

Planning Board Meeting Minutes – November 4, 2019

A meeting of the Planning Board, Town of Yorktown, was held on **Monday, November 4, 2019 at 7:00 p.m.** at the Albert A. Capellini Community & Cultural Center located at 1974 Commerce Street, Yorktown Heights, NY 10598.

Chairman Rich Fon called the meeting to order at 7:00 p.m. with the following Board members present:

- John Kincart, Secretary
- Bill LaScala
- Aaron Bock
- Rob Garrigan, Alternate

Also present were:

- John Tegeder, Director of Planning
 - Robyn Steinberg, Town Planner
 - Tom D’Agostino, Assistant Planner
 - Nancy Calicchia, Secretary
 - John Buckley, Esq. – Oxman Law Group, PLLC
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Correspondence / Liaison Report

- There were no liaison reports.
- The Board reviewed all correspondence.

Motion to Approve Meeting Minutes

The Board did not approve the meeting minutes of October 21, 2019 as there was not a quorum of members present who were at the meeting.

Motion to Open Special Session

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

SPECIAL SESSION

Popeyes Restaurant

SBL: 36.06-2-76

Discussion: First 1-Year Time Extension

Location: 3333 Crompond Road

Contact: JMC Site Development Consultants

Description: Approved site plan for a restaurant with a drive through at the Staples Plaza in the C-3 zone by Planning Board Resolution #18-18, dated October 15, 2018.

Comments:

Umberto Baldinucci, P.E. of JMC Site Development Consultants was present. Mr. Baldinucci stated that they had a construction meeting last week and met with the Planning Department, Engineering Department and DEP at the site. He said that they plan on starting the actual construction by the end of the week. The building plan was revised to include a sprinkler system. They expect to receive a building permit soon. Chairman Fon asked the public if there were any comments. Public comments as follows:

Andrea O’Connell, 2522 Pine Grove Court – Ms. O’Connell is here on behalf of the home owners association for her neighborhood. She stated that she and her neighbors have concerns about Popeyes coming in now that it is in the planning process.

Chairman Fon responded that the applicant is here this evening for an approval of a first one year time extension and has already gone through the planning process. He said that the plans were reviewed, a public hearing was held and the project has already been approved. He asked why no one came forward during the public hearing which was held over a year ago. Ms. O'Connell responded that she was unaware of this. She noted that her concern is the dumpsters and the possibility of rats and asked the Board to consider the neighborhood with respect to this. Chairman Fon advised Ms. O'Connell to contact or send a letter to the Planning Department with her comments.

Chairman Fon asked if there were any other comments and there were none. Chairman Fon asked the Board if there were any other comments and there were none.

Upon a motion by John Kincart and seconded by Bill LaScala, and with all those present voting aye, the Board approved the request for a first one-year time extension for Popeye's Restaurant.

Hilltop Hanover Subdivision - Lot #9

SBL: 48.19-1-26
Discussion: Finished Floor Elevation Amendments
Location: 1178 White Horse Lane
Contact: Michael Lewis Architects
Description: Amendments to Finished Floor Elevations of lot #9 of the Hilltop Hanover Major Subdivision plat, approved by Planning Board Resolution #03-03, dated February 10, 2003.

Comments:

Mike Martorelli was present. Mr. Martorelli stated that he is seeking approval for a change in finished floor elevation for a new single family dwelling located at 1178 White Horse Lane, Lot #9 of the Hilltop Hanover approved subdivision. The approved subdivision plan shows a finished floor elevation of 539.0' and the proposed plan shows a finished floor elevation of 532.5'. He said that this will allow the house to work better with the existing grade. They felt that the back of the house would be too high with the original finished floor elevation. Mr. Tegeder asked how he was referred to the Planning Department and the response was that he was referred from ABACA.

Mr. Tegeder stated that in addition to the finished floor elevation approval, the erosion and sediment control permit relative to this lot needs to be approved by the Planning Board and can be done in another resolution. The resolution for the whole subdivision requires that the lots get separate erosion and sediment control permits. He asked Mr. Martorelli if he submitted an application to the Engineering Department and the response was yes.

Mr. Kincart asked about the sewer. Mr. Tegeder responded that the developer is still responsible but is researching this further.

The Board requested that the Planning Department review the application and prepare the resolutions (*finished floor elevation and stormwater*) for the next meeting.

Motion to Close Special Session and Open Work Session

Upon a motion by Bill LaScala and seconded by Rob Garrigan and with all those present voting aye, the Board closed the Special Session and opened the Work Session.

WORK SESSION

McDonalds

SBL: 36.05-1-10
Discussion: Amended Site Plan
Location: 3481 Crompond Road
Contact: Keith Brown, Esq.
Description: Proposed to construct a two lane drive-through and associated parking lot improvements on 1.05 acres in the C-4 zone.

Comments:

David Pernick was present. Mr. Pernick stated that they met with the Yorktown Fire Prevention Bureau on October 21, 2019 to discuss the proposed McDonald's renovation and received positive feedback. He said that as long as the items discussed were addressed, the Fire Bureau had no issues with the plan. They are going to provide fire access to the property. A "knox box" padlock will be used in place of a "knox box". Grasscrete pavers will be installed between Old Crompond Road and the parking lot along the length of the gate. "No Parking Fire Lane" signs will be affixed to the gate and the pavement in front will be striped and lettered "No Parking Fire Lane."

Chairman Fon asked about the cost for the installation of a fire hydrant in the back of the property. He noted that the community would benefit from a new fire hydrant. Mr. Pernick responded that it would be in the range of \$100,000 which would include 300 feet of pipe from the front. He noted that McDonald's would not pay for all of it and that the franchise owner would be responsible for most of it. This would not be financially possible. Mr. Pernick stated that the two fire hydrants on Old Crompond Road are the closest hydrants. They have revised their plans to reflect the changes requested by the Fire Bureau. He said that the Fire Bureau wanted the fire hydrant in the front. There will be a 20 foot wide access gate on the southwest corner next to the dumpster enclosure location as shown on the plans. The Town Engineer's memo dated 10/15/19 was reviewed. Chairman Fon stated that all should be building code compliant. Mr. Pernick stated that the building will have fire sprinklers.

Mr. Pernick stated that the Fire Prevention Bureau memo was addressed and they have addressed all comments from the Planning Department. Mr. Bock asked about item #12 of the Town Engineer memo noting that there is no loading space being shown as required by the Town Code. Mr. Pernick responded that the existing site currently does not have a loading space and since the loading would be done after operating hours, they did not feel that they have to add this space. Mr. Tegeder asked about the delivery times and the location on the plan in the parking lot where the truck will unload. Mr. Pernick stated that there will be a 5:00 a.m. delivery once a week, 1:30 a.m. bread delivery twice a week and trash pick pickup twice a week. He will send a schedule of delivery and pick up times to the Planning Department. Mr. Tegeder requested that the applicant add the delivery schedule times and truck delivery location on the plans.

Crystal Court Subdivision

SBL: 27.11-2-43
Discussion: Minor Subdivision
Location: Crystal Court
Contact: PANBAR Realty
Description: Proposed 3-lot subdivision on 5.07 acres in the R1-20 zone.

Comments:

John Barile and Lou Panny were present. Mr. Panny stated that they are still waiting to hear from the Board on whether to make this a 3 or 4 lot subdivision so they can move forward. They have submitted a letter dated 10/19/2019 with updates regarding the application. Mr. Barile said that he contacted several agencies regarding the 4th lot and none were interested. The Town is not interested in the property as well. Mr. D'Agostino noted that the Open Space Committee support either the 3 or 4 lot subdivision with a conservation easement and the Recreation Commission is not interested in acquiring more land.

Discussion followed regarding the easement on the property. Mr. Bock asked who would get the easement, if there was any value to it such as a tax benefit to the owner and what role does the town have to take in accepting this easement. If the Planning Board is taking an active role, the question would be is the Town Board acceptable to taking this land. Stewart Glass, Assistant to the Supervisor, stated that the town does not want the liability but is interested in protecting it. It was noted that there is no tax benefit from this easement. Mr. Kincart stated that the easement should be memorialized as the town does not want to own the property. Mr. Bock asked about a stewardship fee. Mr. Tegeder stated that the Town has never done it, but the Westchester Land Trust has. Mr. Kincart said that the value is in the land and its potential for development, that portion is restricted and will be encumbered by an easement. Mr. Tegeder stated that a conservation easement could be to the town of Yorktown in

which the town enforces its value, but still remains the applicant's property and cannot be developed. Mr. Bock stated that he would like the easement to go to the town.

The Board agreed that a 3-lot subdivision with a conservation easement would be the best plan for this property. Discussion followed as to the location of the easement line demarcation. Mr. Tegeder noted that the stormwater outlet needs to be addressed and suggested improving the stormwater conveyance system as a neighbor was concerned with the run-off. A public hearing will be scheduled for December 16, 2019.

Correia Site Plan

SBL: 6.17-2-65
Discussion: Site Plan
Location: 250 East Main Street
Contact: Site Design Consultants
Description: Proposed storage facility on 8.22 acres in the Country Commercial zone consisting of two 1 ½ story buildings with 6,000 sf each.

Comments:

Joseph Riina, P.E. of Site Design Consultants was present. Mr. Riina stated that he was before the Board a year ago with a concept plan for this application. The site is located at the intersection of Mahopac Street and East Main Street. The proposal is for two 6,000 sf storage facilities. The storage facilities will be two pre-fabricated metal buildings. The building locations were shown on the plans. Mr. Riina noted that the location is different from what was originally proposed. The new location will free up the site and is tucked away further into the back of the site. The driveway will come off the existing driveway.

Mr. Bock stated that the new plan shows the buildings right behind the adjacent residences and he has concerns. He asked about the drainage control measures. He suggested moving the location of the buildings to the flatter area behind the proposed location to the southwest. Mr. Kincart noted that the buildings must be located on the commercially zoned portion of the property. Mr. Riina responded that the access drive will collect and convey the stormwater to the required infrastructure.

After discussion, the Board suggested that the applicant move one building over so it will not be so linear. Mr. Riina responded that this may work with the grade but would create more of a driveway. He will look into it and work with the applicant.

650 Pines Bridge Road

SBL: 70.10-1-29
Discussion: Minor Subdivision
Location: 650 Pines Bridge Road
Contact: Ciarcia Engineering, P.C.
Description: Proposed 3-lot subdivision on 8.06 acres in the R1-80 zone with one existing residence.

Comments:

Dan Ciarcia, P.E. of Ciarcia Engineering and Alex Cochran, property owner were present. Mr. Ciarcia stated that this property is located on Pines Bridge Road and Route 134. The property is presently improved with a single family dwelling home. They are proposing to preserve the existing home and create two additional building lots. Mr. Ciarcia stated that he has received the Planning Department memo dated 10/31/2019 and the Town Engineer memo dated 10/31/2019. Mr. Ciarcia noted the following in response to the Town Engineer's memo:

1. Will re-submit the EAF.
2. Working on the SWPPP.
3. Will provide additional copies of an updated survey.
4. Working on the driveway profiles.
5. Septic system – They did the soil testing when a new septic was installed for the existing home on Lot #1, and there are viable areas for the septic on the other two lots. They will seek approval from the Health Department.

6. Requires multiple variances – He is not sure what this is. Mr. D’Agostino noted that he did not see anything. Mr. Garrigan asked about the tennis court and pool. Mr. Ciarcia stated that the tennis court is not a structure and the pool is far away. He is not sure what this is about and will seek clarification.
7. Proposed retaining wall at the entrance to Lot #3 was discussed.

The Town Engineer memo questioned if the application should be a submission for subdivision approval only or for subdivision with site plan approval. Mr. Ciarcia stated that the applicant will likely sell these lots and not build them himself. Mr. Tegeder responded that a set of site plans will need to be submitted with the subdivision plan as required by the Land Development Code.

Mr. Ciarcia noted that the property behind them has frontage on Route 134, however, it is challenging. They have looked into providing access via Wilde Greene Terrace via a private road. He noted that NYS took the land in 1979 and at one point Route 134 used to make a hard left turn going into Route 100. They are proposing a future easement for access to the property. This should not be a problem as the property has been in the family for over 100 years.

The Board asked if there was any historic significance to the property. Mr. Ciarcia stated that the online EAF queries the NYSDEC data base and answered that question yes, but he isn’t sure if anything is located on this site. The Board stated that the applicant must verify that there is nothing on the site of historical importance. The Board had no issue with the plan and advised Mr. Ciarcia to explore the driveway access issue on Lot #3.

Battery Storage Facility at Staples Plaza

SBL: 36.06-2-76
Discussion: Site Plan
Location: 3333 Crompond Road
Contact: Maziar Dalaeli, IPP Solar, LLC
Description: The Applicant is proposing a battery storage facility to support the rooftop solar energy system installation. The facility would take up four parking spaces along the west side of the Staples Plaza.

Comments:

Maziar Dalaeli and Damian DeCaires from IPP Solar were present. Mr. Dalaeli stated that they have followed the guidelines for this application as directed by the Planning Board. They are in compliance with the model law based on NYSERDA’s guidelines. He stated that they met with the Yorktown Fire Prevention Bureau on 10/21/2019. The Fire Board noted in their memo dated 10/24/2019 that they agreed to the proposed plan as long as all the items addressed at the meeting are met and proper procedures are followed. They have submitted a revised set of plans which includes a sheet showing all the steps to be taken with regards to installation, signage, operations and safety issues. The plans were reviewed with all. Mr. Dalaeli noted that with the winter approaching, the ground will freeze and was hoping to move forward with a resolution. Stewart Glass, Assistant to the Supervisor, asked for a copy of the plans submitted for review.

Mr. DeCaires stated that the batteries to be used are lithium aluminum and do not contain manganese. Tesla prefers this type because they can survive the impact of a crash. Stewart Glass, Assistant to the Supervisor, responded that there is a battery chart that lists the lithium ion battery as the safest battery and the battery they are using is listed as low safety. Mr. Glass asked if this is similar to what is going on with Walmart and Tesla. Walmart sued Tesla over several solar panel fires caused by negligence. Mr. DeCaires explained the battery to all. The cooling system was discussed. The system will detect a change in temperature for an individual cell and will isolate the pack. The system uses pumps and valves. Mr. Dalaeli noted that there is also an infrared camera completely independent from the system that will measure temperature increases. Mr. Tegeder asked the applicant to provide the battery information to the Board.

Mr. Dalaeli showed pictures to the Board from an installation adjacent to a Home Depot store in another town. Chairman Fon requested that the pictures be sent to the Planning Department.

Discussion followed with respect to the next step. A resolution will be prepared for the next meeting. Chairman Fon stated that we need to ensure that all aspects of the project comply with the building code and model law. The Fire Board approved the plan. The Board noted that the steps shown on the plans along with the type of battery to be used be placed under the conditions within the resolution. Mr. Buckley, Planning Board attorney, stated that the resolution would have to state that the installation must be in compliance with NYSERDA, National Electric Code, National Fire Protection Association (NFPA) and the Fire Prevention Bureau.

Town Board Referral - Special Use Permit for a Gas Station at 3700 Barger Street

SBL: 16.07-1-43

Location: 3700 Barger Street

Description: Proposed MS4 Stormwater Management Permit, Wetland Permit and Special Use Permit for a gas station. The proposed work is for the demolition for the existing Getty Automotive Service and replace it with the construction of a new gas station with a 2,000 sf convenience store and a 2,200 sf canopy and associated appurtenances.

Comments:

Rich Williams, P.E. of Insite Engineering and Danny Porco of NY Fuel Distributors, LLC were present. Mr. Williams stated that in 2017 the property owner, Global Montello Group Corp. applied for a special use permit which was approved for the site to be redeveloped as a BP branded gas station and convenience store but never happened. This application by NY Fuel Distributors proposes a similar redevelopment of the site with a more efficient layout for ingress and egress to the site. The proposal is to demolish the entire site and construct a 2,000 sf convenience store and new gas station providing four fuel pump islands with eight fueling stations. The convenience store will be branded CoCo Farms and operated by NY Fuel Distributors and the gas station will be operated by Global. The brand of gasoline to be sold will be Mobil. The site is located at the corner of Barger Street and East Main Street. Mr. Williams noted that the improvements will benefit the town as the site will be cleaned up and there will be a better view of the building. The redevelopment of the site will utilize the existing water and sewer connections. A new stormwater treatment system will be installed as it does not currently exist on the property. A stormwater permit application and stormwater pollution prevention plan was submitted with the application. The plans were shown to all.

Mr. Tegeder informed the Board that the Town Board is responsible for gas station site plans. The Planning Board can make a request to the Town Board to allow them to work on the site plan and send it back to the Town Board once their review is complete.

Mr. Bock noted that the traffic pattern is very tight. Mr. Williams responded that the NYS DOT will review the application for traffic impacts. He is still waiting to meet with the DOT. The existing conditions will remain along Barger Street which is a state road. Discussion followed regarding a traffic study. Mr. Tegeder stated that they need a plan that shows Route 6 and surrounding properties. Mr. Kincart noted that he would be against any left turn from the northerly curb cut on Barger Street.

Mr. Williams stated that there is no formalized curbing currently and they are proposing to create a new curb line to formalize the parking area. Mr. Tegeder stated that he would like to see a turning radius for cars backing out and maneuvering while there are cars at the pumps. He asked how the queuing will work waiting in line on Barger Street. He also suggested that the applicant consider a “no parking” sign in front of the building.

Mr. Tegeder stated that the town owns a short right-of-way between the site and Route 6 and suggested that the applicant could use this property and move the access to the adjacent property to the south end of the site. This might allow an access to the adjacent site to the east. Mr. Williams responded that this would necessitate building a whole new stream crossing which would be costly for the applicant, in addition, this is an already existing site.

Chairman Fon stated that the site needs to be developed responsibly and that the traffic pattern and impacts need to be reviewed. The Board requested that the Planning Department send a memo to the Town Board requesting more time to review the application. The applicant was advised to set up a meeting with the Planning Department to

review the proposed plans. The Board requested that the Planning Department schedule a site visit along with the Conservation Board.

Town Board Referral - Proposed Local Laws pertaining to Battery Energy Storage Systems

Description: Proposed to amend the zoning code, Chapter 300 of the Town Code, by adding a two new sections titled “Battery Energy Storage Systems” and “Temporary Land Use Moratorium Prohibiting Large Scale Battery Energy Storage System Installations within the Town of Yorktown.”

Comments:

Stewart Glass, Assistant to the Supervisor updated the Board on this item. Mr. Glass stated that the Town Board is considering a dual track process by pursuing a moratorium and the proposed law at the same time. He said that in case the proposed law is not passed, they will move forward with the moratorium. He mentioned that he had discussions with NYSEG and Con Edison regarding the battery storage installations. He said that they do not get informed until the applications for connection come in to them, and their only concern is whether it will interfere with their equipment. Mr. Glass stated that the town is looking to move as fast as possible. He said that because it is a local law, it must be referred out for comments. They are starting to receive comments back and if it continues this way, it will not have to be referred out again. The next step would be a hearing.

Mr. Bock stated that he did not understand this law very well and supports the moratorium to let the Town Board move forward. He noted that there are no regulations to implement at this point as the town is working on it. He does not feel that the Planning Board can make a judgement on these applications. Chairman Fon stated that the Planning Board’s concern was the safety issue and potential fire hazard.

The Board discussed the proposed local law and moratorium for large scale battery energy storage systems in relation to the current applications. Mr. Tegeuder stated that the proposed law is based on the NYSERDA model law. Both projects currently before the Town (*Staples Battery Storage and Borrego-Gomer Street*) follow the model law. Staples Plaza has solar panels, generators, chargers and a propane filling station all of which are accessory uses incidental to the main use. The Staples battery storage project is set up as a “behind the meter” installation. The Borrego-Gomer Street project conversely is a “front of the meter” installation that has nothing to do with the main use on that site. It draws electric at night and releases it back to the grid in the day when the demand is higher. It is a commercial enterprise unto itself. There is no moratorium in place currently and thinks these two referrals should be further discussed with the Town Board. The Zoning Board does not meet again until December with respect to the Borrego application.

Mr. Glass stated that if the Planning Board needs direction from the Town Board, he will have Rich Abbate, Town Attorney send a letter to the Planning Board with some direction as to how to proceed with the conditions that follow all the regulations and requirements as set forth in the model regulations. Chairman Fon stated the Town Board is asking this Board for their recommendation on the proposed law.

Mr. Buckley stated that the Planning Board is in a predicament. The Town Board is saying there may be a moratorium at some point and law passed at some point but how are the pending applications going to be treated – will it be retroactive. The town does not know how long it will take for the law or moratorium to be passed. The Board can only look at the pending applications to see if they comply with the current laws.

Mr. Kincart stated that he is comfortable with the Tesla battery storage installation at the Staples plaza as it has been refined to a satisfactory point. He does not feel the same for the Borrego installation and noted that it is close to the wetlands. The Board noted that both applicants have done everything that was asked of them.

Motion to Close Meeting

Upon a motion by Bill LaScala and seconded by Rob Garrigan, and with all those present voting aye, the Board closed the meeting at 9:25 p.m.