

Minutes
Work Session of the Planning Board
Village/Town of Mount Kisco
Tuesday, May 13, 2008
(Agenda 4/22/08)

Meeting called to order at 7:50 p.m., Tuesday, May 13, 2008, at the Municipal Building
Mount Kisco, New York.

This meeting followed the April 22, 2008 Planning Board Work Session Agenda.

Members Present: Chairman Joseph Cosentino
Vice Chairman Anthony Sturniolo
Doug Hertz
Joseph Morreale
Ralph Vigliotti

Members Absent: Stanley Bernstein
Sol Gibbons

Staff Present: Nanette Bourne
Anthony Oliveri
Whitney Singleton

Public Hearing (Continued):

**The Park at Mount Kisco
333 North Bedford Road
PB2008-03**

Present:

**Lester Steinman
David Stolman**

Recused:

Doug Hertz

David Stolman: The applicant has submitted an application for Amended site plan approval. in order to increase the total permitted floor area on the site from 575,253 square feet to 613,480 square feet, largely as a result of adding a second story within the Safe Haven Self Storage space, and to increase the permitted floor area of the office portion of the project from 36,485 square feet to 64,800 square feet, largely due to utilizing what had been approved as warehouse floor area as office floor area in association with The Wine Enthusiast establishment. That is what is being proposed right now. If there are no comments from the public, I would think you could close the public hearing.

Chairman Cosentino: Is there anybody out there who has a comment; for or against?

Vice Chairman Sturniolo: Since this is not a SEQRA issue, we do not need to leave the record open for a 10-day written comment period.

Lester Steinman: We will be making a SEQRA declaration on this, but there is no legal requirement that it be held open beyond tonight.

Vice Chairman Sturniolo: Thank you.

Motion to Close Public Hearing:

Motion: Vice Chairman Sturniolo
Second: Joseph Morreale
Aye: Ralph Vigliotti
Aye: Vice Chairman Sturniolo
Aye: Joseph Morreale
Aye: Chairman Cosentino

Final Action:

**The Park at Mount Kisco
333 North Bedford Road
PB2008-03**

Chairman Cosentino: We have a memorandum from David Stolman to me, and we have a draft resolution.

David Stolman: If I could just suggest, the Negative Declaration needs to be entertained and adopted prior to the resolution being adopted, so you have a negative declaration in front of you, and you have had that for awhile now. The only change I would note that ought to be made is with respect to the date in the upper right hand corner. We expected this would be adopted on the 22nd of April, and it should get changed to today's date, May 13, 2008. This is a negative declaration, which is basically a finding that there will be no significant adverse environmental impact resulting from what is being proposed.

Motion to Adopt the Negative Declaration as of May 13, 2008 regarding The Park at Mount Kisco, 333 North Bedford Road:

- Motion: Vice Chairman Sturniolo
- Second: Ralph Vigliotti
- Aye: Joseph Morreale
- Aye: Ralph Vigliotti
- Aye: Vice Chairman Sturniolo
- Aye: Chairman Cosentino

David Stolman: The next matter before you is the draft Resolution of Approval. Notably on the first page is an explanation of the project as I just read before, and then we list the application materials. Going on to the third page, we mention that public hearings were held on March 11 and March 25. We were going to be having a public hearing on the 22nd; that ought to be changed to May 13; again, today's date. Most importantly, going on to page five, you will note that the first condition has the Planning Board retaining its original jurisdiction on the project. The second condition states that all retail uses of the buildings on the site shall be accessory to the respective principal uses of said buildings, and shall be further limited to and abide by the document above entitled *Summary of Tenants with Consumer Sales as a Customary Accessory Use Incidental to the Principal Use of the Site*. That's a matter that the Planning Board has spent a fair amount of time analyzing, and that is the extent to which retail can be at the site. The third condition is basically the expiration provisions, the fourth condition says that the amended site plan approval can be extended by the Planning Board if warranted by the particular circumstances involved, and then the last condition: *Be it further resolved that except as otherwise expressly amended herein, all of the terms, provisions and conditions of the Planning Board's Resolutions of Site Plan Approval and amended Site Plan Approval, respectively granted for this Site on April 27, 2006 and December 12, 2006 and of the Board's Resolution of Special Permit Approval granted on December 12, 2006 shall remain in full force and effect, including but not limited to the required traffic monitoring and analysis program specified in said approvals, the first portion of which has been triggered by the occupancy of 200,000 square feet of gross floor area (35%) of the main building on the Site, which traffic and monitoring and analysis study shall be submitted to the Planning Board within thirty (30) days of the adoption of this Resolution of Approval.*

Motion that the Planning Board adopt the Resolution of Amended Site Plan Approval for Diamond Properties, 333 North Bedford Road, a Unlisted Action under SEQRA.

- Motion: Vice Chairman Sturniolo
- Second: Joseph Morreale
- Aye: Ralph Vigliotti
- Aye: Vice Chairman Sturniolo
- Aye: Joseph Morreale
- Aye: Chairman Cosentino

Public Hearing:

**Westchester Residence and Club
Kisco Avenue
PB2006-19**

**Present: Kory Salomone, Attorney at Law, Veneziano & Associates
Patrick Hewes, Saccardi & Schiff
Charles Utschig, CMX Engineering**

From the Public:

**James Gmelin, Conservation Advisory Council
Dr. Jill Berkowitz Berliner**

Nanette Bourne: Chairman, this is a continued public hearing, and if you wish the applicant will make a brief summary of where the project is.

Kory Salomone: We are here to continue with the DEIS public hearing and open the public hearings with respect to the special permit for senior housing as well as a natural resource disturbance permit, and I'll turn it over to Patrick to give it a brief summary.

Patrick Hewes: In summarizing the discussion from March, this is a proposal for a 129 unit senior facility between the Saw Mill River Parkway and Kisco Avenue. It is proposed on vacant land. The project is proposed to be completed with certain changes to zoning, and this public hearing that was not completed in March is pursuant to the Environmental Impact Statement process. The project is west of Kisco Avenue and east of Saw Mill River Parkway.

Kory Salomone: With respect to the special permit that we're going to need for the senior housing that's in the PRD district. Currently we're in the CD zoning district. We are in a petition with the town Board to rezone to PRD, so this is the public hearing to discuss that. We comply with all the elements and requirements for the special permit in your code except for building length, and in connection with our petition, we've also petitioned for a zone text amendment to increase the building length to accommodate our building.

Chuck Utschig: As indicated in the DEIS the natural resources on this site include a small wetland area of about 2200 square feet and an associated buffer that's almost an acre in size. We also have steep slopes on this site. The site is evenly distributed relative to those slopes, a little over 30%, there is a slope of 0-15, which is fairly flat and then progress up from there. We are proposing to disturb a small portion of the steeper slopes as part of this application and as part of the DEIS, a full explanation of those impacts is included in the topography section and the natural resource section.

James Gmelin: I spoke on this issue before, and I notice that you did get some correspondence which I won't touch on, which we feel is pretty significant, and we support the correspondence that is before you now. I want to address the wetlands issue. I have been up there three times, most recently today, and walked through the property. The last time I was here I indicated that the last time the property was inspected was in December, which was a very inappropriate time for anybody to investigate a wetland because you don't get a significance of what's going on. I question the impact statement with respect to the creation of the wetland but I agree with it now, because I went up today. It's a significant wetland, not in size but in importance. When BMW went in they disturbed the land and created quite a nice looking wetland. The importance of the wetland and the buffer surrounding it is to protect the land and the water, to forestall erosion on the property and to recharge the ground water. The DEIS said they didn't think there would be much impact and no mitigation would be necessary. I differ with that conclusion for the following reasons. We do have a wetland law as I'm sure you are familiar with. Chapter 107 of the Mount Kisco code. There will be proposed to be significant changes done to the land. Clearly what is going to be done with the cutting down of 1900 trees out of a total of 2100 falls within the definition of clear cutting the property. A permit, in the Conservation Advisory Council's opinion would be required, because a regulated activity under the code is any form of draining, dredging, excavation or removal of natural materials directly or indirectly, and that has to be done by reason of this switchback road that goes up. We are aware of the fact that the only way they're going to get that road in is because of the steepness of the slope, is the way they have it configured, but it does create quite a disturbance in the wetland buffer. It does not go into the wetland per se, but it comes pretty close to it, but it hits the buffer. There are some things that the permitting authority, which is the Planning Board, can consider. One of them is the availability of technical improvements, safeguards or other measures that could feasibly be added to the proposed activity to mitigate or eliminate any negative impacts. In my viewing the area today, there is what appears to be an old, almost like slues way coming down, ending directly across from Holiday Inn Drive, which you may be familiar with. At one time, there was a significant run off from up on the mountains, so somebody says the need to put that slues way in there. However, above that, where the BMW property is and the wetland has been created, there are various eroded areas coming down from

on top because of the steepness of the area. Some of them impact that wetland that's there right now, and some of them go alongside of the parking lot BMW has created. We submit what will happen is that when 1900 trees are taken down, that will have a significant impact on sediment going into that wetland. It may not directly, but it will be indirectly be impacted, and this has to be mitigated. There is no way they can avoid that. One way you do it is by relocating the wetland. Under the circumstances it can't be done; there is just no room for it. Another way is by making the applicant make plantings that will replace what is there. I am assuming that is going to be done, but I think the applicant should make it very clear that in replacing any of the proposed trees or vegetation that is coming down, this type of planting would significantly forestall the erosion and creation of sediment in that wetland. One of the things that the Board can require under the code of 107.8F9 is replanting of wetland vegetation. If the Board was to go ahead and grant the permit, that should be a requirement. I don't know if the applicant has made another investigation of the property since December a year and a half ago. If they have I would be interested to see what they saw, because what I saw today was animal life in that area. There were deer tracks around the pool and what I believe to be the remains of egg masses for amphibians and frogs. The words amphibians and frogs are not even mentioned in the DEIS when they are talking about natural resources, and last time I looked they are animals that would be severely impacted by anything that has a deleterious effect on this wetland. One final point in the DEIS under water resources and wetlands; it is stated and it is acknowledged "that the proposed development would significantly alter the amount of surface water currently entering the wetland; however, no significant adverse impact is expected to the wetland because this is not the primary form of wetland hydrology." That may be true because of what's been done by BMW that most of the water that has created the pool is groundwater. But the minute those trees are taken down there is going to be more than just groundwater there, there is going to be a significant amount of surface water that is going to inundate that pool and we think that that should be addressed.

Chairman Cosentino: Thank you, Jim and the CAC for that report. It was very implicit and good reading. Is there anyone else from the public that would like to speak?

Dr. Berliner: I am Jill Berkowitz Berliner. I have lived in Mount Kisco for about 14 years, and I've been following the whole development of the Westchester Residence and Club, including when it was previously Town and Country Home. I am a podiatrist in the community and had been treating patients at the prior residence and am assuming I'll be treating patients at the next residence, but I'm not speaking as a podiatrist here or as an environmental expert; although I do consider myself a pro-environmental person. As all this has been developing I have noticed that the applicant in my interpretation has been very cooperative in trying to formulate a facility that will satisfy the town's requests and environmentalist's concerns and has been extremely patient in this more than ten year process. I am pretty confident that they are willing to remediate whatever environmental issues are presented to them. I have noticed that there are other commercial buildings that have gone up in the adjacent areas to where the Westchester Residence is planning to be built, and although I'm not an engineer, I can certainly say that similar issues must have been brought up with those projects; the BMW project and that green "James Bondesque" cantilever out over a cliff building, and that those slope grades I'm assuming, were as large or larger than the grades that are involved in this project. I am wondering if there is something else going on besides strictly environmental issues. I'm not saying discrimination, but it seems to me that this project has gone on for an incredibly long time while other projects have been built on that hill and didn't take this long. I don't know what the problem is, but it seems to me that a residence of this kind would definitely be an asset to this community. It's an upscale community bringing in active adults who will contribute to the economic base of the town, providing tax revenues for the town and not really being any kind of burden to the town as far as adding to the school district, etc. I don't know if that makes any impact, but I am in support of this and I would like to see it come to a happy conclusion for the environmental people, the people who will eventually be moving in, and the people who live in this town and would like to see this kind of community settle into this area since everybody will hopefully eventually become a senior. It's a growing population and they do need someplace to live.

Chairman Cosentino: Thank you for coming out tonight. Is there anybody else for or against?

Motion to Close Public Hearing with a 10-day Written Comment:

Motion: Joseph Morreale
Second: Doug Hertz
Aye: Ralph Vigliotti
Aye: Doug Hertz

Aye: Joseph Morreale
Aye: Vice Chairman Sturniolo
Aye: Chairman Cosentino

Nanette Bourne: The next step in the process is for the Planning Board as Lead Agency to consider what substantive comments are. You are in receipt of comments received from Westchester County, Anthony Oliveri, and there are some draft discussion points that have been provided by my office. It would be appropriate at either this meeting or the following meeting to take those into consideration and begin drafting what your substantive comments are. The substantive comments that you raised are those that need to be addressed in the FDIS along with all of the rest of the comments that have been received and will be received over the next ten days.

Chairman Cosentino: Because of the lengthy agenda this evening, I would rather hold this until the next meeting and give the Planning Board members time to read on the comments that we received.

Doug Hertz: Our substantive comments; if those same comments have been addressed as questions, either by someone else in the public or the written correspondence, is it important for us to reiterate that or will it automatically be addressed?

Nanette Bourne: It underscores the importance of certain issues. If there are five agencies as well as yourself that consider the amphibian issue of particular importance, the FDIS will define what ever statements or issues are raised and it will identify the number of comments that have that issue.

Kory Salomone: May I ask; the Natural Resource Disturbance public hearing and the Special Permit Public Hearing; are they going to remain open or does the Board wish to close them as well.

Whitney Singleton: We can keep the Natural Resource Public Hearing open because there are some issues that I wanted to address, relative to Mr. Gmelin's comments, and have them coincide with the Board's comments at the next meeting.

Vice Chairman Sturniolo: Nannette, do you want our individual comments sent to you in advance so you can incorporate it in the package?

Nanette Bourne: We provided the talking points, which were an outline of some of the issues. When you have a chance to digest the EIS as well as the comments that are coming in, you can comment on those and either have them be elaborated upon or deleted. It was a structure for you to begin. I wasn't planning on revising those for the next meeting, but however you want to give them to me.

Chairman Cosentino: There is a lot to read here, as you know. I say "the next meeting" but there is a possibility that it won't be. Is there a clock running here?

Nanette Bourne: There is, but you can extend it with mutual consent of the applicant.

Chairman Cosentino: I'm sure they won't have a problem. We'll see how it works out and we'll try for the next meeting, but if not, we'll do it for the following meeting.

Kory Salomone: And the Special Permit as well?

Chairman Cosentino: Yes.

Kory Salomone: Thank you very much.

Site Plan Compliance:

Letters from Austin F. Cassidy, Building Inspector:

195 North Bedford Road
Tax ID: 69.58-1-2.1/2
Letter dated April 11, 2008

Angelo and Carmelo Luppino
15-21 Armonk Road
Tax ID: 80.73-1-1
Letter dated April 14, 2008

Louis DiLisio

486-488 Lexington Avenue
Tax ID: 80.64-1-9
Letter Dated April 15, 2008

Memo from Francesco Mignone to Mr. Cassidy re 55 Main Street

Correspondence:

Letter from Steve and Peter Finklelstein dated March 2, 2008
Re: 156 North Bedford Road

Vice Chairman Sturniolo: Reference in the letter is made that the property owners have engaged the services of John Slaker. That is an incorrect statement. Mr. Slaker has not been engaged to provide any landscaping services to the property owners.

Chairman Cosentino: We will continue with the agenda for May 13, 2008.

Respectfully submitted,

Stanley Bernstein
Board Secretary

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