

Minutes
Meeting of the Planning Board
Regular/Work Session
Village/Town of Mount Kisco
Tuesday, September 11, 2007

Meeting called to order at 7:55 PM, Tuesday September 11, 2007, at the Municipal Building Mount Kisco, New York.

Members Present: **Chairman Joseph Cosentino**
 Vice Chairman Anthony Sturniolo
 Stanley Bernstein
 Doug Hertz

Members Absent: **Sol Gibbons**
 Joseph Morreale
 Ralph Vigliotti

Staff Present: **Nanette Bourne**
 Anthony Oliveri
 Whitney Singleton

Formal Application:

Pure Indulgence
305 (293) Lexington Avenue
PB2007-13

Present: **Ray Terrell & Joan Terrell, Owners**
 Robert F. Davis, Esq., Shamberg, Marwell Davis &
 Hollis
 John Martabano, the Landlord and property owner

Robert Davis: We are before the board tonight pursuant to Condition #8 in the Board's February 2006 Resolution of Approval, and we're here primarily for a modification of the site plan, and another Change of Use Permit, this one based on a Change of Tenancy for Store #7, from N4Fitness to Pure Indulgence because, as you know, the number of available parking spaces on the site, which is 58, are now actually 55 usable spaces with the relocation of the dumpster at the Board's request at the last proceeding. That is exceeded by the total parking requirement for the site which was 67 spaces, when N4Fitness was in occupancy that required ten spaces, and with this perspective tenant that required number of spaces would increase by another nine or ten. However, as the board determined at its 2006 resolution, a review of the actual parking demand on the site demonstrates that the existing use does not fully utilize the parking spaces on the site, particularly in the afternoon hours and weekends. The nature of this proposed use, which I'll take you through, is that each usage occurs at different times and the peak usage of some of the other uses on the site, particularly the bank. So the board's exercise of its discretion, as it has done in the past, to permit joint utilization of spaces in accordance with Section 110-28C2 of the Code would still be appropriate. That section, as you know, provides a two-part standard in essence for the board's discretion with respect to joint utilization. It states that in a case where two or more establishments on the same lot have substantially different operating times, the Planning Board may approve the joint use of parking spaces provided that the board find that the number of spaces to be provided substantially meets the intent of the requirements of this section by reason of variation in the probable times of maximum use by patrons or employees among the establishments. As you'll see the proposed use does have substantially different operating times for most of the other uses on the site, and most importantly will significantly vary in its probable time of maximum use for most of the other establishments. The other tenants are the same as they were during the last proceeding and their required parking spaces and posted operating times are as follows: (and you had this in your last resolution) Pilates which is ten required spaces, and that primarily operates Monday through Thursdays from 9:30 to 8:00 pm, and generally only on mornings for Friday, Saturday and Sunday then significantly, you have the Mahopac National Bank as you know, stores two to four that has 22 required spaces that operates Monday through Friday 8 am to 4 pm, Thursdays until 6, and again importantly, for this use doesn't operate at all on Saturday and Sunday, you have the nail salon which is pretty much open all the time from 9:30 to 6:30 or 7:00. The nail place has nine allotted spaces; the pizza place has eleven spaces. It has no posted hours, but principally it's open as you know during lunch and dinner hours throughout the week, and then you have an accessory storage in the basement for which there are

five allotted spaces, and operating times matter or are not applicable. So the existing tenants taking away N4Fitness have 57 required spaces, as you know. But despite the required number of spaces on the site, by simple observation, the 55 or so usable spaces never come close really to being fully occupied as the board well knows. I pass by there everyday too and see this. This was borne out again by recent parking counts that we did on weekdays in August. Basically what we showed at 11 am; there are generally 17 to 21 vehicles on the site; 12:30 pm there is generally 17 to 25, and 4:30 pm it really goes down; it's only 9 to 15. So basically midday on average, only about 1/3rd of the spaces are used; late day, maybe about 20%. Midday there is about over 30 spaces generally available, late day 40 to 50 spaces available, and there is even greater parking availability on weekends when the bank which has three stores and 22 spaces allotted is closed. Now, Pure Indulgence, that's the proposed tenant, I think will dovetail pretty nicely with the other uses in the shopping center and the use of the parking area. This is a business with a track record. It has an existing site in Thornwood at the Rosehill Shopping Center, and until recently had a space at the Somers Commons at Baldwin Place, but this store is essentially replacing it. So this should be a long-term, stable tenant, hopefully we won't be bothering you again for awhile. The main aspect of the business of Pure Indulgence is a retail food use under the parking schedule of your code. The primary use is retail, which consists of the sale of chocolates, desserts, coffees and other confection-type items. Its specialty is gift baskets, so there is a great deal of corporate work and shipping, particularly around the holidays; Christmas, Easter, and Valentine's Day; there are a lot of holiday sales. There is an ancillary use of an old fashioned soda fountain where one can come and have basically an ice cream treat in the old fashioned way that these things were made, that we can all remember but they are not around too much anymore. In connection with the soda fountain use, and I know you'll be interested in this, I'll give you some detail on it, there are children's parties where the children come and make and eat chocolate type items. Now, it's important to note those parties rarely exceed one per week. They take place only on weekends or school holidays when the bank is not open, generally on a Saturday or Sunday afternoon for about two hours, approximately 1:30 to 3:30. They are a relatively minor part of the business in terms of sales volume. It's also important to note that this is not a breakfast, lunch or dinner place. There are only candy and dessert type items. There is no entertainment. The expected operating hours would be Monday through Saturday from 10 to 8 and Sunday from 12 to 5. The primary usage, as you might expect, at least from the soda fountain use, takes place late afternoons and on weekends. There are only two regular employees on the site. They will include, Ms. Terrell, one of the principals, and if there is a weekend party there would typically be two or three teenagers or part-time people assisting just for the party. The maximum customer usage would generally be during a children's party, which as I said, generally would not exceed one per week. The owners don't want to do more than that, and that would be on a Sunday or Saturday afternoon, would involve a maximum 15 to 20 children usually in the seven to ten year-old age bracket. In terms of parking there is little usage of the site during these weekends, mid-afternoon hours when such parties would take place. Generally with these types of things where there are children there is generally a fair amount of carpooling; more than one child per vehicle, which the owner certainly will encourage. With respect to the space for on-site food consumption as you can clearly see on the plans. There are eight stools at the soda fountain, and there are six tables depicted on the plans which could seat a maximum four people each, so there is a maximum of 32 people that could eat desserts or ice cream at the establishment. The tables are pushed together for a children's party. With respect to parking calculation as a retail food use under your parking schedule, the parking requirement is a bit more than for the fitness business, and it's calculated on the basis of one space for 150 square feet of gross floor area for this space, which is 1,716 feet; except that, with respect to the food consumption area, it is 100 square feet, one space per one hundred square feet or one per three person seating capacity, whichever is greater. If you look at the plans it's irrelevant as it turns out, the measure, literally the area including the stools and eating portion of the counter and the tables is about 336 square feet but there are 32 seats, so that gives rise to a requirement of 10 to 11 spaces; one for every three, which would be the same as the fitness business, but the retail square footage, which constitutes the remaining 1,300 square feet would change under your code even though that figure includes two bathrooms and storage and light mechanicals would require an additional nine spaces for a total of 19 to 20 parking spaces. But clearly those 19 to 20 spaces are unlikely ever to be used except perhaps during one of the weekly parties on a Saturday and Sunday when no one else is using the parking area, and again, the primary use of this store on weekdays would be late afternoon after school, also when the bank on weekends is closed with its 22 spaces. With respect to the continued joint usage of parking spaces, there is a substantial difference in operating times among the uses, particularly between the bank and the proposed use. In that respect, there is only 50 percent overlap of operating hours with the bank during the week, zero percent of overlap on weekends when the bank was closed, and virtually zero overlap during expected peak hours of late afternoon on evenings and weekends. Also, I think it's

interesting to note that the dessert component, which is the only aspect of this use, is complementary to the adjoining pizza use, so it's likely certainly that many people who use the pizza restaurant; particularly in the evening or at lunch time, would also use the soda fountain, and as a result, you'd be using the very same parking space and presumably some of the other people from pilates or whatever would be using the same spaces and Pure Indulgence from time to time as well. The store also intends to be complementary to the pizza use in using some of the pizza from time to time for its children's parties. In essence, all of that being said, we would submit that this is a really good addition to this center, to the community; our clients have a known reputation in this business. They are very community oriented in giving to the community, and we think it will be a credit to the community. Thank you for listening to us, and we'll answer any questions that you might have.

Chairman Cosentino: How many children are going to be at these parties that you are holding?

Joan Terrell: Up to fifteen.

Chairman Cosentino: When you have a party and it's a weekend, do you close this down just for the children?

Joan Terrell: No, it's not necessary.

Chairman Cosentino: So you don't have a separate room?

Joan Terrell: No. The tables that will be in the front of the store will be grouped, and that's where the parties will be held.

Robert Davis: Generally they would run from 1:30 to 3:30. There would be one two hour party per week maximum in general and it would be on a Saturday or Sunday or rarely on a school holiday.

Chairman Cosentino: Being that you've had two places is it teenagers, grownups mainly?

Joan Terrell: The clientele is usually adults.

Robert Davis: Not for parties, though.

Chairman Cosentino: Normally it's adults and not teenagers hanging out?

Joan Terrell: No, we discourage hanging out.

Chairman Cosentino: I don't know if it was an error, but on your application it says combined retail and restaurant of Store 7 will not exceed the number of tables and chairs currently existing at the pizza place.

Robert Davis: I saw that, and as you can see I didn't write that, but in our place at Pure Indulgence there are 32 seats.

Chairman Cosentino: But there is not at the pizza place?

Robert Davis: I don't know.

Chairman Cosentino: I think there are 19.

John Martabano: I think there are 19.

Chairman Cosentino: I don't know whether it was an error.

Robert Davis: I noticed that, and I questioned it myself. I don't know how that was calculated, but certainly our plan depicts the number of seats.

John Martabano: The 19 seats are in the pizza place; it's because of the one bathroom. They couldn't go for anything more. It depends on the facility, too. If you go past 19 seats you have to provide two bathrooms.

Chairman Cosentino: So where it says combined retail restaurant will not exceed, not exceed should not be there, then.

Robert Davis: I think that statement is irrelevant.

Chairman Cosentino: It's a statement. I just want to make sure what you mean.

Robert Davis: In my mind it's inaccurate and it's not right.

Chairman Cosentino: We've learned to dot our I's and cross our T's.

Robert Davis: Absolutely.

Chairman Cosentino: There is definitely parking on the site; there is not a problem with the parking.

Robert Davis: We thought in particular this use would work well there because the parking that it uses will be, even though there is capacity on site for this use at any time, in fact this use will primarily use parking when the bank in particular is closed, which as you know, has 22 spaces. Normally you're not going to go in for an ice cream soda at least before after lunch, and usually it's going to late afternoon or on the weekend type of thing. We thought it would be perfect for this site, and it wouldn't have any real impact on the parking.

Doug Hertz: You mentioned that a lot of the business is shipping out gift baskets. Where do they come out of? Are they going to be shipped from this location?

Ray Turrell: They will be shipped from both locations.

Doug Hertz: Can you talk about the freight component?

Ray Turrell: UPS.

Doug Hertz: What kind of deliveries?

Ray Turrell: We do a lot of corporate work. The majority of the baskets that go out that we make is from the Thornwood store. That store has been there for ten years. At the holidays, let's say Christmas, maybe 200 baskets. But then we just did the Academy Awards, and I just shipped out 335 baskets. The majority of the baskets get shipped out of Thornwood.

Doug Hertz: Is there an advantage to you to have everything shipped from one location, or do you want to be shipping from both?

Ray Turrell: If she has baskets to ship out on corporate work, or even a customer that comes in and wants it shipped, she will either have FedEx pick it up that day, which is what usually happens, or UPS.

Robert Davis: Do they make multiple ones in the same day; do they make one pick up?

Ray Turrell: They send a truck and pick it all up. When I did the Academy Awards, they sent me two trucks. Twenty five minutes later, everything is gone.

Doug Hertz: And what about deliveries?

Joan Terrell: We do deliveries.

Doug Hertz: No, no, deliveries to your shop of raw goods.

Ray Turrell: Primarily all the deliveries that come in are either by UPS, Diamond Dairy for our milk products.

Robert Davis: It's important to know that they don't do any manufacturing at their site. They are not chocolate makers.

Ray Turrell: Our chocolates primarily come from the best chocolatiers in the country and overseas. Basically when it comes to the chocolate it is more like an international shop. We have our own chocolate label. That comes from Texas. We have chocolates coming from Austria, Germany; we have three lines coming in from Italy, two lines coming in from Ireland.

Doug Hertz: I am trying to get a handle on other traffic than just parking. How many deliveries to the site, what types, what types of trucks are going to be there?

Robert Davis: Could you give a sense of a daily basis?

Doug Hertz: I'm looking for volume and an understanding of what we're going to see coming in and out.

Ray Turrell: The ice cream is Schraft ice cream, they call us once a week, and whatever we need we get.

Chairman Cosentino: There are provisions to be made in the rear of the store, so they'll never be unloading in the front of the store.

Doug Hertz: I'm trying to get a sense of volume, of truck traffic.

Ray Turrell: You can't tell. This is a new store. To us it's like starting fresh.

Doug Hertz: Because you have a track record, we're trying to get a sense from the other stores and your experience to guide us.

Joan Terrell: With the exception of the Christmas holidays, we would have maybe during the week three to four deliveries.

Ray Turrell: That's like local deliveries. If the PBA calls us and they need a bereavement basket, we'll do that.

Doug Hertz: What is the size of this facility in relation to the other two that you had?

Ray Turrell: I would say middle size.

Joan Terrell: Not quite as big as Somers, but bigger than Thornwood.

Ray Turrell: Thornwood is 1,200 square feet, Somers was 2,700.

Discussion about pecan pie, egg creams, egg creams with Jack Daniels, chocolate syrup, Yankees, Mets, Dodgers, Mississippi Mud Pie, U-bet Syrup and it's cocoa content, the making of an egg crème, Brooklyn, seltzer, etc.

Ray Turrell: Before I went into the service I worked for Jahn's. Everything stuck. What I see today, everything fast food, my wife and I said let's stop, let's let them have a little time. When people come into the store, let them have an old-fashioned egg cream. Let them have a real cherry coke, a real Lime Rickey. None of this stuff is pre-made. How many kids know how a real coke tastes? It's either pre-mixed, Mickey Dees, bottles or cans. A kid does not know. Adults come in just for the nostalgia.

Vice Chairman Sturniolo: Could we go back to parking? If the party is predicated on Saturdays and Sundays, 15 children max, based on the fact that one, the bank is not open on Saturday and Sunday and there are automatically 22 spaces that would be available from the bank, if the bank were to leave and you were capitalizing on those 22 bank spaces in your operation, somebody new comes in, then someone would be handcuffed for parking based on your track record and your history of using those spaces on weekends. Then we would address that handcuffing issue along with the new tenant's application.

Robert Davis: You would retain your jurisdiction for that just as you have for this application.

Vice Chairman Sturniolo: Is there going to be catered food coming from an outside vendor into your operation for parties?

Robert Davis: No. Pizza.

Ray Turrell: We give them a lunch. Everything is included in the price of the party, and next door is a pizzeria which is ideal for us.

Vice Chairman Sturniolo: So the lunch would be something brought from the pizza shop.

Joan Terrell: Yes. Hot dogs, pizza and soda.

Vice Chairman Sturniolo: You would never choose another supplier?

Ray Turrell: This is how we run our parties.

Chairman Cosentino: If they bought pizza, they wouldn't bring it into your place and start eating pizza?

Ray Turrell: No, we wouldn't allow that. It's part of the party.

Chairman Cosentino: No, I came in on a Monday afternoon, went next door to buy pizza but I want to have a Coke with it, so I brought the pizza next door.

Ray Turrell: No, he's got a Coke machine in there. We're a specialty store. We're a little different.

Vice Chairman Sturniolo: You stated that the party operation would be separate and on-going from the retail operation, or do you intend to close the entire facility when there is a party?

Robert Davis: As a rule they only do the party on Saturday or Sunday afternoon. The people are combined there. You may have a few retail customers during that time, but most of the time, as they pointed out, a lot of the work is on the telephone and you are not likely to have a big stream of retail customers at the store in a two hour block on a Sunday in particular or a Saturday 1:30 to 3:30. So, yes, you could possibly have retail customers at that time. That's how they've done it in the past. You know better than I, you're in town all the time, you go by there on a Saturday, there is really no one there.

Ray Turrell: Please don't say that.

John Martabano: Only because of the bank mostly.

Chairman Cosentino: Actually, to be honest there is nobody ever parked in the back.

Robert Davis: We've been monitoring that lately.

Stanley Bernstein: I was concerned with the pick-ups and deliveries, but you told me it's always in the back.

Ray Turrell: Absolutely.

Stanley Bernstein: I had visions of UPS trucks taking up two spaces, loading for an hour.

Ray Turrell: They're not even there for that long.

Stanley Bernstein: If they're in and out pretty quickly.

Ray Turrell: Very quickly.

Stanley Bernstein: And even if you have two or more trucks, they are in and out in the back. And there is a possibility that a delivery will take place when a shipment goes out, but it's not likely, and you could probably handle two trucks in the back easily.

Vice Chairman Sturniolo: What is the price of an egg cream?

Ray Turrell: \$2.50 for a 24-ounce egg cream and a 32 ounce is \$3.00.

Chairman Cosentino: And this is mainly adults?

Ray Turrell: I'm going to be very frank. Usually grandma and grandpa come in with their grandchildren and they tell the story that a place like this is where we met, we split a soda...

Chairman Cosentino: You understand we are trying to prevent a teenage hangout. It's not good for the landlord and it's not good for the other business. Then it becomes a code enforcement thing.

Stanley Bernstein: One other comment it won't be a teenage hangout and chances are you're not going to get teenagers, but there is always a possibility of putting in some kind of video game. Are we making a resolution? If we make a resolution I would like to see that there are no video games or music in there.

Ray Turrell: As a matter of fact there is going to be a jukebox.

Stanley Bernstein: An old fashioned jukebox but no video games. I want that in the resolution.

Ray Turrell: The only video that you'll see are the old movies that we play from the 30's, 40's and 50's.

Chairman Cosentino: There are residents down there too, how loud is this going to be?

Joan Terrell: Not loud. You hear it when you're in the store.

Nanette Bourne: In your EAF you mention that it's an 1850 square foot space, and the N4Fitness was 1716. I remember at the time with N4Fitness there was a lot of confusion as to how big that space was; if you could clarify that, please.

John Martabano: Outside wall to outside wall is 1850 square feet. Inside wall to inside wall is different because they added a bathroom. We went around on that.

Whitney Singleton: They added a 150 square foot office.

John Martabano: And it's still there.

Nanette Bourne: If you could just clarify because I would like it to be clear in the resolution.

John Martabano: I'll send somebody there to measure and take care of that. I know the site plan is on file.

Robert Davis: Is that the dimension that you want?

Nanette Bourne: I'd just like it be consistent.

Doug Hertz: There was an issue with N4Fitness. When we looked at the square footage and you added up all the various uses across, it didn't add up.

Stanley Bernstein: There was a discrepancy of 150 feet.

Robert Davis: I believe at the time that 150 foot office was because we thought there was going to be a rental concept to the underground facility. That was provided on the original plan.

Stanley Bernstein: That was the difference in the square footage.

Nanette Bourne: My other comment, is that conceptually, I don't think we could have enough chocolate coffee places, but I think for the purposes of record this should not be compared with N4Fitness in terms of traffic generation, peak hour operations; I don't think it's necessarily inconsistent, but I don't think it is in any way a comparable use. I think that if the board wants a resolution drafted, it has to be drafted justified on different grounds.

Robert Davis: We suggested that. We don't purport to compare it to N4Fitness. In fact, it's expressly stated that it would require more parking.

Chairman Cosentino: Doing it that way helps for the future.

Nanette Bourne: And it's not comparable to the food store. They are going to have different hours of operation, different peaks, and regardless of what is said there is no way to know if this is going to be a popular place for teenagers or grandparents and their kids. Zoning doesn't cover that, a policy can't cover that... it's not necessarily a bad thing.

Robert Davis: I think what you'll see unlike a Starbucks in Yorktown where that happened; here unlike there you have one of the principals on the site. That's not the type of business they want to run, so that's going to have a little more control over the activities of those individuals than if you have one of these franchise operations.

Doug Hertz: But we can't require that the principal be off site, and should their business be successful and they want to open a third and a fourth, they can't divide themselves out more than that. We need to make a rational decision, whether or not you're on site.

Ray Turrell: Our business is primarily a holiday driven business. We go from Thanksgiving to Christmas, Valentine's Day, Easter, and Passover; that's when we cook. That's when the majority of the business comes in. A lot of people come in, a lot of people order over the phone, but they are only there to get what they want and then go. They don't sit down and have a soda at that point, and that's basically the holiday. Sometime you have four full weekends at Christmas time. Heading into Leap Year, next year, you're going to have three full weekends, and if there is bad weather or anything that's shot down.

Robert Davis: It is also not late night, so you're not going to get that type.

Chairman Cosentino: On your Thornwood store, you don't have a congregation of teenagers in the front?

Joan Terrell: No. Whenever we saw it beginning, we discouraged it.

Ray Turrell: We don't even have anything a kid would come in for. We are a gourmet chocolate shop.

Joan Terrell: And our prices are too high for the teenage pocket.

Vice Chairman Sturniolo: Would you be kind enough to send us a sample menu of what you could order in the store as well as the phone, internet?

Joan Terrell: We're not on the internet yet.

Ray Turrell: It's basically walk-ins; people that we've cultivated over the years. Repeat customers.

Nanette Bourne: Your practice for this has been to have a Resolution Approval for Modification to an Improved Site Plan that reflects the business practice that the applicant is presenting to you; having that reflected in the resolution for you to... on. And if the applicant could provide some correspondence that clarifies the points and really puts your business plan, and clarify the square footage.

Whitney Singleton: I would like to let you know what I would like to see in the resolution. I presume as part of this application since your going to be double counting spaces that there will not be outdoor dining associated with this?

Robert Davis: No.

Whitney Singleton: There is not going to be any food preparation other than the ice cream itself.

Ray Turrell: We don't flip burgers.

Robert Davis: Because I don't want there to be any clarification, sometimes for Easter they make a chocolate mold or something.

Whitney Singleton: That you roughly have pickups and deliveries once a week.

Ray Turrell: On an average, yes.

Whitney Singleton: That the parties will be limited to weekends, once a week with parties not to exceed approximately 15 children.

Robert Davis: And school holidays.

Whitney Singleton: And that there will be no utilization of the basement for anything other than storage. You won't have any fleet vehicles?

Joan Terrell: No.

Whitney Singleton: Lastly, the only thing as I can say as Mr. Davis pointed out with regard to Paragraph D, the property owner takes a little bit of a chance. If this site does generate traffic and another tenant goes out, and there is a lot of parking, it is up to your board to decide.

Chairman Cosentino: That's right; it has to come back before us. That's his gamble, not ours.

John Martabano: So we have to get rid of the station wagon with the big black cow on the top?

Chairman Cosentino: Yes.

Vice Chairman Sturniolo: To my knowledge, because I was not on the Planning Board when Resolution 305 was approved, what is the significance of 293 and 305?

John Martabano: There were three lots there that were involved. We took one of the lots that were 305 and we formed an LLC called 305. But then the town came in and we consolidated the lots to make it one site plan, and the town and the police gave it 293. I refer to it as 305 because that's the name of the corporation that controls it, but the real address is 293.

Vice Chairman Sturniolo: So for the future we can address it as 293?

John Martabano: Yes. There is no other address.

Chairman Cosentino: This sounds like a Mom and Pop store.

Joan Terrell: It is.

Ray Turrell: It's not a franchise. It's more of a specialty, nostalgic store. Walk back into time. I'm trying to bring back something everybody had; the local candy store. But give it an upscale look with better candy, but to also have the nostalgia there of the old egg cream, the banana split, Lime Rickeys, malted, milk shakes, the soda fountain itself, coke, cherry cokes. This is something that at one point or another that the fathers, the sons, the grandparents, have always talked to their kids about. Now they have the opportunity to experience it again.

Chairman Cosentino: Nannette, do you want to entertain a draft resolution for here? The next regular meeting is October 9. Thank you for coming.

Continuing Review:

**Old Iron Warehouse
Cary Place
PB2005-20**

Present: Alan L. Pilch, Evans Associates

Alan Pilch: The last time we met we received a memorandum courtesy of Mr. Oliveri. It was a memorandum originated by Mr. Stein, the previous Village Engineer. We were requested to address the items in design and technical issues that were requested to be addressed by us prior to our hearing before this Board. We addressed these items forwarding in that letter dated July 31st. It was addressed to you, Mr. Chairman, but as a courtesy we sent a copy to the Planning Board and Mr. Oliveri to have him review the plans because it was our understanding that we would appear before this board until Mr. Oliveri was satisfied that we had addressed most of these issues. But, here we are before you. It is my understanding; and tell me if I'm incorrect in this, Nannette, that we are looking for a referral to the Town Board because there are certain facilities that are being proposed on the Village Board, because there are certain facilities that are being proposed within Village lands, namely the storm drainage system and the Vortex system at the end of Cary Place that would actually capture and treat run-off from Cary Place; from the street that presently is discharged without any treatment whatsoever, but will go through a Vortex unit, but because those facilities would be within the right of way to Cary Place or on Village lands, that it is necessary to have a referral from the Planning Board to the Town Board. Do I have that right, I hope?

Nanette Bourne: Right. I think there are off-site improvements, and that was one area that was quite clear. There was consensus on the part of the Town and Village Engineer and your client that that was a good solution to the drainage issue. There were other off-site improvements, but I'm not sure what the status of those improvements is to the road.

Alan Pilch: There was certain paving that was being proposed and some curbing and a couple of drain outlets, things like that.

Nanette Bourne: And those also would require approval by the Village Board. I think what you're asking is for this to be formally referred to the Village Board. You'd have to provide a letter that clarifies what your proposed improvements are and what you're requesting from the board so that that can come back to the Planning Board for them to act.

Alan Pilch: If you want I can just briefly go through the changes to the plans just so you know what was actually changed in it from what we previously submitted?

Chairman Cosentino: Did you also see the letter of September 4?

Alan Pilch: I have not. Is this from Mr. Oliveri?

Anthony Oliveri: We discussed these items, Mr. Chairman.

Alan Pilch: I've not seen it.

Anthony Oliveri: Mainly what we wanted to do was make sure all of the old issues that were brought up along with the changes in the plan have all been addressed. We then issued this memo with some additional comments, which I have been discussing with Mr. Pilch.

Alan Pilch: These are kind of little housekeeping items.

Chairman Cosentino: But we need to have them addressed. (To Mr. Oliveri) you'll address them?

Anthony Oliveri: Yes. I would imagine you'll make a new submission to address these items, update the storm water pollution prevention plan; some of this you might have done already.

Alan Pilch: That is correct.

Chairman Cosentino: We can continue now to July 31.

Alan Pilch: Yes, I just sort of briefly want to go over the changes of what actually was modified on the plan.

Vice Chairman Sturniolo: Before you go there, Nannette, can you go back to your point? What is the mechanism for the applicant to get to the Village Board to request? How does that start and who does it?

Nanette Bourne: That's a good question. I'm trying to think back to the most recent referral.

Vice Chairman Sturniolo: The match-up.

Nanette Bourne: Yes. I don't recall that you formally referred them. It was acknowledged that he needed to get a permit.

Chairman Cosentino: If I'm not mistaken, Tony, it went back to Austin, didn't it?

Nanette Bourne: No. Not Camacho. I don't know if it requires a formal referral.

Chairman Cosentino: Then how did they get on the agenda?

Whitney Singleton: I think this is significantly different from Camacho, in that Camacho had plans on Village property and obtained a license to do so.

Alan Pilch: As you know, we've been requested to do just that. At that meeting that we held here last November 2006, I would like to reiterate it with Village and DEP officials here. At that time it was requested that we view this, we obtained this tree information which we did.

Whitney Singleton: I understand that. That was a recommendation that consultants were giving you. What I'm saying is they don't have the authority, so if you're proposing going after the public right-of-way, opening up the street, and then going on to Village property beyond the right-of-way for purposes of discharging the drainage. I also would assume this Vortex requires a degree of maintenance. I think some sort of proposal needs to be put together so this board could recommend it before we move it to the Board of Trustees. I think if you go to the Board of Trustees without the Board putting a cover letter saying that enclosed you will find a submission of Old Iron Warehouse which involves such and such, it has been before the Board for a period of time, and they are proposing storm water features here which this board endorses but does involve utilization of Village property which mitigates the impact of the wetlands or erosion control... whatever the engineering is. Then the board will have that letter go to the Board of Trustees with your proposal.

Nanette Bourne: The drainage position that Whitney is referring to seems to be something that we've all been recommending as a good idea. The pavement and the curbing to the road; I'm not sure whether that can be left off.

Whitney Singleton: All of that needs to be detailed.

Nanette Bourne: Right, I'm not sure where that can be left off. I think we have a difference of opinion in what you and your client want to do from what the Planning Board is asking you to do. I don't know if the plans address that.

Alan Pilch: Specifically what?

Nanette Bourne: I think if you put your plans up, Joe, maybe you can help refresh my memory and the Board's memory on what you were contemplating for the road improvements.

Chairman Cosentino: The full cul-de-sac.

Vice Chairman Sturniolo: Blacktop curbing.

Chairman Cosentino: And there was some drainage there also on the original.

Alan Pilch: Yes. The right-of-way itself is limited, so we only have so much room in which to have a full cul-de-sac. It's a fifty foot right-of-way.

Chairman Cosentino: This cul-de-sac has to be curbed and this drainage here; drainage and curbed. Whitney, I have something to show you now. If you come down onto Cary Place, right over here (pointing) right here is a garage. What used to be Kisco Garage.

Whitney Singleton: Is it that far down?

Chairman Cosentino: It's a truck repair shop. He stores cars on his lot over here, by way of driving down. If they're going to curb this, what does he do?

Whitney Singleton: Where you're pointing to is Village-owned property.

Chairman Cosentino: So if we're curbing this, how far are we going up with the curb? We did show the curb on the first original plan going all the way to Kiskon Road, and this curb meeting here. That's what we wanted on the first plan, and for some reason, when we got a new plan this was deleted, the full curb, and wasn't there. This curb was supposed to meet this curb, this curbing and cul-de-sac was supposed to go all the way to meet Kiskon Road to the end. The cul-de-sac here, drainage with curbing here. That's what I remember.

Whitney Singleton: I know that the board wants to see all this, but the problem is this has to be put together in a package. When the Board of Trustees gets it, they are going to turn to me and say what is this, and I'm not going to have the benefit of an engineer present. This really needs to be detailed by the applicant with a covering letter from your board.

Chairman Cosentino: I think this has to be explained and gone through with Jeff.

Whitney Singleton: It has to appear on the plans, though.

Chairman Cosentino: He's going to have to dig this road anyway because there is a pump. Is the pump going to Kiskon road or just going down to the street?

Alan Pilch: It's gravity flow.

Chairman Cosentino: Right, because everything else is on a pump going up the other buildings.

Vice Chairman Sturniolo: Somewhere in this area right now is a new pile of dirt about twelve feet high. It looks like topsoil.

Alan Pilch: I'm not aware of that. I would suspect it's probably one of the neighbors has placed it there.

Vice Chairman Sturniolo: There are Jersey barricades along here, so the backhoe that is also there, I'm not sure how it got there with the Jersey barricades there, but there is this pile of dirt.

Chairman Cosentino: I think that dirt was brought there for the Village.

Alan Pilch: I will speak with Mr. Ferrovicchio and let you know.

Vice Chairman Sturniolo: It was noticed by me last week. I haven't been out there in a couple of months but I know a few months back that pile of dirt was not there.

Chairman Cosentino: I know he's going to need some fill by the cul-de-sac, maybe that's what it's for.

Nanette Bourne: What is the proposed surface here?

Alan Pilch: This will be pavement here, as we said, this would not be within the right-of-way the wetland buffer, it will be, I'll call it a structural paver, kind of like a grass paver or something like that, something that would be pervious. We'll actually just cut the pavement line right here, and the rest will just be on; we'll call it a structural grass paver.

Nanette Bourne: This is asphalt?

Alan Pilch: That is correct.

Chairman Cosentino: What is this garage going to be used as, anyway?

Alan Pilch: There are four compartments. Mr. Ferrovicchio wanted to use one for his auto glass, in which he basically has two vans. They go out during the day with four or five pieces in place; automobile glass, windshields for vehicles. He wants to store some of his own construction equipment that he has. He's working on Old Iron Estates in Chappaqua right now, and he was planning on renting out. He doesn't have anybody here; employees during the day, he won't. They drop off the glass at night, the vans pick it up in the morning, and they're gone all day. I just want to make sure I have the mechanism correct because in theory this letter said I thought we needed to do this, to go to the Village Board and now I'm told I have to do yet another letter to, if I'm correct...

Nanette Bourne: To outline these improvements to the Planning Board so that they can take your package and request it is sent to the Village Board for action so that the Planning Board can then act on it.

Alan Pilch: That's fine. That is more specific to the purposes of what the Village Board does. I understand, as opposed as to just trying to respond to the comments of Michael Stein.

Vice Chairman Sturniolo: What is the Manning's n factor in laymen's terms?

Alan Pilch: I'll call it a roughness factor of a pipe. Certain pipes are very smooth inside and offer little resistance to the flow. Other pipes, for example, a corrugated pipe offers a lot more resistance to flow, so the so called Manning's n factor is higher. Basically what that does; it's a factor that affects the flow through the pipe. The Manning's n factor goes up if the flow goes down. You can also apply the same thing to a stream. A stream with a lot of boulders, for example, has less capacity, they use a term a concrete mine stream.

Whitney Singleton: What is the maintenance that is going to be associated here, and how are you going to propose to deal with that when you get before the Village Board? If I'm the Village Manager and I say well this is all very nice that you're going to do this and there is going to be utilization of town property with regard to, didn't you say there is a Vortex system?

Alan Pilch: Yes. It's within the right-of-way. A vehicle will be able to come back here; it's probably a removal of sediment.

Whitney Singleton: Is your proposal to dedicate that to the Village and that they have the maintenance obligation?

Alan Pilch: I would tell you right now it would certainly be my preference because most of that is run-off from Cary Place. That is the bulk of the sediment that would be destined to here. This is treated run-off already in the storm water management basin, which goes through the Vortex unit as we discussed with DEP during our meeting. The rest of it is what occurs at Cary Place. Now, mind you, when this is paved, curbed, the amount of sediment from here could be much lower. This drains essentially down towards the stream; the treatment of this basically will be treated in here, so I suspect it will be less. It being the Cary Place right-of-way, it probably would be. You tell me.

Whitney Singleton: Most communities don't want to take on maintenance obligations.

Alan Pilch: I understand, but believe it or not, there are some that do that I've actually seen and they are here in Westchester County. But it's something that I don't know the answer to. It is probably not much different from, if you want to use the term, catch basin cleaning.

Nanette Bourne: But that should be a conversation you have with Jeff Econom.

Alan Pilch: I agree.

Whitney Singleton: I want to make sure when it gets before the Village Board it is not a learning experience for 45 minutes where they have 80 questions; 30 of which are answered. The less guesswork as possible is best.

Anthony Oliveri: The Vortech unit is being put in not because of the site. The water on the site is being treated.

Alan Pilch: That is correct.

Anthony Oliveri: That should be noted in your description.

Whitney Singleton: Is this existing?

Alan Pilch: No, it is not.

Whitney Singleton: So you're going to be putting all this in as well?

Alan Pilch: Yes. Once it reaches this point, it will just be placing, if you will, stone between the trees to convey the final flow down to the Kisco River.

Chairman Cosentino: You need to meet with Jeff on this also.

Nanette Bourne: Jeff has been part of this solution. He is aware of it. The final mechanism and the maintenance is what Jeff needs to weigh in on.

Whitney Singleton: You also have a twelve inch sanitary sewer. Are you going to be going over that?

Alan Pilch: Yes.

Whitney Singleton: That's very deep. I think you need to coordinate with Nannette, Jeff, Anthony and myself as far as what we need and how to put it together. Also discuss with Jeff whether or not he sees anything here regarding dedication, maintenance and anything else before anything gets put back before this board or to the Village. You can go directly to the Village, but if you go without a referral of this board...

Alan Pilch: No, it sounds like a very wise idea. I think we should get together and work this out.

Chairman Cosentino: It's getting there now.

Vice Chairman Sturniolo: At the risk of repetition, what this board wants to do again is see a full blacktop all the way, with in place concrete curbing.

Chairman Cosentino: You've got some homework to do. You won't be on the next agenda, that's for sure.

Alan Pilch: Why don't we wait and see in October?

Chairman Cosentino: That will be best. Thank you for coming.

Final Action

**Dominos
130 North Bedford Road
PB2007-02**

(No one present at this time)

Chairman Cosentino: I want to make record on the site plan parking.

Whitney Singleton: Yes. Nancy has notified the property owner that the site plan that they submitted to replace the one that is missing from their file will not meet your approval because it has language in it that is not what you asked to have put in it, and they are in the process of resubmitting it for your review.

Final Action:

**134 Main Street
PB2007-06**

**Present: Clifford Munz, Munz Associates
Isidoro Albanese
George E. Pommer, P.E., Hahn Engineering**

Nanette Bourne: While the applicant is getting prepared, the board should realize that this cannot be voted on tonight. They do not have ARB approval.

Isidoro Albanese: We don't need your approval first?

Chairman Cosentino: No, we're last. You have to get ARB approval first before we could do anything.

Isidoro Albanese: They said they couldn't give us the approval. They liked everything but they said they can't approve it because they don't have Planning Board approval.

Chairman Cosentino: Go back and tell them I said they are wrong. We always get the ARB approval first, normally. That's the way it's been done in the past.

Doug Hertz: The ARB asked you to come back because of some issues on the plans that needed clarification.

Clifford Munz: They just asked for them to be drafted more and presented that way.

Doug Hertz: It wasn't because we hadn't approved.

Chairman Cosentino: We always get their approval first, anyway, we couldn't vote on it tonight.

Anthony Oliveri: The submission you put in the day after the last meeting; in reference on the first letter, the comments of the meeting didn't reference the comments that were published at the last meeting. Everything you have there addressed what I had on the first memo, but it wasn't really fully addressing everything in my comments of the last memo; relatively minor stuff, but now you have an opportunity really to update the plan and maybe address these more to the point before the next meeting. At the last meeting there was a memo dated August 14 from our office, do you have that?

Clifford Munz: No. The last one I received was a memo dated July 26.

Anthony Oliveri: I had given you comments through e-mail also, the same comments that were on the memo.

Clifford Munz: I tried to do them point by point.

Anthony Oliveri: Yes, that was the July 26 memo. There was a memo that was issued at the last meeting mentioning issues like getting the invert of the drain at the Blakeby lot. You said you couldn't do it in a day.

Clifford Munz: But we did it.

Anthony Oliveri: You did it?

Clifford Munz: Yes. The information is on here. If you bring up the point we can let you know that we did address that.

Anthony Oliveri: All I'm saying is before anything is voted on, those need to be on the site plan and addressed.

Clifford Munz: And they are. It's on the delivery that was on the very next day after we met. That next day was Wednesday the 23rd, and we delivered it. Literally we worked through the night to get all that information on so that we could make that next day.

Anthony Oliveri: I don't know that everything was on here. Particularly what stands out is the invert of the existing grading connecting to the drain... you don't have it on here.

Chairman Cosentino: Can you give him a copy of it?

George Pommer: We had a crew out there that morning.

Anthony Oliveri: Somehow it didn't get on the plan.

George Pommer: We have it; we'll get it to you.

Anthony Oliveri: As a matter of fact, we should talk after the meeting and go through a couple of minor things.

Chairman Cosentino: Do you have a copy of the draft resolution?

Clifford Munz: No.

Chairman Cosentino: I'll give you this one so you have a copy.

Whitney Singleton: So there is no confusion going forward with the two boards, it says right in the Board of Architectural Review Regulations that "*the Planning Board shall not approve any site plan and the building inspector shall not bring in any permanent receipt of, etc., etc., until the Board of Architectural Review has approved the application.*"

Chairman Cosentino: Yes, that's been our policy. Is there anything on this we need to know besides Anthony's comments before the next meeting?

Vice Chairman Sturniolo: I have a few things. Nannette, the comments from Hydro Environmental Solutions; the letter of August 22 regarding the two questions that I asked at the last meeting about potential leakage or leaching of the fuel and their response. Are you okay with that response?

Nanette Bourne: I don't have anything to add.

Chairman Cosentino: Actually it answers it, but it doesn't answer it.

Nanette Bourne: I'm sure that it can never be fully answered.

Chairman Cosentino: Exactly.

Vice Chairman Sturniolo: But you're comfortable with this response?

Nanette Bourne: I don't have anything more to add.

Vice Chairman Sturniolo: The parking fees need to be filled in on the draft resolution where it says non-applicable, and on the draft resolution on Page 4 Number 25, at the risk of sounding redundant, you talk about no standing parking, loading or unloading. I'd like to add "or any other type of deliveries" shall not be permitted on Main Street. Just add "any other type of deliveries" even though you can't do a delivery because it's already discussed.

Doug Hertz: I have one thing on the resolution. On the top of Page 3 in the second whereas, it states, "whereas the project site contains underground tanks that must be removed prior to construction," it is my understanding that the tanks have been removed. Do we want to just clarify that statement in some way?

Nanette Bourne: We had this conversation; do you know if all of the tanks have been removed? I thought there was some issue as to when you start construction you really start doing site disturbance that there could quite possibly be tanks?

Isidoro Albanese: Almost impossible. The whole front, the whole side and the whole back has been removed and new soil will be brought in.

Doug Hertz: I think we should put a "whereas" that suggests that we know, we understand, based on documents that have been provided that tanks have been removed. But, in one of the conditions, there isn't a provision for what happens if a

previously undiscovered tank is discovered. I think that is 19. *"The applicant shall prepare a remedial action plan that includes a contingency plan that outlines the procedures for encountered previously unidentified tanks."* Maybe the whereas can acknowledge that this removal has been done, but that there can't be 100% positive confirmation until construction is underway, that we won't encounter something unforeseen. But it is our belief that proper remedial action has been taken based on representation by the applicant.

Vice Chairman Sturniolo: If we could look at the August 22 Hydro environmental solution letter; specifically page two of that letter signed by William Canavan, President. Under concern #2 when they talk about underground storage tank UST, there is a paragraph that is a description paragraph of procedures that are required by the county health department and the DEC. What I need clarification on is assuming the verbiage is accurate, does that mean that every tank that has been removed has to be registered with the County Health Department and DEC, or does it mean that if you discover a new tank that you don't know about, and you remove it in a proper manner, then you have to disclose that information to county health and DEC.

Nanette Bourne: Underground tanks that are identified on site, whether or not they are allowed to stay on site, or removed have to be registered with DEC.

Vice Chairman Sturniolo: So, let's say, and I'm using a fictitious applicant; not you, if somebody has property and claims that they have removed underground tanks, does there have to be a paper trail record stating that those tanks have been removed, and that record resides with the County Board of Health and DEC?

Anthony Oliveri: I believe it is the DEC.

Nanette Bourne: Yes, that is the only way to legitimize it.

Vice Chairman Sturniolo: Applicant X, I removed it, and here's the paperwork that I submitted to DEC and County Board of Health saying that I removed it.

Nanette Bourne: Or it's been removed in a manner appropriate to the guidelines of. That doesn't necessarily suggest that all tanks have been removed; it's only the known tanks.

Whitney Singleton: And that would go for any tank registered with the County Board of Health. Whether it's not registered; the way most old tanks are not.

Nanette Bourne: And you only find those out when you start construction.

Whitney Singleton: There is a requirement that you did... commission...tank with the County Board of Health as agent for DEC in a particular fashion. Those are those registered tanks. If you have tanks which are not registered, I don't know that they are saying the same procedure will be had.

Vice Chairman Sturniolo: Because the registration may not exist?

Whitney Singleton: I think what you're trying to get around in a long fashion is if they discover tanks on site during construction, we wish to be notified and we wish the County Board of Health be notified. That should be in the resolution.

Vice Chairman Sturniolo: Right. Agreed. I'm looking at a hypothetical situation. Somebody who comes and says, I did this and this and blacktopped over, and I took care of the tanks, they're gone, and where is the paperwork to prove it?

Chairman Cosentino: They may not have paperwork, but let me ask you a question? Is there a metal detector?

Whitney Singleton: I don't think so.

Nanette Bourne: There is a geo-probe that identifies mass, but it's not 100%.

Vice Chairman Sturniolo: But it can distinguish metal from rock.

Chairman Cosentino: Unless the tank was put in and it was fiberglass.

Vice Chairman Sturniolo: This would be relatively new.

Doug Hertz: In relation to this, we've talked about this before, some sort of safety bond. I know this has been discussed with applicants. In the case of this situation, is there

any special bond that is required? My specific concern is: the Village is digging its wells right next door, and if there is a spill and there is a contamination of Village property, what is the mechanism for dealing with that?

Nanette Bourne: I think we should add that.

Whitney Singleton: You can actually get insurance, but I'll just tell you having gone through that myself, it took seventy phone calls and a tremendous amount of money to get one insurance company out of this country to issue that sort of policy. It was very, very difficult to obtain. I think that that would be, in this particular circumstance, very onerous for the applicant. I think we can certainly have a requirement as on any other site plan whether to get a bond on the site before it is built. With regard to off-site contamination; for bulk petroleum storage, they go out to these people as owners, they go out to prior owners, they can go back to owners of many, many years ago and when they do that, and there is contamination that travels off site, they will probably do an analysis of the soil to date when it's from. You can actually examine soil that is permeated with gasoline and determine when it originated. Seventies, sixties, fifties; they can actually determine that and go after these people.

Anthony Oliveri: And if there is a spill and it registers with DEC, DEC will then hone in on the owner to clean it up.

Doug Hertz: Do you feel there are enough safeguards in place that regular procedures would cover and protect the Village adequately?

Whitney Singleton: For existing conditions that are there now? If something happens now, as a new owner, the owner is always responsible whether he did it or not.

Doug Hertz: I mean for exactly what we are talking about. If something unforeseen is discovered or they rupture an underground tank during construction and it spills. That's what I'm concerned about.

Whitney Singleton: Perhaps what you want is a performance bond.

Doug Hertz: There has been enough monitoring of the soil. I'm not concerned if there is an old spill that we didn't catch. That's not my concern. My concern is that there may be something out there that clearly we don't know about.

Isidoro Albanese: As far as clean up, the only area that wasn't being dug up was underneath the building. So, I went out and actually hired somebody to do geo-probes in order to get underneath the building to find out if there is contamination under the building, and we found out that underneath the building was clean, and that was the only area that really concerned me then because we knew we were monitoring the other stuff and I had to pay for the monitoring later, but when I take the building out, if I find a tank under there it's going to be my responsibility. I think we did three geo-probes inside the building, but everywhere else would be hard to find a tank unless it was on the outside of the property.

Chairman Cosentino: Where do we go from here?

Nanette Bourne: I will speak with Jeff Econom.

Chairman Cosentino: Why don't you talk to him and find out what we do before the next meeting so we don't hold him up.

Whitney Singleton: There is also going to be a monitor on site in accordance with Section 21; environmental monitoring of the site for hazardous material. I think that we simply can be aware of the construction zone. If you go by there, and they are excavating, and there is an odor of gas, trust me, the Village is going to hear about it.

Chairman Cosentino: We need to be protected, so we'll get it done by the next meeting so we won't hold him up anymore.

Nanette Bourne: So you want this on your work session or regular?

Chairman Cosentino: Regular.

Nanette Bourne: That would be October 9.

Whitney Singleton: For approval.

Clifford Munz: Our only solace is that we have no basement.

Doug Hertz: And you'll have to get Anthony's concerns addressed.

Whitney Singleton: I need to clarify a couple of things. Tony, your comments... are you saying that we want all deliveries to be in the rear of the building?

Vice Chairman Sturniolo: Yes, even though when I say deliveries in the front we're referring to FedEx or DHL; we want nothing in front of the building.

Whitney Singleton: With regard to the sequence, there is going to be a staging and construction plan put before the building inspector and Village engineer. The only thing that is going to be a little bit different about this site is that there are residences here, the movie theatre, the restaurants, they are going to be right next door, so you're sensitive to this, but construction at the wrong time of day will be very disruptive to the residents of the Village. I don't know whether you want to give that to Austin and Jeff and Anthony.

Chairman Cosentino: But don't you think all construction should be fenced off in the front?

Whitney Singleton: The way we currently do it, you leave that to Austin and Anthony.

Chairman Cosentino: Then let's leave it that way; it's one less thing we have to worry about.

Whitney Singleton: I'm saying it's been a concern in the past. We have other sites in town right now; we just looked at them.

Chairman Cosentino: Let them worry about it.

Whitney Singleton: Okay.

Doug Hertz: We can just make that a memo to Austin.

Chairman Cosentino: So Nannette you will talk to Jeff, put this on the October 9 agenda for approval, you will get your plans done by them.

Clifford Munz: Anthony, would it be alright to give you just individual sheets instead of thirteen sets of the entire plan?

Anthony Oliveri: I just want to make sure that the plan that is approved has everything on it. So it should probably be a complete set.

Nanette Bourne: We need to have a complete set. If the board made a change in the way the resolution is structured so that it references the actual set of plans that the Planning Board is approving.

Anthony Oliveri: That set of plans is what we're going to be looking at later when you're doing the work, so it's got to be a construction set.

George Pommer: I think what he's saying is to take out one sheet and put in one sheet.

Doug Hertz: You're welcome to pull these back and swap out what you need.

Clifford Munz: If that's appropriate then I'll do that.

Nanette Bourne: I think it's a waste of paper, but it's completely essential that we have a complete set of plans that are stapled together, so however you want to use your labor and change them out is fine.

Vice Chairman Sturniolo: Anthony, please send us a heads-up e-mail once you're satisfied with the conversations in advance of the meeting please?

Anthony Oliveri: Yes.

Special Discussion:

Westchester Residence and Club

Review of memorandum from Nannette Bourne, Anthony Russo and Ashley Ley, AKRF to the Mount Kisco Planning Board dated August 29, 2007 re Westchester Residence and Club Final Completeness Review.

Present: Patrick Hewes

Nanette Bourne: Whether or not the additions that we made to the completeness memo reflect what the board had requested.

Vice Chairman Sturniolo: As one member of the board I went through this, I went through my notes and everything that I requested I see incorporated in this revised memo with one slight exception, but I understand why that was deleted, so I am happy with the modification to this memo.

Chairman Cosentino: I don't have any either.

Stanley Bernstein: I went through it thoroughly. All my concerns were addressed. Does the DEIS reflect these comments?

Nanette Bourne: No.

Doug Hertz: They'll get this and then they will make their modifications.

Stanley Bernstein: They will make the modifications. This is a preliminary DEIS. Who will get the next draft?

Nanette Bourne: It will come back in the way that this one did.

Stanley Bernstein: So we will get the next draft, and we will decide whether it's complete or not. Yes, everything that you've done here, everything that I wanted is in here. One clarification you mentioned about elevations, and I specifically asked for the elevation to the roof, but I think you covered that. I want that shown in datum so it can reflect the height. In other words, they are showing only up to the fourth floor, and this is a five floor building. There is an attic there.

Nanette Bourne: I would ask the applicant, we tried to make it clear in here that the Board wants and understanding of the height both from the perspective of what the Village's definition of height is plus the real time difference.

Stanley Bernstein: From the platform and also datum from zero zero.

Patrick Hewes: Not only do I understand you, but we're close to illustrating all ways of measuring. Yes, indeed we're illustrating that and it will show up. Elevations will have, 448, I think, is a typical ground elevation. You'll have plus twelve, plus twenty four, etc., and also, it will be the feet that it represents and then it will be calculated as the co-defines height, which is an average grade, of course, but also the feet off, when you look at the building when you're standing. So yes, the answer in responding to that would be yes.

Chairman Cosentino: That was great Nannette, really.

Nanette Bourne: Just to conclude this, this reflects your completeness comments, and you recommend it be sent to the applicant to have a draft copy of this, and they are on their way, and they will revise the document and resubmit in a manner that they did with their original DEIS.

Doug Hertz: My only comment regarding to that is on page 11 of your memo. Alternatives proposed, Alternative D. This is a synopsis of what both myself, and I think Ralph were discussing. It says, "*Also consider approximately the same site configuration of the preferred alternative but with multiple buildings connected with enclosed walkways. This alternative will also consider extending the building farther back up the hill.*" It's not exactly what we have been discussing. What I was trying to indicate and, I think the group understood this, was to find a way to use the depth of the site. Right now we're using mostly the width of the site so that we don't gain either height or anything else, and make the building appear to be a number of smaller structures, but I understand the argument against making it actually several semi-attached buildings that that was not preferable because of the lay-out. So, there was extensive discussion of that during the last meeting. I don't know if that comment accurately reflects what we were looking for in that alternative.

Nanette Bourne: If you could just help me rephrase this so it reflects it. Adding this alternative could also consider extending the building further back up the hill, using the depth of the site to...

Doug Hertz: What I was trying to get across was right now the building is something like 650 feet in width, I believe, and has relatively small L Shaped L's that come out forward of the main width of the building. My alternative that I asked be explored is one that considers these cross pieces of building be much deeper so that ultimately we're not using as much width to the site, we're using more depth of the site, even if that requires stepping up in elevation if we're not taking as much advantage of that plateau. How to phrase that succinctly?

Stanley Bernstein: What you're trying to say is make the building fatter and not as long.

Doug Hertz: Essentially. In other words, all the other alternatives imagined, high building, long building; they didn't use the one that used the depth of the site.

Stanley Bernstein: Cutting it.

Doug Hertz: What I'm trying to do is find a way to cut the visual impact of the site from across the valley, by bearing some of that mass behind the main structure. I think we can phrase it that the building be deeper than currently proposed.

Nanette Bourne: I wrote: Using the alternative, the board will also consider extending the building for the back-up rebuild using the depth of the site, for example, stepping the building up the hill to reduce the visual massing of the building from the eastern viewpoints.

Doug Hertz: Not quite Kisco Avenue but from the east.

Vice Chairman Sturniolo: Anthony, your comments; are they dovetailed in this memo?

Anthony Oliveri: I think Nannette references them at the end of her memo.

Chairman Cosentino: Next, building inspector reports; any questions on any of those reports that we've done, and site monitoring?

Building Inspector Reports:

Thistlewaithe Children's Program

Present: Maria Fitzgerald, Director

Whitney Singleton: I think there is an applicant here although they are only under building inspector reports. Are you here for Thistlewaithe? You know that you are not on our agenda? You're only under Reports.

Maria Fitzgerald: Mr. Cassidy said...

Vice Chairman Sturniolo: When was this conversation, today?

Maria Fitzgerald: No, after we had met. He said that there would be a meeting today, and I said that you had said that there would be a meeting on the 22nd, and he said, well it will be on the 11th, so here I am. I asked him did I need to bring anything, and he said no.

Whitney Singleton: And you don't have a copy of this report?

Maria Fitzgerald: No.

Vice Chairman Sturniolo: Has he contacted you recently?

Maria Fitzgerald: No.

Vice Chairman Sturniolo: In the last two days?

Maria Fitzgerald: No.

Whitney Singleton: The proposal that you have is not permitted in this building. There is a special setback that is specific to religious uses and school uses. It has a heightened setback. Instead of having a ten foot side yard setback, there is a 50 foot side yard

setback. There is also a requirement that for a school use like this, you need to have a Special Use Permit which requires a public hearing. This Board cannot conduct a public hearing, and this board cannot grant you any approval while you have something that is not conforming with the site if you do not have the authority to waive that provision, the fifty foot setback. The building is 36 feet from the side property line. It needs to be 50 feet, and this board is not the board with authority to waive that requirement. Even if they wanted to with all their might, they cannot do that. And that's what Austin Cassidy's memo was to apprise you.

Maria Fitzgerald: And why didn't Mr. Cassidy tell me this right up front?

Whitney Singleton: I don't know that he caught it first time around.

Maria Fitzgerald: And are we talking about the playground, the fencing, or are we talking about the building?

Whitney Singleton: The playground is a separate issue that I won't get into. We're talking about the building itself. It's too close to the property line.

Chairman Cosentino: It can't be utilized for what you want it for.

Whitney Singleton: I called Mr. Cassidy today to inquire, I left him a voicemail as to whether or not he is going to be contacting you in this regard, because I was under the impression that you were put over to the next agenda. I saw that there was a report in here, but it didn't appear as you were on the agenda.

Chairman Cosentino: I put her on the agenda for the 27th.

Whitney Singleton: We wanted to apprise you of this as soon as possible.

Maria Fitzgerald: So what do I do? Can I go for a special permit?

Whitney Singleton: You can't go for a special permit for this board while you have something that is not compliant. At a minimum, you would have to get a variance from the Zoning Board of Appeals. Then you would have to come back to this board and then you would have to have a public hearing for a Special Use Permit; then the board could entertain it, if you got the variance from the ZBA.

Maria Fitzgerald: And how long do you think that would take?

Whitney Singleton: Honestly?

Maria Fitzgerald: Yes.

Whitney Singleton: Three months. The Zoning Board only meets once a month. The other option that you do have available to you, and I don't know if it's viable from your business plan or anything else is to simply conduct the activity that you're proposing within the existing building, the main building. You already have approval from this board for that, and you would not need to come back for that.

Maria Fitzgerald: Yes, I know that.

Whitney Singleton: I'm just trying to map it out for you as best I can, and I don't know what, if you were to go to the Zoning Board of Appeals, they look at five criteria in doing an analysis like this for an area variance; and one of the criteria will not fail to your application certainly is something that they consider is whether or not it is a self-created hardship. You go to a site, knowing full well what the zoning is before you go there. It is presumed that you created the hardship yourself. However, by the same token, special accommodation is generally given for schools and churches. So, I'm not advising you what to do, I'm simply telling you that there are a lot of considerations that go into it, but the time frame to do this would be fairly lengthy, and I know that the Planning Board chairman wanted to make sure that you were apprised what was going on as soon as possible.

Maria Fitzgerald: So can you tell me about the playground? I did get a permit to do the playground, and I'm wondering now, why I can't.

Chairman Cosentino: You have a permit to do the playground in back of that building?

Maria Fitzgerald: Yes.

Whitney Singleton: I would have to confer with the building inspector on that as to whether or not that would require a site plan approval by this board, but obviously if you have a permit for a playground, for a use that is not going to go into the building it seems...

Chairman Cosentino: It would be null and void.

Whitney Singleton: I don't know about null and void. If you'd like to confer with me and the building inspector tomorrow; whatever time is convenient for you, I'd be happy to conference call or sit down with you. I'll also give you a copy of the building inspector's memorandum.

Maria Fitzgerald: I have to tell you that I am so surprised by the conduct of the whole procedure. I just can't believe it.

Stanley Bernstein: Getting back to Coolidge, are we going to discuss that at all, or just read it and let it sink in? That really is a park, and they want to put an enormous nail salon there.

Chairman Cosentino: I've had problems with that. Shouldn't that come before this board if it's a site plan renovation?

Whitney Singleton: This goes to somewhere along the same lines...do you want to discuss this with me afterwards?

Chairman Cosentino: Yes.

Doug Hertz: I have one item that's not on the agenda. There is an interesting article in the New York Times this weekend regarding moratorium in various municipalities in Westchester on banks. Bronxville I believe was cited, and Rye was cited as either having a moratorium or having restrictions because they are like us seeing this absolute proliferation of banks pushing out small mom and pop shops. So a number of municipalities in Westchester have either had a moratorium on new banks opening within the Village or restrictions such as they have to be certain distances away; whatever they may be. I, for one, think that we probably have the highest density of banks per square inch probably in any town in Westchester and would like to ask if we could look into what some of those regulations are, and if they seem appropriate, maybe possibly recommend or refer this to the Village Board as a possible recommendation from us; that maybe this is an appropriate thing to look into.

Nanette Bourne: Both of those communities are regulating banks and real estate offices.

Chairman Cosentino: What about nail salons?

Nanette Bourne: No, nails salons are a necessity. But they are really destructive to the pedestrians and what creates a vibrant downtown economy.

Doug Hertz: So, my suggestion would be, and I don't know how we authorize this, but perhaps Nannette, your office or Whitney could look into what some of these municipalities have done.

Nanette Bourne: I think a request would have to go to the Village Board or to the Village Manager that this is something that you would like drafted.

Vice Chairman Sturniolo: And then you could advise of lighting standards.

Whitney Singleton: You guys over there are the ultimate say so on this, but this topic has come up before not formally but casually with the Village Board, and I'm aware that the proliferation in other communities and legislation that they are adopting to minimize or separate, but discussions that we've had are they are not an enormous traffic generators, they create a lot of available parking at night for other businesses that are otherwise vibrant at night, you have pretty limited operating hours, with the exception of Commerce, and they are good as far as mitigating traffic and parking within the community. When you think about CB1, if you can put in a soup kitchen in a closet, and you could put a Chinese Restaurant right next door to that in a storage room and generate hundreds and hundreds of people going in and out of there everyday, and the intensity; and then you look at banks. They are big, they take up a lot of space, and they are not generating a tremendous amount of foot traffic. I understand that you want to keep a vibrant downtown, but I think Mount Kisco is kind of on the other end of that pendulum swing. It's tough finding a parking space in town in the middle of the day.

Doug Hertz: I question whether we want to have more banks come in. I know that Chase is doing their review, and they are going to be closing some number of branches. I don't know if any of ours are slated for closure.

Whitney Singleton: Take that for example. Even though they haven't exactly jumped through every hoop that we've asked them to, look what's going on in Mount Kisco with Chase. They are going through painstaking details to bring their properties up to snuff, and you have a building where the former NBW was, that could probably be...I don't know what you could put on that site as of right and provide no parking.

Nanette Bourne: Its interesting as trends come and go. Maybe ten years ago Tarrytown was trying to regulate the number of nail shops, and because the economy was not great and because of lease rates, there were just proliferation of nail shops and Chinese take-out. To have too much of anything is just not good for a downtown, so that had separation requirements for Chinese take-outs and nail shops.

Whitney Singleton: Were they specific; Chinese take-out, not just take-out? That's a little discriminatory to me.

Nanette Bourne: They didn't prohibit it; it just needed to be separated.

Doug Hertz: It's like liquor stores. Don't we have rules regulating how close liquor stores can be?

Whitney Singleton: Yes, but not Chinese liquor stores.

Stanley Bernstein: There are two nail salons; one across the street from each other and one of them is enormous.

Whitney Singleton: Now we're getting back from one topic to another. We can discuss this on the record; it's just a question of whether we want to have Donna reproduce this in the minutes.

Stanley Bernstein: Are we ready to adjourn?

Vice Chairman Sturniolo: Are you finished Doug?

Doug Hertz: Yes, I just thought I'd bring up the topic and see where it went.

Whitney Singleton: You questioned whether we should bring up the topic of a moratorium. Do you think it's something that you are advocating?

Doug Hertz: I think it would be a positive. I am advocating it. I think we have more than enough, and I think ultimately it does a number of things. It drives up rents, it drives out smaller shops, and it has a number of negatives. I think if a moratorium or some regulations regarding spacing were to be put in place, we certainly are not about to lose the fifteen that are there currently. It just may prevent another five from popping up. I understand your comment about parking and I don't disagree.

Stanley Bernstein: We've already gotten that benefit from the parking by the number of banks that are there now. Anything else is self defeating or diminishing returns.

Doug Hertz: And it's more than offset by the nail salons.

Whitney Singleton: Okay. So I will convey to the board. Do you want to schedule a meeting with them?

Chairman Cosentino: Get their feelings.

Doug Hertz: Do we want to talk about this further or draft a letter recommending to the board that if it is in their power to do so we would love to see some ability to forestall more banks coming in. Or are we just asking them to discuss it?

Whitney Singleton: Right now I have a note to advise the board that you would like to only consider a moratorium regarding banks as to both the number and proximity. Do you want me to request a joint meeting with them?

Doug Hertz: No, I don't think so at this point.

Vice Chairman Sturniolo: And to act on the proposed lighting standards?

Whitney Singleton: I will initiate that.

Doug Hertz: Before we die of old age.

Motion to Adjourn: Vice Chairman Sturniolo

Second: Stanley Bernstein

All: Aye

Meeting adjourned at 10:00 pm.

Respectfully Submitted By,

Stanley Bernstein
Board Secretary