

Planning Board Meeting Minutes – September 23, 2024

A meeting of the Town of Yorktown Planning Board was held on Monday, September 23, 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

Aaron Bock

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

The Board reviewed all correspondence and had no comments.

Motion to Approve Meeting Minutes of September 9, 2024

Upon a motion by Bill Lascala, and seconded by Rob Garrigan, and with all those present voting “aye”, with the exception of Aaron Bock who abstained as he was not present during this meeting, the Board approved the meeting minutes of September 9, 2024.

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

Ryder Subdivision

Discussion: Decision Statement

Location: 48.06-1-12; 532 Underhill Avenue

Contact: Site Design Consultants

Description: Proposed two lot residential subdivision to be served by a single (existing) common driveway. Each home will have a septic system and will be served by Town water.

Comments:

Joseph Riina, P.E. of Site Design Consultants was present. Riina stated that he received the draft resolution and had no issues. Chairman Fon asked the Board, Planning Department and Counsel if there were any comments. Tegeder suggested amending the resolution to include a requirement that the wetland mitigation is complete prior to the issuance of the first certificate of occupancy. Riina had no issues. The Board agreed to amend the resolution as suggested.

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

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

Upon a motion by Bill Lascala, and seconded by Aaron Bock, and with all those present voting “aye”, the Board approved the resolution approving the subdivision plat titled Ryder Subdivision as amended.

Motion to close Regular Session and open Work Session

Upon a motion by Rob Garrigan, and seconded by Bill Lascala, with all those present voting “aye”, the Board closed the Regular Session and opened the Work Session.

WORK SESSION

MJM Subdivision

Discussion: Major Subdivision

Location: 17.18-2-2; 3232 Gomer Street

Contact: Site Design Consultants

Description: Proposed flexibility alternative for 13-lot single family subdivision on 12 acres in the R1-20 zone.

Comments:

Joseph Riina, P.E. of Site Design Consultants was present. The applicant is here as a follow up to the previous meeting with respect to the proposed site plan alternatives and direction from the Board. At the request of the Board, additional information was provided for review. Fon stated that he spoke with Highway Superintendent Dave Paganelli and received his feedback. After reviewing the alternatives, Paganelli was in favor of the two separate entrances off of Cordial Road and Gomer Street. Garrigan asked if Paganelli had any comments with respect to Cordial Road. Fon stated that he thought his feeling was that the six homes compared to the total would be the better alternative. Bock stated that the Cordial Road sketch included some widening and asked if this will become part of the proposed mitigation. Riina responded that he was asked to provide a Cordial Road study and noted that the red section shows the amount of widening up to their site that would be required to bring it up to the town code's width requirement of 24-ft; everything west of the red section is currently to standard; and the blue section is beyond their project site that would need to be widened to the town standards. Bock asked if they were proposing red and blue or just red. Riina responded that they are not proposing anything at this point but are open to discussion. Bock asked if the access off Cordial Road is the preferred plan would they propose as part of the access both the red and blue widening. Riina stated that he is not speaking for the applicant but he would just go for the red as that would be the exit point, however, they are open to discussion and he will speak to his client. The Board agreed to move forward with the plan showing two separate entrances off of Cordial and Gomer Street. Fon informed Riina that they now have direction in order to move forward. Tegeder stated that as of now they need to develop the plan and refine the lots.

Savannah's Restaurant

Discussion: Site Plan

Location: 25.20-1-3; 3901 Crompond Road

Contact: Gina & Paul DiPaterio

Description: Proposed outdoor dining patio and site improvements.

Comments:

Gina DiPaterio, business owner; Jim Annicchiarico, P.E. of Cronin Engineering; and David Tetro, Architect, were present. Chairman Fon noted for the record that they received a memo from the Town Engineer dated 9/23/24 accepting the proposed stormwater improvements and requesting that an erosion control plan be provided prior to approval.

Annicchiarico stated that the stormwater management plan for the existing asphalt parking area that was paved after the original approval as well as a future asphalt parking lot extension was submitted to the Town Engineer and Planning Department for review. The stormwater calculations are provided on the plan. As noted earlier, the Town Engineer reviewed the plans and his only comment was to provide an erosion control plan.

Tegeder asked about the number of seats for the proposed outdoor patio. Tetro responded that the calculation table was provided on the previously submitted drawing. After discussion, the Board noted that the calculations need to be broken out. Tegeder informed the applicant that the number of seats proposed for the outdoor patio is required for the special permit approval. Tetro responded that he will break out the calculations to show the outdoor seating number. Tetro added that they spoke previously about meeting with the Planning Department to review the parking calculations and Tegeder responded that this was would be the next step. Fon noted that the plan shows that 74 spaces are required and 74 spaces are provided.

Chairman Fon asked the Board if there were any issues and there were none. Tegeder stated that the applicant will need to refine what they talked about and a resolution could be drafted for the next meeting.

Lamp Subdivision

Discussion: Minor Subdivision
Location: 70.08-1-8; 357 Crow Hill Road
Contact: Zarin & Steinmetz
Description: Proposed subdivision of a 4.463-acre lot in the R1-80 zone
Comments:

Jody Cross, Esq. of Zarin & Steinmetz; Paul Lynch, P.E.; and Evan Lamp, property owner were present. Chairman Fon noted for the record that they received a memo from the Town Engineer dated 9/23/24 stating the plans should be revised to include stormwater management practices to demonstrate the feasibility of the application.

Cross stated that they were last before the Board in July and since that time they submitted revised plans to the Planning Department for review. The plans were revised to reconfigure the house and show the septic and well locations. They are also proposing to extend the existing access drive by 2-ft making it 14-ft. She noted that the Planning Board conducted a site visit with the applicant in August. In addition, they received correspondence from the Yorktown Heights Fire Chief Paul Liberatore dated 8/1/24 stating that he had no concerns with the existing 14-ft width but noted that the driveway needed some maintenance. Since they are already paving it they decided to widen it by 2-ft to make it 16-ft. They cut back 3-ft of vegetation that was encroaching on each side of the access drive to make it wider and improve the sight distance. Photos of the access drive was distributed to the Board and Planning Department for the record. They received the Town Engineer's memo this evening so they have not addressed his comments as yet. Cross stated that at this point she believes they need a referral to the ZBA and also requested to proceed with a Public Informational Hearing. Chairman Fon asked if there were any comments. Bock stated that he was at the site and noted that the clearing was an improvement. Tegeder asked if they submitted an agreement amongst the neighbors. Cross responded that there is an existing easement agreement that was submitted with their initial application to the Planning Department. Tegeder asked if it needed to be modified to add the proposed new residence. Cross responded that it did not as it actually contemplates adding new homes and how it gets broken down cost wise amongst the neighbors. Fon asked Tegeder if the application had to be referred to the ZBA first. Tegeder responded that they should proceed with the Public Informational Hearing and then make the referral thereafter. The Board agreed to schedule a Public Informational Hearing for the application.

Atrac Recycling Facility

Discussion: Site Plan and Special Use Permit
Location: 6.18-1-37; 76 Route 6
Contact: Zarin & Steinmetz
Description: Construction of a 40,000 SF recycling center with 1,672 LF of road, associated parking and office space. The proposed accessory storage for the recycling facility requires a special use permit.

Comments:

David Cooper, Esq. and Jaclyn Cohen, Esq. of Zarin & Steinmetz; and Andrew Zinman, Esq. of Sichenzia Ross Ference Carmel, LLC, litigation counsel for the applicant, were present. Cooper informed the Board that only attorneys are present this evening for two reasons – the first is for the land use; and the second is for the proposed rezoning of the site and removal of the use that was discussed at the Town Board meeting last week which is why Mr. Zinman, Esq. is also present.

Cooper stated that with respect to the land use, they only found out this past Friday that the application was on the agenda so their consultant team and client were not available to attend. They are present this evening to discuss procedural questions and ask for a recommendation to the ZBA with the Planning Board. They submitted materials to the Planning Department on July 31st in response to siting questions. For background purposes, he noted that they are before the ZBA for a side yard variance request for a 101-ft setback, where 200-ft is required, on the eastern side for the portion of the building that would be located on the upper northern portion of the property (preferred northern layout). In July, they presented a proposal to the Planning Board and ZBA showing a location for the building that could be built as-of-right consistent with the zoning on the lower southern portion of the property (alternate southern layout). The submission cover letter explains that the northern siting requiring the variance is the more appropriate siting as it is set back, has more buffering, etc. The ZBA has asked the Planning Board for its recommendation on which site location is preferable. As a result, they are stuck in limbo with the ZBA as they will not make a decision until they hear back from

the Planning Board. They are here this evening, on the land use side, to ask the Planning Board to issue their recommendation to the ZBA so that they can move forward with the processing of the application.

Chairman Fon stated that they are before the Board with two siting options. The alternate option (southern layout) is closer to Route 6 and he noted that the Board had questions with respect to the setbacks and asked Tegeder if they received clarity. Tegeder responded that this was one of the questions that has not been settled. Tegeder noted that the alternative plan (southern layout) that was produced at the request of the Board is zoning compliant. He thinks they need to look at what is the best siting of the building on this site given some of the impacts that have been brought to light. If you look at the preferred plan (northern layout), the building is all the way back closer to the residential zone in Somers and closer to future proposed residences on the neighboring property. Placing this building closer to Route 6 and away from those receptors may be a better site without being constrained by the zoning setbacks. He thinks there needs to be some analysis and design work done to analyze what those potential sitings may be. With respect to the zoning compliant plan (southern layout) they may be able to move the building further back from Route 6 so that it can be screened better and won't be as close to the neighbors across Route 6. It will have more of a wetland buffer encroachment but he thinks this should be analyzed as to what the wetland buffer and wetland encroachment are on all the alternatives so they have an understanding of what all those impacts in order for them to actually select and design the site with the best siting. In his opinion, he doesn't feel they are there yet and noted that there are questions that remain as the last time they saw this they were just presented rather than go thru them and analyze them. Fon noted that the last time they were before the Board they discussed the operations of the site. Cooper responded that they were last before the Board on July 15th and they had a consultant discuss the operations and regulatory controls for the site. They submitted materials to the Planning Department thereafter and noted that this is the first time they have been on the agenda since that submission two months ago.

Fon stated that in reference to Tegeder's comments it may make sense to have the applicant's engineer work with the Planning Department and Town Engineer to discuss the variables. Cooper stated that they could do this to understand the variables but noted that what was submitted shows all of this. They have the setbacks to understand the difference between the road, adjacent properties, residential properties, etc. on both sides. At the request of the Board, they also included the conceptual layout of the residential development proposed on the neighboring property. He would submit that they have what they need with respect to the siting questions as to whether or not there is sufficient area for buffer, noise buffer, visual buffer, lighting, etc. Fon stated that Tegeder is requesting detail with respect to the wetlands and the two alternatives. Tegeder responded that this was correct but noted that there may be another alternative that may turn out to be the optimal site so if the building is pushed back on the alternate southern layout it may be more optimal than the first two plans. He is suggesting that the design process has not played itself out completely.

Fon noted that the Board's charge is to make sure that the impacts to the surrounding area are addressed to the best of their ability and noted that this is still an approved use in the area. His opinion is that the layout with the building in front (southern layout) may work better as it protects the surrounding areas better but there are still issues with the parking in the rear and the wetland crossing. Pushing the building back would take it further away from the residents across the street and could be looked at.

Cooper stated that the as-of-right southern alternative depicts a red dotted line that shows the wetland buffer so the issue of how far back they can push the building is identified on the plan as they can see the building footprint. He noted that there isn't much room to push the building back because of the wetland buffer. Tegeder stated that they are already in the buffer on this plan and added that they have buffer and wetland encroachments on both alternatives. Cooper stated there is a small encroachment on the southern alternative but if they push the building back it will be increased. Tegeder stated that both of the proposals have impacts to both the wetlands and wetland buffers so he is suggesting to move the building around on this site to manage those impacts and place the building in the least impactful site where the impacts to both the wetlands and the wetland buffers are still mitigatable. They can move the building and analyze the impacts and maybe further improve how it is impacting the surrounding area. Cooper responded that they are happy to do this but the proposal is for the upper northern layout away from the wetlands so if the Planning Board is saying that they don't like the proposed layout he then requests that they send their recommendation to the ZBA so that they can end that process and move forward with the southern side. He noted again that they have been in procedural limbo for a while. Tegeder noted that the practice has always been when you do a land use site plan that the preferred layout is determined by the Board to move forward but if it needs a variance it is at that point when it is sent over to the ZBA.

He thinks the limbo is the cart before the horse. Cooper respectfully disagreed and felt that there is a subcontext because of what is going on with the Town Board. Tegeder stated that it has nothing to do with this and is about choosing the best site for the building. Cooper stated that they don't want to be held up so they are requesting this evening for the Planning Board to issue a recommendation to the ZBA.

Garrigan stated that the Board is being asked to make a choice between the lesser of two evils which is never a good result. Each of the plans have advantages and disadvantages and is why they are in limbo. One location is not compliant with the zoning and yet there may be a better location but there are aspects with that plan that may not be appealing as well. Bock stated that regardless of where the building is sitting the impacts to the community and the adverse environmental impacts for the proposed project remain. He read all the documents as well as the most recent traffic consultant letter and feels that this project has unavoidable adverse environmental impacts so he is suggesting that the Board consider issuing a positive declaration so that they can properly and adequately study all of the impacts regardless of where they are siting the building as that won't change the overall environmental impacts of the project. It will change the site impacts but in his opinion that is not nearly as significant or adverse as the broader impact. Garrigan noted that they haven't gotten to that point yet as it is currently all about the placement of the building. Fon stated that this application has nothing to do with the Town Board and added that they are independent of the Town Board with separate agendas. Fon questioned if they should move forward with a positive declaration. Tegeder stated that they are asking for an analysis which can be done in one fell swoop or they can let it unfold with the analysis. Cooper stated that the Board could discuss this with their own Counsel but he doesn't think they have the proper record to suddenly issue a positive declaration especially a week after the Town Board proposed a rezone. Bock stated that if it was an insignificant project it wouldn't be before the Town Board to consider changing the use. In the meantime it is before the Planning Board as a permissible use so the question is what are the impacts of that use.

Chen, Planning Board attorney, noted the traffic study report recently submitted by the town's outside consultant and asked the applicant if they wanted to respond. Cooper responded that he received the letter from the AICP from Transpo Group dated 9/17/24 this morning. He noted that he read the letter and it wasn't written to assist the Planning Board in its assessment with the proper siting. The first half appears to be justifying what the Town Board is proposing with respect to the zoning; and the second half has some comments about their traffic report that was submitted in July. Since he only received this letter this morning, their traffic consultant, Kimley-Horn, has not had a chance to review the comments as yet. He noted that there is no empirical analysis in the letter to suggest that this would be the basis upon which this Board could issue a positive declaration. Chen responded that he wasn't suggesting anything and that he was just asking if they would like to have their engineer respond to it. Cooper responded that they will have their traffic consultant respond. Cooper asked the Board when the traffic consultant was retained and if it was to come out of the applicant's escrow for the analysis. Tegeder responded that this was the first review of what was submitted and is sure there will be more review once they receive their response. Fon asked Chen, Planning Board attorney, to review what was discussed this evening as they proceed forward. Fon advised the applicant to meet with the Planning Department and Town Engineer to discuss the alternatives.

Town Board Referral - Amending Chapter 300 – Solar Law

Description: Proposed amendments to Chapter 300 regarding solar power generation and facilities.

Comments:

The Board discussed the significance of increasing the 100-ft setback to 200-ft with respect to the visual aspect. Tegeder noted that at the previous meeting there was discussion amongst the Board during one of the solar applications that if the screening measures were further back they may be less effective and the profile to the viewer is smaller. However, if the screening measures are closer they may be more effective as you won't be able to see anything. This is why the line of sight profiles are so effective and helpful during the site planning process as they show a perspective. Part of the issue with changing the law was the "fully screened" aspect. He noted that you would not be able to fully screen the array from every vantage point and would be unusual to do so; they would have to create the best condition in the most reasonable way and most often they can do this. Fon asked if they could suggest possibly have flexibility with this such as best engineering practices or landscape architecture that could be under the purview of the Planning Board. Tegeder noted they could look into this. Councilman Esposito asked if the Planning Board was requesting discretion on the 200-ft setback. Bock responded that they were and noted that the Town Board could set the outer limits but the Planning Board could have discretion on particular sites.

The Board agreed with the proposed amendments but requested that the Town Board consider giving the Planning Board discretion of having flexibility with respect to the proposed 200-ft residential setback as it applies to the visual aspect. The Planning Department will prepare a memo for the Town board.

Town Board Referral - Battery Storage Facilities - Moratorium

Description: Proposed local law to establish a six month moratorium regarding “Battery Energy Storage Systems.”

Comments:

After discussion, the Board was in favor of the proposed moratorium. The Planning Department will prepare a memo for the Town Board.

Closed Session

Upon a motion by Aaron Bock, and seconded by Bill Lascala, and with all those present voting “aye” the Board opened a Closed Session to seek advice of Counsel on pending litigation.

CLOSED SESSION

Upon a motion by Bill Lascala, and seconded by Aaron Bock, and with all those present voting “aye”, the Board closed the Closed Session and resumed the Work Session.

WORK SESSION

Bock stated for the record that the Planning Board went into a Closed Session to have a discussion about litigation and noted that the only people present besides the Board members were the Planning Department staff.

Town Board Referral - Amending Chapter 300 – Recycling Facilities

Description: Proposed amendments to Chapter 300 regarding recycling facilities.

Comments:

The Board discussed the proposed amendment. Bock stated that this would affect all the properties in the light industrial zone and removing the recycling use across the board would eliminate that use in the town completely and questioned if this was the best way to approach this. Garrigan stated that there is a variety of use cases and types of recycling efforts that are for the community and he wouldn’t be in favor of eliminating it as it is an appropriate use. However, he thinks the code could use a more detailed definition on what can be done, what is allowed, and what is appropriate in that zone. Fon stated that it is a necessary use. Bock added that one of their consultants distinguished between recycling and construction debris work as a way of defining or narrowing this use. Garrigan noted that there are reasons why the county does different things such as e-waste days as there is no where else to take it and noted that we have a definition of right and wrong with our own refuse and bulk pickup. He thought that in terms of the use for this zone it could be more defined using some of these ideas. Bock asked if the proposed amendment would eliminate the use completely. Tegeder stated that it would from the I-1 zone. Bock stated that he knew Navajo Street was in the I-1 zone and questioned if there were others. Tegeder responded that Lexington Avenue is as well and noted that Front Street is in the I-2 zone. Tegeder explained the difference between the two zones and noted that the I-1 zone is more intensive.

The Board felt that the proposed amendment needed more definition as opposed to removing it from the zone. The Planning Department will draft a memo for the Board’s review based on their discussion prior to releasing to the Town Board.

Meeting Closed

Upon a motion by Bill Lascala, and seconded by Aaron Bock, and with all those present voting “aye”, the meeting closed at 8:20PM.