

# Planning Board Meeting Minutes – February 12, 2024

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A meeting of the Town of Yorktown Planning Board was held on Monday, February 12, 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

Bill Lascala

Bob Phelan

Bob Waterhouse, Alternate

Also present were: John Tegeder, Director of Planning; Robyn Steinberg, Town Planner; Ian Richey, Assistant Planner; David Chen, Esq., Planning Board Attorney; and Councilman Sergio Esposito, Town Board Liaison.

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## **Correspondence:**

The Board received a memo from Planning Board Attorney David Chen regarding the setback for the Atrac Recycling Center application. Chen disagreed with the letter from the applicant's attorney, David Cooper, regarding the setback from a residential zone for the eastern property line because this property line adjoins a residential zone over the town line in the Town of Somers. Cooper's letter had stated the Town can't regulate beyond the town line therefore the 200 ft setback from this property line does not apply and the setback should be 100 ft. Bock noted that the Board made site visits on Saturday, February 10<sup>th</sup> to the Atrac Recycling and the Jacob Road Solar sites. Fon questioned what next steps would be and Tegeder stated the applicant will have to address this issue, whether the site plan is redesigned or a variance is requested. Chen will convey this information to the applicant.

## **Meeting Minutes:**

**Upon a motion by Waterhouse, and seconded by LaScala, and with all those present voting "aye", the Board approved the meeting minutes of January 22, 2024.**

## **WORK SESSION**

### **SDML Realty, LLC aka Dunkin Route 202**

#### **Discussion Approved Site Plan**

Location: 35.08-1-11, 14, 15, 23; 3735 Crompond Road (Route 202)

Contact: Engineering & Surveying Properties, PC

Description: Proposed 3,069 square foot Dunkin with drive thru, parking, and associated site improvements.

Reuben Buck from Engineering Properties was present to represent the applicant and gave an update on the project that is in the process of obtaining approvals from outside agencies, which include the NYC DEP and NYS DOT. Soil testing was witnessed by the NYC DEP in December. The testing showed high ground water table, so the stormwater plan had to be changed. This resulted in additional changes including raising the building a foot and a half and decreasing the building size by about 200 square feet. The building size was reduced to reduce the parking at the front half of the site so that the entrance roads into the site could be at a higher pitch. Buck has been in contact with an engineer at the DEP to follow up on their last comments. The architectural drawings changed slightly to accommodate the reduced footprint of the building. In order to make up for

the lost square footage, the two drive-up windows were combined into a single window. Colliers Engineering & Design has prepared a full set of plans that were submitted to the NYS DOT in November 2023 for the left turn lane from Route 202. Colliers has not heard back yet, but does not think there will be significant comments as a result of the latest submission. Buck stated one of the next steps would be for the Board to grant conditional approval so there would be a punch list of remaining items to complete the project.

Bock stated he did not think the changes were significant enough to prevent the Board from moving forward and clarified Buck was requesting approval with conditions. Tegeder stated staff would review the submission and work with the applicant. Phelan asked about the extent of the turning lane, specifically where it starts and ends and asked about the curbing to the east of the site. Buck responded that the turning lane starts at the gas station and will be extended past the site. The project will replace curbing to the east of the site with the latest DOT specifications. The curb islands will all be in the same locations. Buck confirmed the project will replace all curbing in the right-of-way. The turning lane will be striped. Buck stated again the Colliers is confident that there will not be significant changes to these submitted plans. Two lanes merge into one lane just west of the site. Fon asked Buck to work with the Planning Department and Town Engineer to review all the changes to the plans to move towards the approval.

### **BJ's Wholesale Club – Propane Filling Station Special Use Permit Renewal**

Location: 36.06-2-75; 3303 Crompond Road

Contact: Diane Rae, BJ's Wholesale Club, Inc.

Description: Request for renewal of a Special Use Permit for a Propane Filling Station approved by Resolution #14-03, dated February 10, 2014.

Richard McDermott represented the applicant requesting the renewal. There haven't been any changes to the facility. Fon asked how long BJ's has had the special permit and if there have been any complaints. The original special permit was granted in 2013. Tegeder stated he isn't aware of any complaints.

**Upon a motion by Lascala, seconded by Bock, and all those present voting aye, the Board approved the renewal of the special use permit for the BJ's Propane Filling Facility for a period of 5 years.**

### **Underhill Farm Discussion Site Plan**

Location: 48.06-1-30; 370 Underhill Avenue

Contact: Tim Miller Associates, Site Design Consultants, Colliers Engineering, Hudson Cultural Services

Description: 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. Approved by Resolution #23-13, dated July 17, 2023.

Present were Mark Blanchard, project attorney, Joseph Riina, project engineer, Michael Guillaro and Terrence Murphy, from Unicorn Contracting. Blanchard stated the applicant had a long list of conditions in the Board's resolution and are coming back to the Board to start checking off those items. They are prepared to show the Board updated architectural renderings. Blanchard believes the issue regarding preserving the main building

with the Town Board. The applicant would like to ask for approval tonight to demolish the outbuildings on the site.

Elevations of the proposed apartment building, the condominium building, and the townhouses. Blanchard clarified that these renderings respond to comments from staff and ABACA, but these revised renderings have not yet been reviewed by ABACA. Phelan asked if the applicant was fulfilling requirements from the original resolution and by submitting these drawings we are continuing our review under SEQR. Blanchard clarified that SEQR has concluded, but SEQR leaves with it ongoing obligations. Phelan expanded that landmarking does not require SEQR, however once you get into the details that is SEQR appropriate for review. Blanchard stated that the SEQR process is so robust that it had left with it ongoing obligations the Board purposefully left for review now. Fon stated that staff has worked hard to go through the conditions of the resolution and that this is an ongoing process. All of the town's professionals and consultants completed a thorough review of the project.

Tegeder requested Riina zoom in on the elevations of the proposed buildings. Riina stated that pursuant to the outside agency approvals, application was made to the NYC DEP. Comments were received and the applicant responded. Plans were also submitted to the NYS DOT and the Health Department. Riina is working on the response to the Health Department and also working on an application to the DEP for a sewer permit.

Fon asked about the process for salvaging the buildings that are to be demolished. Blanchard stated State has looked at the what the applicant has compiled as their record and they are satisfied. The applicant made an appeal to salvage companies to see if anyone wanted to salvage parts those structures, but they haven't had any interest. They performed a structural analysis to evaluate moving the structures. The Building Inspector determined the buildings are condemnable. Tegeder asked if the applicant reviewed the HPI memo that suggested the applicant go to historic preservation architectural companies to see if they have contacts that may know. Tegeder asked if SHPO will be responding in writing regarding the salvage. Blanchard said their consultant submitted to SHPO about this, the photographic documentation and other items, but he will look into what their response will be and if it will be in writing. Tegeder stated that a response in writing would benefit the Board's record on those issues. Waterhouse stated that he didn't think the Board could move forward with demolition when we're not done with the salvage. Phelan clarified that not all the buildings were condemned, so the Building Inspector has determined that those are not safe for people to salvage from. Blanchard stated that based on the work the applicant has done, they are confident the buildings are ready for demolition. Phelan remembered only 2 or 3 of the buildings were condemned, not all of the buildings, and wanted to know which buildings remain that could possibly be used for salvage. Blanchard is then requesting to remove those buildings that are condemned first. They want to start site prep on April 1st. Fon stated it might be better to meet on site with staff to review the HPI memo and make sure the conditions of the resolution have been met. LaScala asked why the Board couldn't let them move ahead with the demolition. Bock clarified that salvage steps need to be investigated to the Board's satisfaction before the buildings are demolished and requested the applicant submit their documentation for the salvage. Blanchard stated their team will work with staff to work through this issue and return to the Board.

## **IBM Battery Storage**

### **Discussion Site Plan**

Location: 69.16-1-1; 1101 Kitchawan Road

Contact: Powerflex

Description: Proposed amendment to the Tier 2 Battery Energy Storage System (BESS) Special Use Permit by increasing the capacity of the BESS from 1 MW to 2 MW, previously approved by Resolution #23-08 on May 8, 2023.

Dennis Phayre from Powerflex was present. Phayre stated updated plans and equipment were submitted to the Board for changing from the 1 MW battery to the 2 MW battery on the same footprint. The plans comply with all the same requirements. The fence was replaced for the neighbor. Councilman Esposito asked if the neighbor was happy. Phayre and Tegeder responded that she was very happy. The Board agreed that the larger battery does not significantly change the site plan. The Planning Department will prepare a resolution for the next meeting.

### **ZBA Referral #02-24 – Confident Kids Club Special Use Permit Application**

Location: 36.05-1-14; 3535 Crompond Road

Contact: Chris Berlow

Description: Application for a Special Use Permit for a Child Fitness & Before and After School Program.

Joel Greenberg, project architect, and Chris & Brandon Berlow, were present. Greenberg stated the location is to the left of the bagel store on Crompond Road. The program is offered to parents who need before care. The parents drop off the students and the bus comes to take them to school. Or if parents work late, the after care program has the bus drop the students off and parents pick them up later. There used to be a gym in this particular store in the past. The parking needed would be for the staff, so the parking requirements would be much less than required for the gym that was there before. Waterhouse noted there is no outside play area. Greenberg stated if an outdoor play area is required, they will provide it. Tegeder asked about the business; how many employees, how many students, and if the program is licensed by the state. Berlow stated the program is licensed by the state from OCFS and in this space there could be a maximum of 60 children probably. The program is for school aged children from kindergarten to 12 years old. The student to teacher ration is 10 students to 1 teacher. Tegeder asked where the bus would drop-off. Berlow stated he hasn't spoken to the transportation company yet because this is still preliminary, but at his other locations the bus pulls up to the curb or if there is a road, the students are dropped off and then walked into the site. Because the program is licensed, the school must deliver the children. He does not yet know if they will be dropped off on Route 202 or in the site. Tegeder thought there should be some sort of drop off area if the drop off is on Route 202 with signage. Berlow asked if there was any reason why the bus could not come into the site. Tegeder preferred the bus enter the site. Greenberg noted the traffic pattern on the site is conducive to a one-way circulation. Berlow will call transportation to inquire. Councilman Esposito stated the transportation can use smaller buses. Tegeder recommended there be some provision to drop off out at the street if this is an open issue. Berlow will talk to transportation so that the bus drop off isn't unknown. Tegeder requested that if the bus company will pull into the site, then Greenberg should show on the plan where the bus will stop to drop off the students.

For the after school program, the students are dropped off by bus and picked up by parents. Pickup is from 5:00 - 6:15 pm in designated parking spaces/using existing parking spaces. In their other location, three spaces are designated as 15 minute parking spaces for parents to park for pick up. Phelan noted that the traffic circulation in the site will stop when the bus is dropping off. Waterhouse agreed this would affect the other

tenants in the shopping center. Berlow stated that the bagel store closes at 4 pm. The pizza and chinese restaurants are mostly delivery. The nail salon has 1-2 customers at a time. Phalen stated there are a lot more questions than answers before a recommendation can be made to the Zoning Board. Fon suggested a meeting with the Planning Department to address the questions and details. Bock agreed more information is needed to make a recommendation. The applicant goes back to the Zoning Board on February 22nd. The applicant will meet with staff and then the Planning Department will draft a memo to the Zoning Board.

**ZBA Referral #03/24 & #04/24 – Little Red House of Westchester, LLC  
Request for Special Use Permit Renewal**

Location: 37.09-1-59; 2300 Crompond Road & 37.18-2-51; 322 Kear Street

Contact: Melanie Sindaco

Description: Request for renewal of Special Use Permits for both Child Daycare Centers.

Melanie Sindaco, the applicant, was present to renew her special permits at two locations. Tegeder asked if Sindaco still also had space in the new building on Kear Street. Sindaco responded yes, but that location is a group family daycare, which is why it doesn't come before the boards and the other two are daycare centers so those require a special use permit. Tegeder suggested the crosswalk be repainted on Kear Street. Sindaco stated that the owner of the Kear street building repaints the crosswalk every spring. The Planning Board had no additional comments. The Planning Department will send a response memo to the Zoning Board.

**Town Board Referral**

**Large-Scale Solar Energy Systems Moratorium**

Description: Proposed amendment to Chapter 300 "Zoning" regarding a moratorium for large scale energy systems.

Councilman Esposito stated the Town Board is considering a temporary moratorium to look at the law more closely. Fon asked what happens to applications in front of the Board. Esposito stated the moratorium would be retroactive even if it is passed. No moratorium is in effect yet, so you should continue to review applications. Fon stated the "fully screened" language that is currently in the code is difficult to achieve. Waterhouse stated that if applications currently under review asked the Board for recommendations, how do we know how to direct them. Bock stated the issue in front of the Board is simply should there be a moratorium which would apply to any project not yet approved. Tegeder stated that as written the moratorium includes already approved projects because it includes the issuance of certificate of occupancies. Tegeder would recommend removing that part because if projects already have building permits and are constructing, we wouldn't want to prevent them from continuing on now. Fon stated that it would be a good idea now that we've had several applications to review the law. Bock agreed the Board should support the moratorium and that the Board is in a good position to evaluate the law based on the review of the dozen projects so far. The Board should identify for the Town Board some concerns we've encountered during those reviews. The Board agreed to support the moratorium and suggested revisiting the sites that have been constructed to see if the projects were built as expected. The Planning Department will prepare a draft memo for the Board to review at the next meeting.

**Town Board Referral  
Smoke/Vape Shop Moratorium**

Description: Proposed amendment to Chapter 300 “Zoning” regarding a moratorium for smoke and vape shops.

Councilman Esposito stated that similarly, the Town Board would like to review this law to make it better. The concern has been the negative feedback regarding the smoke shops in town. LaScala recommended the Town Board require the landlord be responsible to remove a business if it is illegal. All the details of what is being sold at a store and by whom should be in the lease. Fon recommended contacting other municipalities to see how they have dealt with them. In Greenburgh there were 5 smoke shops and they were all shut down by a task force. Esposito commended the Police Department for investigating the one shop that was shut down recently. Fon asked if the moratorium could be extended if needed. Esposito replied yes. The Board had no specific comments, but had no objection to the Town Board identifying an issue and taking action to review the law. The Planning Department will send a memo to the Town Board.

**Upon a motion by LaScala, and seconded by Waterhouse, and with all those present voting “aye”, the meeting closed at 8:08 PM.**