

Planning Board Meeting Minutes – May 6 , 2024

A meeting of the Town of Yorktown Planning Board was held on Monday, May 6, 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:

Rob Garrigan

Bill Lascala

Bob Phelan

Also present were:

John Tegeder, Director of Planning

Robyn Steinberg, Town Planner

Ian Richey, Assistant Planner

Nancy Calicchia, Secretary

David Chen, Esq.

Councilman Sergio Esposito, Town Board Liaison

Correspondence

- **Wipe Your Paws** – Proposed dog grooming and daycare facility to occupy the former Remax Realty space at 2013 Crompond Road. Mr. Tegeder informed the Board that they would need to determine if this type of use is appropriate for the site. The proposed facility will require an outdoor area that will be used for the dogs to relieve themselves. Two parking spaces in the corner of the south side of the building are proposed to be used for this purpose that will include the removal of the existing asphalt and installation of a fence enclosure. The dogs will be leashed and walked to the relief area every two hours. Mr. Phelan asked how they would access this area from their space. Mr. Tegeder explained that they would exit the side door and walk down the elevated sidewalk to the steps and across the parking lot to the designated relief area. Mr. Lascala was concerned about the noise control for the neighboring tenants and cited the review of the Guiding Eyes facility.

Eric Goldschmidt, real estate broker for the property owner, stated that this tenant space is on the corner so two of the walls are on the outside. The back wall (south side) has already been sound proofed for the existing gym tenant. He noted that if necessary the property owner is willing to sound proof the wall adjacent to the neighboring nail salon. He added that it is a one story building so they don't feel it will be an issue.

Christina Racanelli, Wipe Your Paws owner, stated that they currently have a facility in Mt. Kisco that has been operating for 14 years and are now seeking to expand their business to Yorktown. She understands their noise concern and reiterated that the landlord has offered to install sound proofing if necessary. She explained that the interior set-up would be designed so that the grooming would be along the shared wall as it is quieter; the daycare would be on the outside wall where the windows are and at least two or three daycare rooms are proposed depending on the configuration. She anticipates about 30 dogs a day for the daycare but not at the same time. She explained that the daycare dogs come to play, socialize and exercise; it's not a silent situation but is nothing like a kennel environment. Chairman Fon asked if there were any noise issues in their Mt. Kisco location. Ms. Racanelli responded that her neighbor, The Poppery, of whom they share a wall with, submitted a letter stating that they are good neighbors and have no issues with noise or cleanliness. She noted that the outside area is not a designated play area and is simply used for the dogs to relieve themselves.

Mr. Phelan thought that there may be a need to install a striped walkway and stop sign for safety purposes since the traffic for the site wraps around the building and will go through their path to the designated relief area. Ms. Racanelli didn't anticipate the need for a walkway but didn't have an issue with this. She noted that the relief area is not far from the stairs and feels that the line of sight is clear.

The Board agreed to move forward with review of this application on a formal basis and advised the applicant to work with the Planning Department.

- **Tully fka Sandvoss Subdivision** - Chairman Fon noted that a letter of recusal was formally submitted by Aaron Bock for this project on April 15, 2024 for the record.

Motion to Approve Meeting Minutes of April 15, 2024

Upon a motion by Bill Lascala and seconded by Bob Phelan, and with all those present voting “aye”, with the exception of Rob Garrigan who was not present during this portion of the meeting, the Board approved the meeting minutes of April 15, 2024.

Motion to open Regular Session

Upon a motion by Bill Lascala, and seconded by Bob Phelan, and with all those present voting “aye”, the Board opened the Regular Session.

REGULAR SESSION

Confident Kids Club

Discussion: Decision Statement

Location: 36.05-1-14; 3535 Crompond Road

Contact: Chris Berlow

Description: Seeking site plan approval for a Child Fitness & Before and After School Program.

Comments:

Joel Greenberg was present. Mr. Greenberg stated that he read the draft resolution and had no issues. Chairman Fon asked the Board, Planning Department, and Counsel if there were any issues and there were none.

Upon a motion by Bill Lascala and seconded by Bob Phelan, and with all those present voting “aye”, with the exception of Rob Garrigan who was not present during this portion of the meeting, the Board approved the resolution approving a site plan for the Confident Kids Club.

Motion to close Regular Session and open Work Session

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

WORK SESSION

Curry Honda Large Scale Solar

Discussion: Site Plan

Location: 35.08-1-10; 3845 Crompond Road

Contact: Michelle Walker, Freedom Solar Power

Description: Installation of a 253.17 kW Photovoltaic Solar System on the existing commercial building.

Comments:

Nicholas Speir, Director of Quality Control of Freedom Solar Power was present. The proposal is for the installation of a solar system on the roof of the existing commercial building occupied by Curry Honda. They are proposing to maximize the roof space keeping up with all the international fire codes and National Electric Code. They are trying to provide as much power to offset the building but there is not enough roof space to offset the full consumption.

Chairman Fon asked if the system was flat or raised. Mr. Speir responded that it was flat. Chairman Fon asked about the visibility from Route 202. Mr. Speir responded that directly in front of the building there is a parapet wall that covers the view of the panels; however at a very wide angle from either direction you may be able to see a glimpse of it while passing by. Mr. Phelan stated that what he heard is that the system is to produce power strictly for the use of the building with surplus to the grid but they don't anticipate surplus. Mr. Speir responded that this was correct and explained that they cannot produce enough solar to meet their annual demand but if the demand is lower then the production of the solar would export back to the grid. Mr. Lascala asked if there were any units at the site currently and the response was no. Mr. Tegeder asked about the existing roof. Mr. Speir responded that it was a shallow pitch roof with no parapets on the side; it does overhang the current wall. Mr. Tegeder noted that there are two separate ridges and two gables that are parallel to one another and it seems that the panels will be flat against each side. Mr. Speir stated that this was correct and noted that some of the panels will be oriented east and some west. Mr. Tegeder suggested that elevations for the front and two sides be provided for review.

Mr. Phelan asked if it were possible to install a light weight screen on the roof in the place of where a parapet wall might be. Mr. Speir stated that the roof was not designed for a parapet but a screen may be possible. He noted that they also have skirts attached to the panels to create a clean, sleek look. Mr. Phelan asked Mr. Tegeder if they were bound by

visual constraints for large scale solar. Mr. Tegeder responded that he will look into this as the roof mounted solar systems may be different from ground mounted systems.

Mr. Phelan informed the applicant that the town implemented a solar moratorium for review of the laws regulating large scale solar systems. As a result, all solar applications in front of the Planning Board would proceed with the understanding that a moratorium is in place. The Board can have the discussions but can't take action until the moratorium is lifted.

Chairman Fon stated that their biggest concern is the screening. The Board requested for the applicant to provide elevations of the front and two sides to gain a better understanding of the system's visibility. The applicant was advised to meet with the Planning Department to discuss the screening requirements and moratorium.

Village Traditions

Discussion: Site Plan

Location: 15.16-1-32; 1821 East Main Street

Contact: William Bottiglieri

Description: Seeking to amend previously approved site plan to 5 apartments consisting of four 1 bedroom apartments and one studio apartment in the upstairs of the existing structure instead of the previously approved four 1 bedrooms by Resolutions #18-05 dated May 21, 2018 and #21-08 dated May 10, 2021.

Comments:

JD Summa, Billy Bottiglieri, and Randy Castaldo, were present. Mr. Summa stated that they are proposing to amend their approved site plan to increase the number of approved apartments from four (4) to five (5) on the existing structure as shown on the submitted plans. Chairman Fon noted the Building Department's memo dated May 6, 2024 stating that they had no objection to the increase but noted that these apartments will be considered new construction and are required to have a fire sprinkler system installed as per the Town Code.

Chairman Fon asked when the plan was originally approved and if there were any zoning issues. Mr. Phelan stated that the amended plan was approved in 2018. Mr. Tegeder responded that there were no zoning issues. Mr. Garrigan asked about the parking count. Mr. Summa responded that they have 50 parking spaces on site and with the addition of this apartment they would only require 44 spaces so they are compliant.

Chairman Fon noted that the previous owner made a drive through connection with the neighboring property owner and asked the applicant if they were aware of this. Mr. Summa responded that his understanding is that if their neighbor wanted to put a drive through on their property they would then have to work with them for access to a turn around on their property to exit through the rear of their property. In the same aspect, if they wanted to build on their own property, they would need access to their rear lot as well. The Planning Board approved the neighbor's egress to the rear of their lot and if either of them wanted to do any new construction they would have to work with each other.

Mr. Tegeder stated that the condition for both site plans is to meet up in the rear so when they reconfigure their site this connection is required. He added that the practice in Yorktown, when feasible, is to connect parking lots and cited sites within Yorktown as examples. This connection will help control the traffic from Route 6 and will also make their front parking lot safer for entering and exiting. The Board felt that the connection would be used as the single and only egress for the neighbor in order to make the two parking lots and two sites work together and to make it safer.

Mr. Summa asked what triggers the new egress. Mr. Tegeder responded that their rear parking lot is set up to meet the neighbor's driveway. When the neighbor starts construction is when their front lot will need to be reconfigured to accommodate the connection. Mr. Summa's understanding was that the neighbor's site plan approval requires the egress to the rear that will trigger their front lot change but won't be required until the project is constructed and questioned who would be responsible for the construction cost. Mr. Tegeder responded that part of the cost will be theirs as their site's front lot will be amended as part of their approval for the connection when it comes. Mr. Summa noted that the neighbor didn't have any plans to build out any time soon and is exploring purchasing that property. Chairman Fon advised the applicant to meet with the Planning Department to review the details of the connection requirements with the neighboring property.

Chairman Fon asked the Board and Counsel if there were any objections to the increase in the apartments from 4 to 5 and there were none. The Board agreed to place this item on the next meeting agenda for a resolution for the amended site plan.

Foothill Street Subdivision

Discussion: Major Subdivision

Location: 15.07-1-7; 3850 Foothill Street

Contact: Anthony Genovese

Description: Proposed 7 lot single family subdivision on a 16.8 acre lot in the R1-40 zone.

Comments:

Anthony Genovese was present. Mr. Genovese explained that his engineer could not be present this evening and requested to be placed on the next meeting agenda. The Board agreed to place this item on the next meeting agenda.

TJ Maxx – Yorktown Green Shopping Center

Discussion: Site Plan

Location: 37.18-2-56; 355 Downing Drive

Contact: Mathew Dudley, Harris Beach PLLC

Description: Seeking site plan approval to construct a new loading dock, trash compactor, and trash enclosures in the rear of the existing building.

Comments:

Darrius Chafizadeh, Esq. of Harris Beach PLLC; and Jon Kuybida of Jarmel Kizel Architect and Engineers, Inc. were present. Mr. Chafizadeh stated that they are here as a follow up to the previous meeting. Mr. Kuybida stated that they met with the ABACA and received their comment memo. The plan has been updated to include two pylon (monument) signs. The existing sign on the corner of Kear Street and Route 118 will be replaced (33SF); the second sign is new and is proposed to be installed at the corner of Downing and Route 118 (66SF). The total square footage for both signs is 99SF. The 8 existing tree wells along the front of the building are proposed to be elongated to allow for additional plantings; maple trees with a mixture of lower plantings are proposed. Two bike racks are proposed along the front of the building. The building is proposed to be upgraded and painted. Each tenant store will have their own signage and will submit their applications separately. Since they last spoke to the Board, they removed the rear signage and rooftop screening from their plan. The rooftop screening was removed since the building sits lower than Route 118. A cross section at Kear Street and Route 118 was shared with the Board. A design study was prepared that shows the relationship between the intersection of Route 118 and Kear street. The street elevation of this intersection is approximately 458. The elevation height in the rear of the building is approximately 454. An average person sitting in a vehicle will have an eye level of 5 feet above the roadway (463). Thus placing the typical eye level at 9 feet above the roof of the building. They believe it is in their best interest to discuss providing additional plantings along the top of Route 118 to screen the building.

Chairman Fon asked if the original 1995 (revised 1999) landscape plan for the site was part of the original approval. Mr. Tegeder responded that it was. Chairman Fon asked the applicant if they saw this plan and the response was no; a copy of the plan was handed to the applicant for their information. Chairman Fon informed the applicant that based on this approval, it seems that their work is done and that all they need to do is comply with the originally approved landscape plan. Mr. Phelan added that the drawing was produced by the ownership of the property. Mr. Chafizadeh stated that they were not aware of this plan and will reach out to the Planning Department to review the previous resolution and landscape plan. He noted that they are willing to provide the landscaping provided that the DOT and the Board is fine with it. Mr. Tegeder asked about their landscape plan. Mr. Kuybida responded that the species selected would be similar to what is there now.

Chairman Fon asked about the two pylon signs and if a variance was required. Mr. Tegeder stated that the height limitation is 16-ft. Mr. Kuybida responded that both signs are at 16-ft. Mr. Tegeder noted that the new sign will be visibly obstructed by the existing pine tree. He informed the applicant that per the sign manual, the town prefers monument signs that are lower and more horizontal with a nice design base. Mr. Kuybida responded that the pine tree will be removed and they are happy to revise the signs as suggested and will provide a drawing.

Mr. Chafizadeh stated that they will work on the landscape plan and sign drawings. Chairman Fon felt that a landscape plan may not be necessary if they follow and comply with the original plan. Mr. Phelan added that there may be an approval from the DOT. Mr. Tegeder noted that with the current discussion of the original approved landscape plan, of

which they now have, it would make sense to continue the tree line and landscaping scheme from the corners of the existing building to the ends of the development as there is already an approval in place.

The Board advised the applicant to work with the Planning Department and set up a meeting at the site. Mr. Chafizadeh stated that they will revise their submission for referral to the county.

ZBA Referral #10/24 - TJ Maxx – Yorktown Green Shopping Center

Location: 37.18-2-56; 355 Downing Drive

Contact: James Polinsky, Signs Ink Ltd.

Description: Application requesting variances for three signs on the building. 96.1 square foot variance on the Southern sign, 17.6 square foot variance on the Northern sign, and a 128.6 square foot variance on the western sign.

Comments:

James Polinsky of Signs Ink was present. Mr. Polinsky stated that the applicant, TJ Maxx, is proposing one main front sign that is over the square footage and requires a variance. They are also requesting additional signs to the rear and side of the building. After a discussion with the attorney representing the property from the previous agenda item, he is of the understanding that the rear signage may not be allowed and that with the proposed rear screening that was discussed earlier, these signs may not even be seen.

Mr. Phelan clarified that he was looking favorably upon the possibility of the rear signage but in consideration for this they were discussing screening options for the rooftop mechanical equipment which has now been removed. Given this information, his feeling is that he is not in favor of the rear signage. It is not that they won't allow it, the applicant chose to remove the screening and the rear signage. Mr. Garrigan noted that in fairness, the applicant is proposing natural screening along Route 118 and the cars that are driving by are not focusing on the building; the better impact may be to install more plantings. Chairman Fon advised Mr. Polinsky to attend the site visit to show where the signs are proposed.

Mr. Garrigan thought that they didn't need to comment on the rear signage as it was withdrawn but could comment on the front signage. Mr. Polinsky stated that this is a separate tenant application from TJ Maxx and has nothing to do with the building owner.

Mr. Chafizadeh, attorney for the landlord, stated that when they were last before the Planning Board, their understanding was that the Board was not in favor of the rear signage and wanted the rooftop screening. The applicant then removed the rooftop screening and proposed landscaping as discussed previously. They noticed on the agenda this evening, that there was a separate signage application by TJ Maxx that included the rear and side signage. They agree with the Board that it can't be seen and confirmed that they did withdraw the rear signage as part of their application. Chairman Fon asked if the owner objected to the signage application. Mr. Chafizadeh responded that they don't object to it but they need to have a discussion. Chairman Fon advised Mr. Polinsky to work separately with the property owner. Mr. Polinsky stated that TJ Maxx works with a national sign vendor for their stores and are obviously not up to date with the discussions for this project.

Mr. Garrigan asked if they needed to address the front south sign facing the parking lot separately. Mr. Tegeder thought they could do so. Mr. Polinsky stated that they are asking for a 96.1SF variance for the front south sign that includes the two column signs. Mr. Tegeder asked what the allowable was and the response was 161SF and they are asking for 257SF for the front facing. Mr. Tegeder noted that if the rear and side signage is removed they would still require a variance over the allowable. Mr. Phelan asked if the area of signage they are talking about is just for the TJ Maxx portion or the whole building. Mr. Polinsky replied it was just for the TJ Maxx portion.

Chairman Fon requested to see the revised package and noted that he would have less of an issue with the variance if there was less signage to eliminate the confusion. The Planning Department will provide a memo to the ZBA with their comments.

Mr. Polinsky informed the Board that the application is scheduled for the May 23rd ZBA meeting agenda. The Board advised the Mr. Polinsky to work out the signage details with the applicant and attorney for the landlord. This item will be placed on the May 20th meeting agenda.

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:

Jaelyn Cohen, Esq. of Zarin & Steinmetz; Kevney Moses of Toll Brothers; and Joseph Riina of Site Design Consultants was present. Ms. Cohen stated that Toll Brothers is seeking a rezoning of the Field Home / Holy Comforter property that is located on Catherine Street from the split RSP-3 and R1-40 districts to the RSP-2 district to facilitate their proposed 55 and older active adults townhouse development. This project is currently before the Planning Board on a Town Board referral as they are reviewing the rezoning and seeking a recommendation from the Planning Board as it pertains to SEQRA and the rezoning. They have been working with the Planning Department and Board over the past several months. A submission was made in February to the Planning Department that included additional information and reports in response to their January 23rd comment memo to the Town Board. They recently received a new memo from the Planning Department dated May 3rd of which they are in the process of responding. Toll Brothers is eager to advance the review process and believes that they have provided sufficient information for the record and SEQRA review. They are hoping that tonight the Planning Board will finalize their comments and authorize the Planning Department staff to send their memo to the Town Board so that the Town Board can pick up their review of the application.

Chairman Fon asked about the existing zoning. Ms. Cohen responded that the property is currently split zoned in the RSP-3 and R1-40 districts. The property is the site of the Field Home building and adjoining parcel to the north and is located next to an assisted living facility. Across from Catherine Street is another townhome development; Jacob Road is to the south and Old Crompond Road is to the north. Chairman Fon asked if the existing townhome development was similar to the current proposal and Ms. Cohen responded that it was. Mr. Phelan asked about the light green area shown on the plan. Ms. Cohen responded that the entire property is proposed to be rezoned to RSP-2 but are setting aside 14 acres as a conservation easement which is shaded green on the plan. Mr. Phelan asked if any development was proposed for the shaded green area and Ms. Cohen responded that there wasn't.

Mr. Lascala asked about the sewer capacity. Kevney Moses stated that Toll Brothers has decided to help participate in investigating I&I within the basins where their project lies and noted that the work will be commencing this week by their team Weston & Samson. Dan Ciarcia, Town Engineer, informed the Board that they are currently working with the applicant's consultants and provided mapping and GIS data so they can find out if there are areas in need of repair. Basically the formulation they came up with is that Toll Brothers would provide a mitigation at a 1 to 1.5 ratio towards the repair. Chairman Fon asked how old the system was that they are proposing to tie into. Mr. Ciarcia responded that the Hunterbrook pump station has two basins; everything to the west are relatively new systems as some of it was constructed as part of the new Field Home expansions; other connections were made afterwards so it is a fairly new system. To the east is the older system and noted that when they performed the INI study it didn't show as an in-flow infiltration anomaly. This system was built in the 1960s and went to a treatment plant on the site of the pump stations which has since been decommissioned. This system is older and they will be looking at it as they are under an order of consent with the DEC. They are collaborating on this and the town will perform the television inspection on the system on the east side and eventually move to the west side and whatever leakage they identify will be quantified and then Toll Brothers would implement the repairs that would be credited toward their mitigation. Mr. Phelan asked if they had an expectation of what may be found. Mr. Ciarcia noted that they just repaired two big ones and noted that the older system is transite pipe and know that they have to make repairs as there is a response at the pump station during big rain events.

Mr. Garrigan asked what the status of the Field Home was relative to this application. Mr. Tegeder responded that they produced a report within their submission that evaluates the structure, soundness, and potential for different types of reuse. The Planning Department is scheduled to meet the historic consultant at the site tomorrow. As part of the application, Toll Brothers is seeking to subdivide it off and donate it to the Town or another entity that could possibly reuse it.

Mr. Garrigan asked with respect to the 55 and older community if there would there be a chance of families with children living there and possible school bus service. Mr. Moses responded that there would be no school children generated by this project and added that it would be deed restricted and clearly laid out within the offering documents.

Chairman Fon asked the Board if there were any issues with the draft memo being released to the Town Board and there were none. Mr. Tegeder informed the Board that the recreation requirement should be determined by the Planning Board during the site plan review process and just wanted the Board to be aware of what was proposed to the Town Board. Mr. Moses responded that they are not being presumptuous in saying that what was proposed is the end result as they know this will be adjudicated during the site plan review process and added that it is noted purely as an offer.

Ms. Cohen asked for clarity purposes if the Board was finalizing the memo for distribution to the Town Board. Chairman Fon responded that this was correct. Mr. Tegeder stated that the memo was ready to go. Mr. Moses stated that they are working to address the Board's comments and asked about the next steps. Mr. Tegeder responded that a meeting should be scheduled with the Town Supervisor.

ZBA Referral #09/24 - Atrac Recycling Facility

Location: 6.18-1-37; 76 Route 6

Contact: Zarin & Steinmetz

Description: This referral is regarding the 200 foot setback interpretation of Section 300-97(A) of the Zoning Ordinance. The project consists of constructing 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:

No representative was present. Chairman Fon asked about the referral and noted that they submitted a memo to the Zoning Board on 4/25/24 asking for their determination on the setback interpretation with respect to the code. Mr. Chen, Planning Board attorney, stated that it was referred as a matter of course. The Board agreed to reiterate their memo to the Zoning Board and note that they have not made any determination on a variance.

A resident stated that she received a notification from the Town for the proposed recycling plant that will be 50 yards from her house and is not in favor of this project. She added that there are many people that will be affected by this proposal that don't even know about it. Chairman Fon informed the resident that the notice was from the Zoning Board of Appeals, not the Planning Board, for the public hearing to be held at their meeting of May 23rd for the setback interpretation. He explained that all items on the Work Session portion of the Planning Board agenda are for discussions between the Board and the applicants only and added that public hearings are the time to be heard. He advised the resident to attend the Zoning Board public hearing and state her concerns for the record. The resident was confused as to what the setback requirements are. Mr. Tegeder informed the resident to call the Planning Department with any questions. Councilman Esposito informed the resident to contact him with any questions as well and noted that the during the regular session of the Town Board meetings there is a courtesy of the floor for public comments.

Nantucket Sound Sons LLC

Discussion: Field Changes

Location: 37.18-2-86; 385 Kear Street

Contact: Joseph Thompson Architect

Description: Proposed changes previously approved site plan by Res #21-14, dated August 9, 2021.

Comments:

Joseph Thompson, Architect; and Marsel Praela, property owner were present. Mr. Thompson stated that since they were last before the Board they made substantial progress with the construction of the building and are nearing potential occupancy in the next four to six weeks. They are here this evening to present some site plan changes to the Board. A mark up diagram on the landscape plan depicting the proposed changes was submitted for review. The condensing units (HVAC system) were installed in the area between the lower level and upper level patio and screening is proposed to shield the visibility of the units.

Chairman Fon asked about the location of the units. Mr. Thompson responded that the units were originally approved to be installed on the roof. The HVAC contractor made an applicaton for a permit and the diagram provided showed the units on the ground; the application was approved and the units were installed. Mr. Thompson thought that somehow

the knowledge of the location for the units was not transferred to the owner. They later realized that it was not in conformance with the intent of the original approved site plan and that permission should have been requested from the Planning Board prior to installation. Councilman Esposito pointed out that the permit was approved for the actual units and not the location. Chairman Fon asked how many units were installed. Mr. Thompson replied that there were 6.

Chairman Fon stated that the Board spends a great deal of time and energy reviewing projects before their final approval and noted that this site already had a few changes that included the siding, pavers and refuse enclosure. He noted that the units are located right next to the patio area and the Board is concerned about the screening potential and noise from the units. Mr. Thompson stated that they could perform a decibel rating. Mr. Garrigan asked about the roof placement. Mr. Tegeder noted that the Board approved the placement on the roof similar to other applications during their site plan review but they were then installed on the ground. Mr. Garrigan thought that even though they were on the ground it didn't mean they had to stay there. Mr. Lascala asked if they could be relocated to the roof. Mr. Thompson responded that it would be destructive to the interior of the building now that is finished.

Mr. Tegeder asked about the proposed screening of the units. Mr. Thompson showed photos of the site (existing conditions and proposed screening). He noted that the units were most visible on Kear Street from the side of the patio. The owner is proposing a decorative iron fence with a black wind screen to shield the units. They are also proposing to plant some type of evergreen screening in front of the building in addition to the approved plantings. They omitted the new street trees for clarity purposes but noted that once established oaks are there, the view from the street will be heavily screened.

Chairman Fon asked if the units were HVAC or just AC. Mr. Thompson replied that they were split units and will be operating. Chairman Fon stated that when people are dining outside they will hear the noise from the condensers and noted that the units may require a 5-ft clearance for screening. Mr. Thompson responded that he needed to confirm the clearance.

Mr. Phelan felt that the property owner made a decision to depart from the approved plans and added that there is enough documentation and plans generated from this development that you couldn't miss the intent of the Board's approval to place the units on the roof and not on the ground. In his opinion, the owner made the wrong decision and it now needs to be fixed.

Marsel Praela, property owner, explained that when he bought the property there were no drawings of where to set up the condensers. He noted that there are 9 condensers and not 6 as previously stated because they have three storefronts. He stated that he is a general contractor and based on the square footage, the units could fit on the roof but would be hard to do because they would then need a crane to lift them up to the roof and noted that there is a 9-ft high parapet wall around the roof. There would be no way to repair or replace the condensers should something go wrong. He added that there are also vents for the bathrooms, washers and dryers that take up square footage on the roof. He and the contractor proposed drawings and received a permit and did not know that they had to present this to the Planning Board. Chairman Fon asked if there was access to the roof. Mr. Praela responded that there was a 24 x 24 hatch on the original drawing and to perform service would be hard as they would have to climb a 10-ft ladder to the hatch. Mr. Praela explained that the units are hyper heat pumps (Mitsubishi brand) so they don't make much noise as opposed to regular condensers. The condensers blow left and right so there is plenty of space for air ventilation. The patio is 7-ft high from the condensers and it should not affect the rear patio. Chairman Fon stated that he is well aware of these type of units and the practice, however, the noise and the visual aspect is a concern to the Board and asked if they were operational. Mr. Praela responded that they were and added that they were installed 9 months ago and to remove those 9 units to the roof would be a huge process. The interior of the building is spray foamed.

Mr. Thompson informed the Board that there are a few more proposed changes to the site. The applicant is requesting to remove the approved lower level dumpster enclosure located next to the patio area as they have concerns with respect to heavy odors during the summer time for the residents and potential diners. They are now proposing to double the size of the upper level dumpster enclosure so that all the garbage will be away from the building. Chairman Fon stated that it will not be convenient for the lower level tenants.

Mr. Thompson continued that another change to the site is that the utility company installed a pole and ground mounted transformer on the corner of the property that is visible but the plantings are proposed to be adjusted.

Mr. Thompson added that there is also a proposed pizzeria for one of the tenant spaces that will require two propane tanks to support their cooking equipment. The applicant is proposing to install a pad on the inside nook between the stairs and raised retaining walls that could be successfully screened. Mr. Garrigan asked about the tank size. Mr. Thompson was not sure and will look into it. Mr. Tegeder asked if they were temporary. Mr. Thompson responded only if they can get permanent gas service in the future. Mr. Lascala asked if the building was serviced by gas. Mr. Thompson responded that it was electric and his understanding is that there is gas in the street that could be tapped into that shouldn't be an issue depending on the cost and if the proposed tenant can accommodate this. Mr. Tegeder asked if the natural gas will be pursued. Mr. Thompson responded that it was their intent and they have already contacted Con Ed. Mr. Tegeder stated that the basis of the discussion would depend on whether they are temporary or permanent; if permanent they would then have to be looked at with scrutiny. Mr. Thompson stated that he will provide more information with respect to the gas connection. Councilman Esposito stated that he spoke with the proposed tenant about an electric dual fuel unit. Mr. Thompson responded that they would need an engineer to verify that the electric service could accommodate the cooking equipment but this could be discussed during the site visit.

Mr. Tegeder informed the Board that the site has been issued a stop work order and added that there are landscaping issues presently on the west side of the property that is partially in the DOT ROW. Mr. Thompson responded that this was correct. The existing buffer is not in the way of the plantings, there is an open area that is about 15-ft wide. The vegetation in the ROW is adjacent to the sidewalk and the DOT has taken a position that it should not be disturbed. The thought is that it will stay and all the plantings will be dry set and if the landscaper should have any suggestions they will then verify it with the Board. There is an area that is obstructed by trees and growth that cannot be disturbed.

Chairman Fon suggested that the Board perform a site visit with the applicant, architect, contractor, landscape architect, and Planning Department. The applicant was advised to provide the HVAC specifications for setback verification with respect to the proposed screening; and a sample of the proposed fence. Mr. Thompson noted that the landscape architect for the approved plan has since retired but they should be able to get a landscape architect. Chairman Fon informed the applicant that all site changes discussed this evening should be ready for discussion during the site visit.

Town Board Referral - Peace and Good Order

Description: Proposed amendment to chapter 216 "Peace and Good Order" in order to specify, strengthen, and add to the language in the section.

Comments:

The Board reviewed the Planning Department's memo and had no issues. Chairman Fon asked the Board if there were any other comments. Mr. Phelan stated that procedurally he was concerned with enforcement for complaints during the weekend. Councilman Esposito stated that the Code Enforcement official would enforce these measures during work hours; the Police Department could be equipped with a sound meter during the times when the Code Enforcement official is not available. He added that the complaints were more geared toward commercial establishments and thinks there are more changes to be made with the decibel levels and times of operation especially during the weekends. He noted that the current ordinance is vague so all comments are welcome.

Meeting Closed

Upon a motion by Bill Lascala, and seconded by Bob Phelan, and with all those present voting "aye", the meeting closed at 9:05PM