

## Planning Board Minutes June 26, 2017

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A meeting of the Planning Board, Town of Yorktown, was held on June 26, 2017, at the Yorktown Community & Cultural Center, 1974 Commerce Street, Yorktown Heights, NY 10598. The Chair, Richard Fon, opened the meeting at 7:00 pm with the following members present:

John Savoca  
John Kincart  
Anthony Tripodi  
William LaScala  
Robert Garrigan, alternate

Also present were: John Tegeder, Director of Planning; Robyn Steinberg, Town Planner; Tom D'Agostino, Assistant Planner; Kristen Wilson, Planning Board Counsel; and Greg Bernard, Town Board Liaison.

**Correspondence:** The Board reviewed correspondence.

### **Courtesy of the Floor:**

**PEG Realty Site Plan** – A letter was received from the A&S Pork Store aka PEG Realty Site Plan. The letter explains that they can't obtain some of the trees required on the plan and suggested substitutions that can be purchased at this time. The Board was okay with the substitutions.

**Community Housing Innovations** – Margaret McManus from Badey & Watson and Anthony Navarro from Community Housing Innovations were present. McManus showed the Board plans for 4 units and asked if the Board will entertain this plan at this density. McManus stated the first proposal was for 8 units, then 6 units, and now 4 units. The required parking is 6 spaces. The plan provides 8 spaces. The units would be for fee simple ownership. The units are about 1,300 – 1,400 sf in size. LaScala, asks how the developer obtains applicants to purchase the units. Navarro stated all qualified applicants are put into a lottery. Tegeder stated the 4 units could be approved under Flexibility Standards, Clustering & Flexibility, or just by obtaining variances. Typically with numerous variances, it makes more sense to use the Flexibility Standards or the Clustering & Flexibility Standards. Navarro stated the price point is under \$300,000. The units are each two-story, with no basement. Kincart asked about a utility room. McManus agreed that nothing was shown yet. The Board agreed they would consider a residential site plan application for the four unit plan.

### **Minutes:**

**Upon a motion by LaScala, seconded by Tripodi, and with all those present voting aye, the Board approved the chair's corrected copy of the June 12, 2017 meeting minutes.**

### **SPECIAL SESSION**

#### **Shrub Oak International School**

**SBL: 26.5-1-4**

#### **Decision Statement**

Location: 3151 Stony Street

Contact: David Steinmetz, Esq.

Description: Proposed site plan, special use permit for a helistop, and special use permit for a private school, for autistic adolescents through young adults, at the former Phoenix House Academy.

**Upon a motion by Savoca, seconded by Kincart, the Board opened a special session.**

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Present were: David Steinmetz and Michael Cunningham from Zarin & Steinmetz, and the applicant Michael and Brian Koffler. Steinmetz listed several edits to draft resolution that included changing the plan revision dates to June 22<sup>nd</sup> to reflect the full set of plans that were submitted on Friday. In addition the plan titled “Potential Driveway Improvements” should be changed to “Potential Roadway Profile.” The applicant has offered to contribute \$30,000.00 for a traffic study of the East Main Street corridor in Shrub Oak. Fon asked if the town would do an RFP for services. Tegeder stated yes, and once a consultant is retained, the fee would be due. LaScala asked the applicant if they were concerned that there was no time limit or protection if the town doesn’t use the money. Steinmetz stated he was not concerned because the amount would not be payable until a proposal is accepted by the Town Board for a traffic consultant to complete the study.

**Upon a motion by Savoca, seconded by Kincart, and with all those present voting in favor, the Board declared itself Lead Agency for the Shrub Oak International School application.**

**Upon a motion by Tripodi, seconded by Savoca, and with all those present voting in favor, the Board adopted a Negative Declaration.**

**Upon a motion by Kincart, seconded by Savoca, and with all those present voting in favor, the Board approved the Site Plan, Special Use Permit for a Private School, Stormwater Pollution Prevention Plan, and Tree Permit for the Shrub Oak International School.**

Fon stated he preferred to wait until the school was owned by the applicant and a helicopter can be landed before voting on the Helistop Special Permit. LaScala stated he felt that if the school wants a helistop, and what they have proposed complies with the code, they should have one. Savoca stated he thought the Board was going to wait. The Board asked the applicant their feelings on whether the permit was approved tonight. Steinmetz, stated there was definitely a discussion at the last meeting of waiting, but we thought the Board would act with favor from all members except the chairman. We would like you to vote if the Board is comfortable. Kincart read from the prior meeting’s minutes of his statements at the last meeting. Tripodi asked how much of a detriment to the applicant would there be for not voting tonight. Steinmetz stated the only detriment was the momentum of the application. Steinmetz reminded the Board that the Negative Declaration that the Board just adopted included considering the impacts of the helistop. Again, the applicant left the last meeting thinking four members were okay with the helistop.

Councilman Tom Diana wanted to make the Board aware that after he spoke in front of the Board at the last meeting, he did speak to Steinmetz in the hallway and he made him aware of the limitations on the helistop permit. The limitations including: a limit of 3 flights per month, each flight would consist of approximately 6 minutes in and 6 minutes out, and planned flights are limited to between 8 am – 8 pm. After the meeting, Diana went back to his neighbors with this additional information and they all then told him they were okay with the helistop. Tegeder stated that although Diana is making these statements now, they are not on the record because the hearing is closed. The Board agreed that the Negative Declaration did include the impacts of the Helistop therefore delaying the vote did not make sense.

**Upon a motion by LaScala, seconded by Savoca, and with all those present voting as follows:**

**Tripodi – aye**

**Kincart – aye**

**Savoca – aye**

**LaScala – aye**

**Fon – no**

**the Board approved a Special Use Permit for a Helistop at the Shrub Oak International School subject to the conditions listed in the resolution and expiring two years from the date the helistop becomes fully operational.**

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Upon a motion by Tripodi, seconded by LaScala, the Board closed the special session.

### WORK SESSION

#### **Faith Bible Church**

**SBL: 15.16-2-9, 10, 50, 53, & 54**

#### **Discussion Resolution**

Location: 3500 Mohegan Avenue

Contact: Albert A. Capellini, Esq.

Description: Proposed amending of Resolution #14-08.

Present were: Al Capellini, project attorney; Joseph Riina, project engineer; and Carmine Zottoli, paster of the church. Capellini stated that the Wetland Permit states no work can be done until a building permit is obtained. The applicant is requesting that site work be allowed prior to obtaining a building permit. Zottoli explained that the church has been working on defending the Article 78s filed against the approval. His request is to start on the site work that would be environmentally beneficial to the lake and improves the intersection. Riina stated that beginning the site work is only beneficial to the town. The site improvements will provide parking that is already needed for the existing church, improve the safety of the intersection, and the mitigation work will protect the wetlands, as will connecting to the sewer, as the current building is on septic. Riina stated that the issue with obtaining a building permit is that it requires the church to pay a significant cost for the architect to prepare construction documents. The church does not have enough money raised to do this yet. Beginning the site work will generate excitement for the project and hopefully more funding will follow. Tegeder stated the applicant still must pay the fees required to release the signed site plans. Fon asked if the Board taking an action would give the opposition something to challenge. The Planning Board's attorney, Kristen Wilson, stated yes. Any new action by the Board would be subject to challenge. So starting the site work would be at the applicant's risk. Capellini stated he had advised his client of the risk of the Board taking an action. Savoca asked Wilson if changing this condition sets a precedent for the Board. Wilson stated no precedent would be set. Tegeder stated that one of the reasons why the Board has this condition is to prevent an applicant from beginning site work and then abandoning the project leaving a cleared site with no development. In this instance, if the applicant was never able to demolish the existing church and construct the new building, there would be no detriment to the town. Capellini stated that the neighbor did file an Article 78 against the Board's reapproval of the site plan, but we feel it is defective and will be dismissed.

**Upon a motion by Savoca, seconded by Kincart, the Board opened a special session.**

**Upon a motion by LaScala, seconded by Savoca, the Board removed the condition from permit #WP-FSWPPP-T-002-11 requiring that "No work may be conducted on the properties without first obtaining a Building Permit," because this site work will provide need parking for the church, improve the safety of the traffic intersection, and the mitigation work and sewer connection will protect the wetlands and Mohegan Lake.**

**Upon a motion by Kincart, seconded by Savoca, the Board closed the special session.**

#### **Unicorn Contracting**

**SBL: 37.18-2-73, 74, 85, 86**

#### **Discussion Site Plan**

Location: 355 Kear Sreet

Contact: Ciarcia Engineering, P.C.

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Description: Proposed demolition of the existing restaurant and barn for the construction of a three story, 40,000 sf building with a mix of retail and office uses and a new 2,925 sf bank building. All other existing buildings are proposed to remain.

Savoca recused himself from this item.

Present were: Dan Ciarcia, project engineer; Al Capellini, project attorney; Paul Guillaro, the applicant; and Patrick Murphy, owner of the Murphy's Restaurant parcel. Ciarcia stated that at the Public Informational Hearing the plans showed changes the Board had not previously seen at a work session. The changes included the additional pedestrian connection through the site. The existing pedestrian connection consists only of the sidewalk on Route 118 and down Underhill Avenue. There is also an existing connection via staircase from Murphy's Restaurant to the lower parking lot for parking. Ciarcia added a sidewalk across the eastern property line and out to Underhill Avenue. The second change is that right now the plan does not show a bank on the corner of Kear Street. This was changed in response to comments that the building was too close to the property line and the drive-thru may not fit. The building is shown only as a retail footprint. Ciarcia stated the site encompasses 4 tax lots. As part of the proposal, there will be an apportionment taken from the Grace property. There may be issues complying with the C-2 zoning setback requirements. Since the property line is being moved, the condition may not be all pre-existing non-conforming. The applicant may need to obtain variances from the Zoning Board of Appeals. Ciarcia stated the applicant was also looking to know what the Board would like the applicant to research environmentally as part of the SEQR review. Capellini stated the applicant would like to focus on the scope of environmental review. Ciarcia stated he understood the Board would like a traffic including the three main intersections surrounding the site and the Board would like to see the visual impact of the development. The applicant will be preserving the historical structures on the site except for the barn. Therefore the historical streetscape along Underhill Avenue will remain the same. Ciarcia noted the Board was concerned with interconnectivity and pedestrian flow. Fon stated that removing the bank and the drive-thru gives the site more continuity and has made the plan better. Fon noted stormwater will also need to be discussed. There is a lot of existing impervious surface, which will remain, but this will need review. For the visual analysis, Tegeder requested the other elevations of the building, particularly from Kear Street would be informative. Tegeder asked Ciarcia if he was using the EAF mapper to determine historical significance. Ciarcia stated yes, this was submitted attached to the Full EAF. Tegeder requested the applicant confirm there are no wetlands on the site by getting a letter from a professional.

Tripodi asked the applicant to confirm that the existing Grace building driveway would be eliminated. Ciarcia stated yes, the driveways are being combined into one site access on Underhill Avenue. Capellini stated the Coldwell Banker and Salon property (formerly owned by Markatos) is now owned by the developer and that the applicant will most likely combine this lot with the Murphy's parcel, a portion of the Grace Building parcel, and the corner parcel on Kear Street.

The Board agreed the three intersections to be included in the traffic study were: 1) Underhill & Route 118; 2) Route 118 & Kear Street; and 3) Kear Street & Commerce Street/Underhill Avenue.

Ciarcia stated the applicant will now advance the site plans to the next level of detail. Ciarcia will meet with NYCDEP for the redevelopment project. Ciarcia stated the applicant will submit elevations for the other sides of the building and a section.

D'Agostino asked if the applicant was proposing a lot line adjustment or a resubdivision. Capellini stated the applicant would prefer a lot line adjustment, but will defer to town staff. Ciarcia stated a subdivision was done in the 1980s that added the Markatos line. Depending on which property lines are removed, the

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properties will need cross-access easements because the site is presented as one site plan over the several existing properties.

### **Envirogreen Associates**

**SBL: 15.16-1-30 & 31**

#### **Discussion Site Plan**

Location: 1851, 1867, 1875 East Main Street

Contact: Site Design Consultants

Description: Proposed alternative layouts for redevelopment of the site for 16,000 square feet of commercial space and associated parking.

Present were: Al Capellini, project attorney; Joseph Riina, project engineer; Steve Marino, project environmental consultant; and Rick Cipriani, the applicant. Riina showed the Board the site plan the Board preferred the last time the project was on the agenda. This plan involved filling in DEC wetlands. Marino stated that the applicant took the plan to the Army Corp of Engineers between site adjustments and mitigation. Marino stated the plan received approval from the Army Corp for filling the wetlands and for the proposed on-site and off-site mitigation. Marino stated the applicant then met with the NYS DEC and they balked at the plan stating there was too much impact to the wetland caused by proposed Building #2. In response to a comment in the Town Engineer's memo, Marino noted the wetland line was confirmed by NYS DEC last year. Marino stated the NYS DEC said they would accept that there would be some wetland impact to get around the building and across the site, but not to the extent that was proposed. This plan proposed 17,000 square feet DEC wetland impact. Based on this discussion with the NYS DEC, Riina worked on alternative plans. Alternate A takes the same square footage and put it into one building to remove impact from the wetland. This plan shows 15,000 square feet of wetland fill. All wetland mitigation could be done on-site. This plan is short 6 parking spaces.

Alternative B still shows two buildings, but the buildings are moved forward on the site to remove the building from the wetland. Moving the buildings close to the street provides an environment where the buildings become part of the streetscape. There will be more landscaping and design of the plazas if this option is preferred. The wetland impact on this plan is 12,800 square feet of disturbance. All required parking can be fit on the site, but most is in the rear of the buildings. Marino stated Alternate B does meet the one to one mitigation as noted in the Conservation Board's memo. The Fire Bureau memo indicates they preferred Alternate B as well. LaScala stated the streetscape would be much the same as the building closer to the fire house. Riina agreed that the alignment would be more consistent with many of the buildings in Mohegan Lake.

The Board preferred Alternate B. Tegeder stated that both plans have pros and cons for example, it is a little tight between the buildings on Alternate B. The plaza in the front should be more developed. Cipriani stated that the architecture would be similar to the existing building where the Dunkin Donuts is located. Riina stated the setback shown is 15 feet. Cipriani stated he would like the Board's blessing before going back to the NYS DEC. Fon suggested the applicant meet with staff to further develop the Alternate B plan first.

### **Town Board Referral – The Weyant**

**SBL: 37.14-2-32**

#### **Discussion Site Plan Layout for Rezone**

Location: 2040 Crompond Road

Contact: Site Design Consultants

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Description: Requested rezone from R1-20 to Transitional Zone to construct two 18-unit apartment buildings.

Present were: Joseph Riina, project engineer; Al Capellini, project attorney; Phil Grealy, project traffic engineer; and John DeVito, the applicant. Riina stated the main reason the applicant was in front of the Board was to discuss the traffic. Fon asked for clarification on the referral from the Town Board. The Town Board did not vote on the rezoning yet. Capellini stated that the Town Board will simultaneously approve the rezoning and the site plan so the applicant is here to give this Board more information on the traffic so recommendations can be made to the Town Board. Fon asked staff if the Board can comment on all aspects of the site, the massing, landscaping, etc. Tegeder responded that the Board should make any and all comments they have.

Grealy stated that traffic counts were taken in April and May of this year. The applicant had a preliminary meeting with NYS DOT on the alternative accesses. The NYS DOT preferred no access onto Crompond Road, therefore they preferred the main access on Hamblyn Street with only an emergency access on Crompond. Grealy fully analyzed both alternatives. The traffic generation for the proposed development will be the same for either access plan. Thirty-six apartments would generate approximately 35 – 40 trips in a one hour period. The current volume on Crompond Road is between 1,200 – 1,500 vehicles per hour. The applicant's goal is to direct cars away from going north on Hamblyn Street. The proposed access is turned towards Crompond Road and includes raised curbs, a raised island, and signage making it very difficult to make left turns in or right turns out of the site. In addition, the proposal shows controlled movement at an all way stop (or could allow free movement from Crompond). This plan keeps the westerly edge of Hamblyn Street in the existing right-of-way and road bed. The widening of the right turn into the site is on the subject property. Once you get passed the site access, Hamblyn remains narrow. Savoca asked Grealy if it makes sense to widen Hamblyn on the westerly side. Grealy stated all widening would be on the easterly side and into the applicant's property to get full 12 foot lanes on both sides. Grealy stated the existing road is approximately 20 feet wide. The proposal shows a 24 ft wide road.

Grealy had another alternative that rotated the end of Hamblyn Street to make it more perpendicular to Crompond Road. This option makes the main road go more directly into the site with Hamblyn being secondary as a left turn from this access. There would be free flow into the site because it is closer to the Crompond intersection. Stop signs would be located coming out of Hamblyn and exiting the project site. The only possible issue with this layout is that the right turn out of the site is a little bit easier to maneuver if someone wanted to go that way. Riina asked if there would be any issues for school buses. Grealy stated no, a bus could still pass through. Grealy stated that no speed table or similar was added further down Hamblyn, but this could be added if wanted.

Tegeder thought the rotated intersection creates more of a free flowing right turn from Crompond Road directly into the site, which could create issues with speed on the subject site. Kincart suggested a speed bump could be added on the site as you enter the parking lot. Tegeder asked if the town should consider one-way access on Hamblyn so heading northbound on Hamblyn is blocked. You would only be able to go towards Route 202. This would eliminate all cut-thru traffic, but would exclude the existing homeowners living on Hamblyn as well.

Fon asked the Board if the proposed buildings and if their size or the number of units was too much for the site. LaScala stated that the commercial area adjacent has building twice the size. If the parking and buildings fit then it fits on the site. Even if you make the buildings smaller, you are going to have the same amount of traffic. He did not see the buildings as too big. DeVito stated he didn't come in with an

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application for 75 apartments hoping to get 36 apartments. His research shows that 36 apartments will work. DeVito is looking to create the gateway into the Heights, instead of the Roma building.

LaScala asked about the size of the apartments. DeVito stated the apartments would be between 750 – 1,260 square foot, one and two bedroom apartments. All the apartments will be market rate. The tax benefits would be \$240,000/year annually with approximately \$140,000 of that to school.

Kincart stated that traffic and keeping the traffic impact out of the neighborhood is his biggest concern. Kincart thought the buildings and parking areas are not overburdening the site. Riina stated that the coverage is 20%, which is well below what is allowed in the adjacent commercial zone. [The commercial zones allow 30% coverage, whereas the surrounding R1-10 zone allows for 25% coverage.] DeVito stated he told Grealy to design the site access so that it created zero trips on Hamblyn. An earlier alternative that showed the main access on Crompond Road near the existing driveway made it very easy for vehicles to make two right turns onto Hamblyn.

Capellini stated the Town Board hearing is scheduled for mid-September. Tegeder asked about the sidewalk. Riina stated he would discuss refining the sidewalk and streetscape with Tegeder. Fon, asked if the Board could make a site visit before the before the July meeting and continue the discussion then. The Planning Department will schedule the site visit.

### **JCPC Holdings, LLC**

**SBL: 48.07-2-2**

#### **Discussion Wetland Mitigation**

**Location: 1540 Front Street**

**Contact: Mr. John Cerbone**

**Description: Proposed Wetland mitigation.**

The applicants John & Patty Cerbone were present. Tegeder stated the applicant would like the Board to discuss the monetary contribution to wetland mitigation introduced by the Town Engineer. Fon stated the wetlands on the applicant's property were more than likely caused by a pipe the town failed to maintain after creating Front Street. LaScala agreed that if the sidewalk was never installed, water would have never accumulated on the property. It would have drained over the street. The Board agreed no further mitigation contribution was need by the applicant.

**Upon a motion by Savoca, seconded by Kincart, and with all those present voting in favor, the Board opened a Special Session.**

**Upon a motion by Savoca, seconded by Kincart, and with all those present voting in favor, the Board approved a draft resolution eliminating the off-site wetland mitigation as a requirement of Resolution #16-10.**

**Upon a motion by LaScala, seconded by Kincart, and with all those present voting in favor, the Board closed the Special Session.**

Tegeder addressed the Board about a section of Town Code he had highlighted and included in their books. The section indicates that where a site plan approval is required from the Board, no building permit shall be issued and no structure or use shall be established except in conformity with such plan approval procedures, and no certificate of occupancy for such structure or use shall be issued until all the requirements of such approval and any conditions attached thereto have been met. Tegeder explained that in the past, we have mostly taken bonds at the outset of a project, prior to a building permit. The Town is

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now doing less of this. Only work done in the right-of-way or for example stormwater that will flow into the town's system, is being bonded. Tegeder wanted the Board to be aware of this, but even though bonds are not being taken, it is still important that a site is built the way it was approved. If there is no bonding, the Certificate of Occupancy is the hook. Again, we used to request a cash bond to say finish landscaping when a Certificate of Occupancy is issued in the winter. This may also not be happening in the future. So the Certificate of Occupancy is the only time during the construction process for the town to make sure the project is built as approved.

Tegeder stated the Engineering Department does have the ability to make sure a site plan is compliant. This Board also has the ability to issue stop work orders or violations later if they note a site is not in compliance even if a Certificate of Occupancy is issued by mistake or on purpose. The site plan governs. Wilson agreed and stated another step a town can take is to revoke a Certificate of Occupancy if it was in fact issued premature or there is a violation, but that is usually as a last resort. Typically warnings and remedies would come first. The Board agreed it was important to make sure sites are built in compliance with the approved plans.

**Upon a motion by Savoca, seconded by Kincart, and with all those present voting in favor, the Board voted to close the meeting at 9:20 pm.**