Planning Department to schedule a site visit with the applicant and to include Walt Daniels of the Trail Commission. The applicant was advised to consider staking the site with red balloons to test for visibility as done with previous solar applications.

Mr. Cooper asked the Board for their feedback with respect to the viewshed and specific areas that they would like them to focus on.

Town Board Referral - Toll Brothers at Catherine Street

Location: 35.12-1-2 & 35.08-1-45; 2302 Catherine Street & 2448 Catherine Street

Contact: Zarin & Steinmetz, Site Design Consultants

Description: Discussion of an amended layout and supporting studies for the proposed rezone of the site to construct a 118-unit townhouse community with clubhouse and pool for 55+ active adults.

Comments:

David Cooper, Esq. was present. Mr. Cooper stated that he is here this evening pursuant to the discussion at the 12/18/23 meeting with respect to approving the draft response memo for release to the Town Board.

Chairman Fon asked the Board and Counsel if there were any comments with respect to the draft memo. Mr. Waterhouse noted his original concern with respect to the sewer. There were no other comments. The Board agreed to release the memo to the Town Board as final.

Ricciardella Estates fka Dubovsky

Discussion: Project Update

Location: 59.14-1-18; 702 Saw Mill River Road

Contact: Ricciardella Estates LLC

Description: Site Plan approved by Planning Board Resolution #19-09 dated May 20, 2019 and #20-22 dated October 25, 2020.

Comments:

Joseph Riina of Site Design Consultants was present. Mr. Riina stated that the property owner was unavailable to attend this evening and is here on his behalf. Mr. Tegeder informed the Board that the project was up for a certificate of occupancy and noted that the as-built survey showed some slight differences to the approved site plan. The handicapped parking space was supposed to be done with asphalt paving and instead was done with pervious pavers. The walkway was supposed to ramp up from the parking lot on the west and now has a set of stairs. The eastern side of the building now has a set of stairs down to the asphalt driveway. Some of the walls were changed and modified. There was an issue with the rain garden which was corrected with the input of the Engineering Department. The pervious pavers are now filled in. The walkway in front of the building was also done with pervious pavers and it was recommended to fill those in as well which was done. A certificate of occupancy has been issued, and a \$25,000 bond is still in place. He added that generally speaking, the site works as it is designed. The purpose this evening is to show the Board the changes to the plan and to also become part of the record. Discussion followed with respect to the building, cleanouts, and setback for the asphalt driveway and property line.

Chairman Fon asked about the next steps. Mr. Tegeder responded that the record should reflect that the Planning Board is aware of the modifications and is accepted. As stated earlier, the site generally works as designed and there is nothing that changes its operation. Chairman Fon thought that the setback should be field checked, otherwise there were no issues with the changes. The Board agreed.

Meeting Closed

Upon a motion by Bill Lascala, and seconded by Aaron Bock, and with all those present voting “aye”, the meeting closed at 8:23PM