

## Planning Board Meeting Minutes – March 11, 2024

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A meeting of the Town of Yorktown Planning Board was held on Monday, February 26, 2024, at 7:00 p.m. in the Town Hall Boardroom. Chairman Rich Fon called the meeting to order at 7:00 p.m. with the following Board members present:

Aaron Bock

Rob Garrigan

Bill Lascale

Bob Waterhouse, Alternate

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

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### **Executive Session:**

**Upon a motion by William LaScala, and seconded by Aaron Bock, and with all those present voting “aye”, the Board voted to go into an Executive Session for advice of counsel.**

**Upon a motion by William LaScala, and seconded by Aaron Bock, and with all those present voting “aye”, the Board closed the Executive Session.**

### **Correspondence:**

No discussion.

### **Meeting Minutes:**

**Upon a motion by Aaron Bock, and seconded by William LaScala, and with all those present voting “aye”, the Board approved the meeting minutes of February 26, 2024.**

## **REGULAR SESSION**

### **ZBA Referral #02-24 – Confident Kids Club**

#### **Special Use Permit Application**

*Location:* 36.05-1-14; 3535 Crompond Road

*Contact:* Chris Berlow

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

Joel Greenberg, architect, and Chris & Brandon Berlow, owners of Confident Kids Club, were present. The Board visited the site with the applicant this past Friday morning at 7:00 am. Greenberg calculated the parking requirements for the tenants in the buildings and confirmed with the Planning Department. Greenberg stated that the main concern of the Board are the conditions in the rear parking lot and the chairman pointed out some repairs needed to the rear of the building. As a result, the applicant had a long conversation with the landlord about these issues. Greenberg submitted revised plans today that address the conditions in the rear of the building including new trash enclosures with chain link fence.

Fon stated on the site visit the traffic in the morning was not an issue. The program would be early morning and late afternoon during the school year and all day in the summer. Greenberg confirmed these hours. Fon stated that provided the site is cleaned up, he has no objection to the use. Greenberg stated the landlord is anxious to get the tenant in place and agreed to clean up the site. Fon suggested the neighboring property needed to be cleaned up as well. Tegeder suggested the Board include a condition that the revised site plan be formally approved by the Planning Board subsequent to the Zoning Board approval. The Planning Board agreed. The Planning Department will send a memo to the Zoning Board. Fon asked about a deadline with the state of April 1st. Chris Berlow stated that if the Zoning Board does not approve the application at their next meeting he will have to withdraw it.

### **Mucci Residence aka Brookside Village Subdivision Lot 1**

#### **Discussion Site Plan Changes**

*Location:* 37.10-2-77; 274 Landmark Court

*Contact:* Matthew & Melissa Mucci

*Description:* Proposed changes to site plan, including but not limited to the grading changes, addition of a retaining wall, relocation of the driveway, and relocation of drainage. Proposed change to first floor elevation from 405' to 407' previously approved at November 20, 2023 meeting.

Matt and Melissa Mucci were present. Mr. Mucci stated that the site plan was submitted with the few minor changes. Fon asked what the changes were. Mucci stated that they moved drainage so the sump pump drains to a culvert they found in the yard during construction. The elevation of the house was raised the additional 2 feet to eliminate the water problem. A retaining wall was added to accommodate the grade change now around the driveway. The applicant will put a timber guard rail on top of the retaining wall. The driveway was relocated 3 feet to the east to avoid an existing electrical box. Fon asked if the Town Engineer reviewed the plans. Ciarcia stated that he had received the revised plans before the meeting and did review them. The adjustments to the house elevation and grading seem to work. If the changes are acceptable to the Board, because we now have a set of plans that can be the approved set of plans for the site. Fon asked if there were any other issues. Tegeder stated that the revised plans are what was requested in November, so the Board has them now. The Board had no issues with the changes to the plan.

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

**Upon a motion by William LaScala, and seconded by Robert Garrigan, and with all those present voting “aye”, the Board approved the changes to the Site Plan for the Mucci Residence aka Brookside Village Subdivision Lot 1.**

**Upon a motion by Robert Waterhouse, and seconded by Robert Garrigan, and with all those present voting “aye”, the closed the Special Session.**

Melissa Mucci asked about Landmark Court. The contract with the seller is that if the Mucci's do not receive a certificate of occupancy by March 21, 2024. Tegeder stated the Planning Board will send a memo to the Building Department in time for them to receive their certificate of occupancy.

### **Underhill Farm**

#### **Discussion Site Plan**

*Location:* 48.06-1-30; 370 Underhill Avenue

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

*Description:* Mixed use development of 148 residential units, 11,000 SF commercial space, and recreational amenities proposed on a 13.78 acre parcel in the R1-40 with Planned Design District Overlay Zone authorization from the Town Board. Original main structure to remain and be reused. Approved by Resolution #23-13, dated July 17, 2023.

Paul Guillaro, Michael Guillaro, and Terrence Murphy from Unicorn Contracting and Joseph Riina, project engineer from Site Design Consultants were present. P. Guillaro stated that for the past 8 months they have been working on the conditions of the Board's approval. There are two outstanding approvals, from the NYC DEP and Westchester County Board of Health that are expected in about 2 weeks. At the February 12th meeting, there were three items that were brought up. First whether HPI's comments had been addressed. These comments have been addressed. The monitoring report was updated accounting for HPI's comments and additional letters were sent to historic preservation groups in the area. The SHPO approved the demolition of the outbuildings. The applicant did visit ABACA on February 20th and then returned to them on March 5th to address their comments. P. Guillaro requested the ability to start the tree removal for Phase 1 of the project because the NYS DEC's restriction on tree cutting between April 1st – Oct 1st to protect a bat. The Phase 1 area was shown on the plan.

Fon asked Tegeder if there were any issues with allowing the tree removal. Tegeder stated that he did not see an issue with removing trees from the Phase 1 area only. Even with the two outstanding approvals, the tree removal from this area would not change. The stumps should probably be left in until DEP approval is obtained.

**Upon a motion by William LaScala, and seconded by Robert Garrigan, and with all those present voting “aye”, the opened a Special Session.**

**Upon a motion by William LaScala, and seconded by Robert Garrigan, and with all those present voting “aye”, the Board approved a tree removal permit for the Phase 1 area provided no stumps are removed and there is no land disturbance.**

Second, P. Guillaro requested the Board discuss the demolition of all the structures except the main house and to possibly relocate the chapel if the Board is okay with the proposed location. M. Guillaro reviewed the applicant's efforts to salvage the outbuildings. The process started by reaching out to several salvage companies; Hudson Valley House Parts, The Hudson Company, Zaborski Emporium, and Historic Albany Architectural Parts Warehouse. None of them expressed interest or capacity to salvage what was on site. An ad was placed in the newspaper in December offering salvage and donation of the buildings. One person responded, but then never followed up once information was sent. The memo outlines how the applicant will try to salvage materials in their own build. The applicant also put an ad in the newspaper. One person responded, but then never followed up. The Westchester County Historical Society was contacted to find additional entities to contact, but they did not identify any additional. On January 3, 2024, SHPO was contacted for recommendations. Demolition Depot and Country Road Associates were provided and contacted, but again, neither expressed interest. On January 29, 2024, HPI sent a memo to the Planning Department with some comments about the monitoring plan and reaching out to additional salvage groups. In response, New Netherland Timber Framing, Putnam County Historical Society, Dutchess County Historical Society and Reclaimed Creations, LLC were contacted, none of which responded. On February 5, 2024, the SHPO sent a letter stating that stipulations B & C of the LOR were resolved and no other conditions of the LOR are

outstanding relating to the buildings, therefore the State is okay with the demolition of the buildings. On February 29, 2024, Unicorn submitted a summary to the Planning Department outlining the demolition of the buildings including potentially relocating the chapel and other pieces that we would salvage from the buildings. For example, Building B, some of the flooring is old. Unicorn would take that up and potentially reuse it somewhere on site. The barn siding and beams inside the barn as well. To summarize, they reached out to 11 different entities, put an ad in the local newspaper, met the requirements of the State, and reached out to additional entities as suggested by the Town's historic consultant. P. Guillaro, stated Unicorn did find someone interested in living in the chapel so it is worth moving it and preserving it. Guillaro showed the figure of where the chapel would be relocated behind the condo building. The chapel would be placed in a small open area behind the condo building. The historic wall would be preserved and building placed just north of it. LaScala asked if the building would be moved as a unit or taken apart and reconstructed. P. Guillaro stated the building would be taken apart and reconstructed. The chapel would be a 550 square feet residence. Councilman Esposito stated it was a good idea and he appreciated it. The Board agreed. P. Guillaro stated that he would have a site plan and engage an architect to do drawings for the chapel building. Tegeder pointed out the pages in the Board's materials, the memo that was referred to, went through a short, but substantial description of each building and what they will be doing. A couple are coming down, a couple of them have salvageable materials, and two of them have been condemned.

**Upon a motion by William LaScala, and seconded by Robert Garrigan, and with all those present voting "aye", the Board approved demolition of the existing buildings with the exception of the chapel and the reclamation of any wood they can salvage as per our resolution and the State requirements.**

The applicant will submit plans for relocating the chapel. Bock asked if a map of the easements submitted would be submitted. P. Guillaro said a map was prepared and can be submitted.

**Upon a motion by William LaScala, and seconded by Robert Garrigan, and with all those present voting "aye", the closed the Special Session.**

### **Atrac Recycling Facility**

#### **Discussion Site Plan and Special Use Permit**

*Location:* 6.18-1-37; 76 Route 6

*Contact:* Margaret McManus P.E.

*Description:* Construction of 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.

David Cooper and Jaclyn Cohen from Zarin & Steinmetz, Margaret McManus project engineer from Badey & Watson, and Pat Cartelemy, Jr, the applicant, were present. Cooper is here tonight to commence a review of the application. The Board circulated intent to be lead agency, but still needs to declare lead agency. First Margaret will review the revised site plan that was submitted.

McManus stated the site plan layout has not changed however more details have been submitted. The sewer and water lines were added to the plan, floor plans, and a building elevation were submitted. McManus showed the proposed building elevation. Then the proposed drainage plan was presented. The water main and sewer force main are aligned under the roadway. The sewer will be connected to a lift station before connecting to the main in Route 6. There are infiltrators under the lower parking lot to pick up that drainage. A preliminary landscape plan was submitted. A sign is proposed on the corner of Route 6 & Navajo Road. There are

evergreens proposed along the driveway between the property and the adjacent use. There are evergreens proposed around the lower parking area from view from Route 6. The proposed building is significantly further away from Route 6 and shielded naturally by the woods that will remain.

Fon asked about the set back of the building. McManus showed the site plan and a 100 ft setback is shown from the Town line and property line. 200 ft setbacks are shown from the northern and western property lines. Cooper argued that the Building Inspector is the town official that makes the determination on the setback. At the last meeting the Planning Board determined it was 200ft and the applicant needs to go to the Zoning Board. The applicant respectfully disagrees with that and feels what governs is a determination from the Building Inspector. Fon asked Chen if the memo from the Building Inspector made this determination. Chen said no. Cooper stated he also disagreed with this point, but if the Board does not believe they have a determination in front of them, he did make a demand in his cover letter for clarification. If the Board still feels this needs clarification, join in the demand. Fon asked if the clarification would come from the Zoning Board. Cooper stated the Building Inspector should make the determination. Cooper also reserved all rights to argue whether the Board has an interpretation before them already. He is not going to argue that point tonight. In his opinion, if the Board is taking the position that the town official hasn't weighed in on the setback, there's nothing for the Zoning Board to interpret. Chen argued that according to Town Code 300-201, the Planning Board can use their authority to ask the Zoning Board for an interpretation at any time. Cooper argued if the Board is stating there is no determination therefore we're going to the Zoning Board, the question before the Zoning Board is do you have an interpretation, not whether or not there is a 100 or 200 ft setback. The Board needs the official charged with that question to weigh in on it. Chen stated the Section of code allows the Planning Board to ask *sua sponte* ask the Zoning Board to interpret any provision of the code and that is what has been proposed. Chen stated there is no ambiguity and the Planning Board is asking the Zoning Board to weigh in on what setback distance applies under Section 300-97 of the zoning code. Cooper stated the applicant and the Board disagree on the answer and procedurally on where the determination is made, but if it's the Zoning Board, they will go to the Zoning Board. Bock stated in his opinion there is no ambiguity. The code states the setback is 200 feet from adjacent residential, period. So that's what it should be. The Board wants to make sure, so they are asking the Zoning Board.

LaScala asked how the 200 ft setback will adversely affect the project. Cooper stated there wouldn't be too much that could be done with the property if there was a 200 ft setback. Fon asked if the parking lot and building can be swapped. McManus stated that the setback does only apply to the building and not the parking, but swapping the two would have a greater impact because it can't be screened. It isn't a better alternative. The building will not fit when you take 400 ft away from a 450 ft lot. Tegeder stated the evaluation the Board will make will be from the actual parameters on the ground, not a description of what the impact would be. Cooper stated this is a substantive question that will be reviewed when we get to the substantive review.

Chen stated the question is: Pursuant to Section 300-201, this Board is requesting from the Zoning Board whether 300-97 requires a 100 ft or 200 ft setback in this instance.

**Upon a motion by William LaScala, and seconded by Robert Garrigan, and with all those present voting "aye", the Board opened a Special Session.**

**Upon a motion by Aaron Bock, and seconded by William LaScala, and with all those present voting "aye", the Board voted to send the question stated by David Chen to the Zoning Board.**

Cooper requested a copy of the communication to the Zoning Board.

**Upon a motion by William LaScala, and seconded by Aaron Bock, and with all those present voting “aye”, the Board closed the Special Session.**

Cooper requested the Board vote to declare lead agency. Tegeder stated the Board doesn't typically declare lead agency to the end so it doesn't start a clock on closing out the SEQR record. The applicant can still move forward and the Board will declare lead agency prior to the resolution.

**Jacob Road Solar**

**Discussion Site Plan and Special Use Permit**

*Location:* 35.16-1-4; 1805 Jacob Road

*Contact:* Nicholas Vamvas

*Description:* Seeking site plan and special use permit approval to develop a 3.125 mega-watt AC solar facility on a 53-acre project site in the R1-160 zone. This property is Lot #6 Colangelo Subdivision.

Bock asked where the Town Board is with the moratorium on solar applications. Councilman Esposito stated there is a public hearing scheduled for tomorrow night. Then the Town Board will make comments.

David Cooper and Jaclyn Cohen, from Zarin & Steinmetz, Ryan Hutcherson CEO of Freestone Renewables, Jamal Batar, the VP of Development from Freestone Renewables, and Nicholas Vamvas, project engineer, from LaBella.

Cooper stated the Board did make a site visit in February and the applicant modified the site plan further based on the comments of the Board. What has not been submitted is the application would like to go through additional changes that will provide 80 foot wide perimeter of trees around the site. Bock asked if this will preserve more existing trees on the site. Cooper stated yes. It does cause a 10% decrease in efficiency of the panels due to shading and 25% expense, however preserves 2 acres of trees that would have been cut down. The applicant will also be submitting a carbon sequestration analysis, which will show the solar still sequesters exponentially more carbon than the existing trees because of the reduced use of fossil fuels. Cooper will be attending the Town Board meeting tomorrow night for the proposed moratorium, but hopes they will still be allowed to demonstrate this project can be screened. Fon stated the screening has become the most important issue with the solar applications. On the site visit it was noted there were neighbors in Cortlandt bordering the proposed project.

Vamvas will walk through the plans as submitted and compare those to the revisions he has been working with the applicant on. Trees were proposed to be cut right up to the western property line. In an effort to mitigate the view, a double row of new plantings was proposed. After discussing with the Board on the site walk and with Freestone, what is proposed now is to move the tree line 80 feet away from the property line, leaving those trees and providing a single row of trees along this line. This will be the updated plan that will be submitted. The fence line is still a little more than 100 ft from the property line. Some grading and erosion & sediment control measures have been added to the plan. Fon asked if any of the residences in Cortlandt are shown on any plans. Vamvas stated no existing homes were close enough to the property line to be picked up by the survey. Fon asked if there are any profiles cutting through the site. Vamvas stated the visual assessment submitted was based on the plan submitted and not the revised plans. The Board didn't want to review the visual assessment if it hasn't been revised yet. Garrigan asked if a tree survey was completed to know the amount of trees now saved. Vamvas stated the trees were surveyed and Batar stated it's about 2.7 acres of trees. Garrigan asked if there were a lot of mature, young, invasive trees in this area. Vamvas stated there was

a blend, however the survey only covers over 8 inch dbh, so the survey is mostly mature trees. There is a significant amount of younger understory that would be preserved. The applicant needs to update the plans and visual rendering. Waterhouse asked for the footprints of the adjacent homes to be on the plans. Vamvas will use aerial photos to show the approximate locations of the adjacent homes. Bock thanked the applicant for reducing the overall size of the project to address the Board's concerns early on. Batar stated leaving trees in place will do a better job than all new plantings to screen the project.

Cooper requested the Board circulate intent to be lead agency. Tegeder requested the revised plans be submitted prior to the circulation.

#### **Town Board Referral**

##### **Stormwater, Wetland, Tree Permits for East of Hudson Corporation Stormwater Retrofit Project**

*Description:* The project will divert water quality volume to a treatment area prior to discharging to the Hallock's Mill River and the Muscote River.

Fon asked Tegeder if there were any issues. Tegeder stated that they may have been opportunities to save some trees along the road, but it may be too late. The Planning Department will send a memo that the Board has no planning objections to the application.

#### **Town Board Referral**

##### **Ethics Law**

*Description:* Proposed amendment to chapter 45 "Ethics" in order to specify, strengthen, and add to the language in the section.

Councilman Esposito stated the original law was somewhat ambiguous and poorly written in his opinion. This is an attempt, based on recommendation from the existing Ethics Board, to amend the law. The Planning Department will send a memo that the Board has no planning objections.

Susan Siegel requested to know what the Executive Session was about. Bock stated the executive session was in reference to the recycling center application. The Board discussed the applicability of certain sections of Town and local laws in terms of what the Board can and cannot do. We were advised as to what to do and that came out as part of the meeting in open session.

**Upon a motion by Robert Waterhouse, and seconded by Robert Garrigan, and with all those present voting "aye", the Board adjourned the meeting at 8:25 pm.**