

Minutes  
Meeting of the Planning Board  
Regular Session  
Village/Town of Mount Kisco  
Tuesday, May 11, 2010

Meeting called to order at 7:50 P.M. at the Municipal Building Mount Kisco, New York by Chairman Cosentino.

**Members Present:**     **Chairman Joseph Cosentino**  
                              **Vice Chairman Anthony Sturniolo**  
                              **Joseph Morreale**  
                              **Sol Gibbons**  
                              **Stanley Bernstein**  
                              **Doug Hertz**  
                              **Ralph Vigliotti**

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

**Acceptance of Minutes**

**April 13, 2010**

**Motion:**     **Stanley Bernstein**  
**Second:**    **Joseph Morreale**  
**Aye:**        **Sol Gibbons**  
**Aye:**        **Doug Hertz**  
**Aye:**        **Joseph Morreale**  
**Abstain:**   **Vice Chairman Sturniolo**  
**Abstain:**   **Ralph Vigliotti**

**Final Action:**

**Filippo Simone**  
**127 Barker Street**  
**PB2006-05**

**Present: Daniel Simone, Engineer on behalf of Filippo Simone**

Nanette Bourne: This draft resolution was reviewed by the Planning Board on March 23, 2010. It reflects a few comments by the Board, which are underlined, along with the changes that we requested. In addition, it was noted that the applicant had not concluded his time with the Architectural Review Board, (ARB) and he was instructed to get approval by the ARB and come back before the Board. The date of the ARB meeting is included in here and the changes that were requested at the last meeting are also indicated.

Chairman Cosentino: This is the final resolution.

Doug Hertz: When re-reading the conditions, something strikes me as possibly vague. Conditions 22 – 26 talk about blasting and rock removal. Without really shifting gears, we talk about backing up of vehicles onto Barker, no standing/parking, etc., on Barker. All these earlier conditions talk about the construction activities, and then we

move into sort of permanent restrictions and we don't quite state it. As I read through this it looks like we talk about all the various construction issues: erosion, sanitation, limit of construction activities, blasting, backing up of delivery vehicles. We should clarify Conditions 27 and 28 to say "both during construction and/or once in operation." Whatever language would make that clear. It doesn't limit it at this point, but if it's narrowly read it could be argued that it is just about the construction. We really mean them as permanent conditions.

Austin Cassidy: "At any time" to be inserted at the end?

Whitney Singleton: It is already prohibited under the code for a commercial site.

Doug Hertz: As long as we are calling it out.

Nanette Bourne: For this one and for additional subsequent resolutions to pull the construction section out and identify it as a separate section and to modify this, if we just took Conditions 27 and 28 and moved it up so we're not changing anything.

Doug Hertz: Correct. Also, we have five different sections talking about blasting. I wonder if it could be just one section. They really don't exist on their own.

Joseph Morreale: The concern I would have about moving the two and separating them is that, in fact you want them to apply during construction. You really want these to read; "during construction and after completion" you want these two conditions to hold. Then you've linked both the construction phase and the after phase. If you move them away from construction, one might not get the idea that you cannot back up or park on Barker during construction. They might think that is exceptional. I think it is necessary to put both in.

Whitney Singleton: It's not harmful to put it in; it's already prohibited in the code.

Joseph Morreale: Whether there is construction or whether it's just a regular road? Period?

Whitney Singleton: It's what we call unprofessional ----- and suspenders.

Doug Hertz: If it's prohibited by law, then it's an issue of whoever backed out. If it's a condition of the site plan then it's a violation of the site plan if it's not being followed.

Whitney Singleton: There is actually a provision in the code relative to supporting parking for site plans.

Doug Hertz: I defer to you.

Whitney Singleton: I think it should be put in, but I wouldn't lose sleep over it. I think you should word it just as Dr. Morreale pointed it out.

Joseph Morreale: During construction and after completion of the project or at any other time.

**Motion to Approve Application PB2006-05 - 127 Barker Street Office Building – Simone**

**Motion: Doug Hertz**  
**Second: Vice Chairman Sturniolo**  
**Aye: Sol Gibbons**  
**Aye: Joseph Morreale**  
**Aye: Ralph Vigliotti**  
**Aye: Stanley Bernstein**  
**Aye: Vice Chairman Sturniolo**  
**Aye: Doug Hertz**  
**Aye: Chairman Cosentino**

Daniel Simone: Thank you very much for all your help.

**Conceptual Application**

**Paul Krause Architects**  
**(Michael Tierney, Architect Representative)**  
**130-132 Main Street**

**Present:**

**Paul Krause, Paul Krause Architect**  
**Michael G. Tierney, Paul Krause Architect**

Michael Tierney: We represent KH Realty, the old Piero's Brass Horn Building. We were here in February. We have a Master Plan of expanding the building. We decided to reorient and just work with the footprint we have. On the rear of the building there is an existing cooler and entry area that are not only in disrepair but also essentially an eyesore. We want to clean up the back of the building, essentially use half, about 60 square feet of what is the existing cooler, relocate it up against the building and plan to clean up the rear elevation. We're asking for your guidance on doing this.

Doug Hertz: Please point out what you're referring to when you say the cooler.

Michael Tierney: There is an entryway on the side and then the rear portion that is almost up to setback – it's only two feet off of setback – there is a big walk-in cooler. It is in disrepair and not exactly the prettiest of things. We're turning it around and putting it alongside the building, increasing our setback as well as in the end, cleaning up the elevation.

Paul Krause: We plan to have the back of the building look like this. It will improve the setback here and it will make it more efficient and nicer aesthetically.

Chairman Cosentino: Is it a permitted use to have the bathrooms that are going to be downstairs?

Austin Cassidy: I have not received any plans at all for the bathrooms in the basement yet.

Chairman Cosentino: On the plans there is a handicap bathroom on the first floor and his/hers in the basement, going down a flight of

stairs for the customers. I know we had someone before us awhile back, and it was not a permitted use for some reason.

Austin Cassidy: It brings up a whole host of issues in my mind, but I think, one of which is zoning. I was aware of the proposal of shifting/reconfiguring the mechanical in the back where it presents an opportunity for more planting.

Chairman Cosentino: Our job is the safety and welfare of the people, and when I see a bathroom in the basement it brings up a red flag. That is up to the Building Inspector whether it's code or not code.

Paul Krause: I've already begun the cursory talks with the health department, and they are okay with that.

Chairman Cosentino: It may not be okay with the Building Inspector. I can understand what the Board of Health wants, but we are bound by the Building Inspector.

Paul Krause: I understand.

Chairman Cosentino: The other issue may be a dumbwaiter.

Michael Tierney: It's a platform lift.

Chairman Cosentino: This lift goes up and down. You say you are putting a prep kitchen downstairs. On the original site plan of record, we just see a few coolers down there. We have no knowledge of ever having a complete kitchen down there. As a matter of fact, I don't know if the Board of Health approved of a kitchen down there. Maybe you or the Building Department has records of that. I like the idea of the back being beautified. It's great for the parking area to see something that looks nice. I praise you for wanting to improve the back of the building. This Board needs to know, though, what else is going to be done within the building. According to your plans, you have a set of steps going down there as well. Is this beautification on the outside of the building bringing you more area to put these steps and to put the lift in?

Paul Krause: No. Those stairs are going down to the basement now.

Chairman Cosentino: They are going to stay right where they are?

Paul Krause: No. We demolished the entire building. The interior is completely demolished. We're investigating the idea of lowering the floor in the basement, so we can get more floor to ceiling height so that the stairs that are there – if that happens, and it's according to code – the stairs will be redone but they will be in the same location. These plans show what existed, and these are what we are proposing. Of course, we understand anything that we propose here will have to be to building code. Our primary purpose here is to listen to what you have to say and see what your reaction is to the simplification of the back in this manner.

Chairman Cosentino: This conceptual is for us to give you our ideas. As I stated to beautify the back of that building is a plus, but we also need to know what is going inside, if any new area is taken.

Michael Tierney: There is no new area essentially taking the existing cooler footprint.

Chairman Cosentino: I think there is more area in the basement that you are going to be using because you're putting in the kitchen downstairs.

Michael Tierney: That was always there.

Chairman Cosentino: There was not a kitchen.

Vice Chairman Sturniolo: Never a kitchen and no prep area.

Paul Krause: Is that not an issue with the building department and the health department?

Chairman Cosentino: It's an issue with area.

Paul Krause: Is it a Planning Board issue or a building code/health department issue?

Austin Cassidy: Let me interject. What I am listening to could become a zoning issue, because it could precipitate parking requirements that you cannot possibly divide. Be aware of which forum of discussion we are under, but also under what heading. Is it a building code issue or a zoning issue besides?

Paul Krause: In what way is that a zoning issue?

Chairman Cosentino: You are telling this Board that there was a kitchen down there before, prepping for pizza. Was it approved by the Board of Health then? You're coming before us now telling us that you are going to put in a kitchen, which is taking more area. That is where the Building Inspector is saying it may be a zoning issue because you're expanding the area that you already have.

Paul Krause: Are you talking about the first floor?

Chairman Cosentino: I'm talking about the basement.

Paul Krause: You're referring to habitable space?

Chairman Cosentino: Occupied space.

Paul Krause: I see.

Vice Chairman Sturniolo: Am I correct, if you move a bathroom down there you are increasing the square footage in the utilization of the entire property from what it currently was before the demolition took place?

Whitney Singleton: I don't think moving a bathroom downstairs in and of itself, increases the square footage of the building. It may increase the required parking associated with the use that is in the building.

Vice Chairman Sturniolo: Thank you. The other point is that I have been down there and whether it was legal or illegal, the only thing that has ever been taking place down there was making pizza dough.

There was no prep area at all. The site plan of record, which unfortunately is not here tonight, clearly demonstrates what I just said. There is no prep area and there never was a prep area. It's magnanimous of you to want to beautify the exterior of the building. Let's focus on the heart and core of the issue and not necessarily hang our hats on making something beautiful at the expense of something else. You have neighbors around you that are looking just for this specific thing to pick up on, and that is what I perceive the illegal preparation of food that has never been authorized. Whether the previous owners did it legally or not, and assuming they did it illegally, that just doesn't justify a continuation of a wrong act.

Chairman Cosentino: This is a conceptual. We are just bringing these points out to you to work this out. As far as the bathroom being downstairs you are going to have to deal with the Building Department on that. We bring this out to you so you know what you have to do and the Building Inspector will decide on that.

Paul Krause: As far as kitchen prep – or whatever we want to call it – in the basement that we are proposing, who do we talk to about that?

Chairman Cosentino: We are just bringing it out. It is the Building Department's job to follow it through.

Vice Chairman Sturniolo: Again, a prep area does not exist on the site plan.

Joseph Morreale: I was going to suggest a before and after in terms of square footage and occupancy because as soon as I hear you start talking about bathrooms downstairs and kitchen preparation downstairs it makes me think you are going to expand the upstairs dining.

Michael Tierney: No, in fact right now there is less. There are 74 people now and we are bringing it down to 42.

Chairman Cosentino: He is allowed more than what he is putting in.

Michael Tierney: Essentially all the seating area is reduced because we're increasing the size of the kitchen that was there.

Joseph Morreale: Why are you moving the bathrooms downstairs and why is the separate kitchen facility in the basement? What would be the need for that if you're making the dining part smaller?

Michael Tierney: It is the way in which the possible chef is going to cook. He wants to keep things separate.

Paul Krause: If you read the letter sent by our client and the owner, Jim Atwood, who is here this evening, it is the way they think of creating the food with a kitchen that is open to the eating area.

Michael Tierney: It's a new concept of being open, showing how it's healthfully produced, how everything is clean. Not that they're hiding anything in the basement. It's more of the fact that things are separate.

Joseph Morreale: It is and it isn't, to me, because here again you could be sacrificing health and safety of the patrons for the sake of making it more dis-conceptual dining.

Paul Krause: How so?

Joseph Morreale: For example, take the bathrooms. If they are on the first floor, and you have handicap and his/hers on the first floor, then people don't have to go up and down stairs.

Chairman Cosentino: If I may interject, I think over so many customers you need a separate his/hers. Right now they do not have that. The size of the ADA on the first floor will probably be the same size as if he had two bathrooms.

Joseph Morreale: I'm not disagreeing with that. Understand that at the same time, in the concept you're expanding the preparation area and reducing the number of and area for patrons. Therefore, there is a substitution of space for preparation for patrons. That is agreeable to you as long as you put the his/her bathrooms in the basement. I would be concerned about the fact that that is the trade-off you're making. By reducing the dining space you could put the bathrooms upstairs if you reduced the preparation space upstairs. You are making a business decision, but you may be creating a health hazard.

Chairman Cosentino: In all fairness, if I may, if it was legal, safe, permitted and according to code, I would sacrifice the his/her bathrooms in the basement in order to beautify the back. He is saying there is a possibility if he can't have this, he can't address the back. I think it is important to the village that the back is beautified. It is ugly. I have to leave that in the hands of the Building Inspector to determine whether it's a legal use or not within the basement. Not to say that you are wrong or right.

Joseph Morreale: It's a different perception.

Chairman Cosentino: I agree, and I would really like to see the back of that building beautified. It's needed it for the last 50 years. In saying that, I have to leave a lot of this up to Mr. Cassidy to determine the code and what could and could not be done. I want that to be clear among my fellow Board members.

Vice Chairman Sturniolo: The bathroom is still a separate issue from the utilization of space in the basement for food preparation. That does not exist currently on the site plan.

Paul Krause: Does that mean that if this meets building code and then Board of Health approval, you would not have an issue with having prep area on the lower level?

Chairman Cosentino: As long as he determines that it does not take any space for parking.

Austin Cassidy: Let me re-emphasize. There are two categories of technical control. The first, which is pure nuts and bolts and the zoning code, which has impacts that you may not be able to deal with. To me the fly in the ointment in the scheme of things at the moment, is that by bringing the public down into the basement, by creating occupied utilizations in the basement that may not presently be there

legitimately in any way, then you are increasing parking requirements that you cannot satisfy. That is a technical point. On the reverse, there is plumbing on the second floor and a stairway. In theory you could have bathrooms upstairs and not precipitate additional parking requests, because the space already exists upstairs.

Paul Krause: In terms of this issue of the basement and prepping or kitchen facilities, are you saying that since there is a document which we have not seen that says there was never one there, if we want to put one there we will have a zoning problem?

Austin Cassidy: You're creating occupied space. Listening to this it sounds like the last planner of record has that as being scourged. If that is the case, in creating occupied space again you're creating a parking requirement issue.

Paul Krause: Which we can't meet.

Doug Hertz: You may be able to meet it. If they currently allow for X amount and they are cutting down the usage, you may actually be able to meet it.

Chairman Cosentino: Austin brought out a very good point. You do have stairs for the his/hers to be upstairs because downstairs you're going to need a pumping system and a separate vent going all the way to the roof.

Paul Krause: That's a very good point. It's going up. It's more the issue of this prep, which is very important to our client. We all know that if we require more parking because of these calculations, we cannot get it.

Chairman Cosentino: You already have bathrooms upstairs so it will be less costly to put the bathrooms upstairs. The plumbing is already there.

Paul Krause: It could be a trade-off of less seats.

Austin Cassidy: Again, I don't want to protract this, I'd say simply let's start with the historical – see what the record says and then let's look at your options and any potential impacts that you don't want to face at this point.

Doug Hertz: I think the question of usage inside is just math. Sit with Austin and you'll find out whether you make or you don't. The plan in the back is currently 100 percent development coverage. Is the plan, once you turn this cooler as proposed, creating any green space?

Paul Krause: Yes. We will be able to get to the 90 percent and accomplish the zoning code requirement.

Doug Hertz: What would you imagine in that space?

Michael Tierney: Here is the A T & T building; there is a fence that comes down. Because we are also removing the exterior mechanical, there is a deck, raised platform. That is going to be gone and we are going to re-locate items on the roof to hide and clean it all up. That can end up being planting area. If we continue that towards the parking lot, we can accomplish the code requirement.



Paul Krause: There will be macadam here for service.

Doug Hertz: Is there a location for a dumpster?

Michael Tierney: It is going to be inside an enclosed room. The room is going to end up being cooled as there will be food scraps. It will be cleaned periodically during the week by a garbage disposal company. The clients will clean it and they will take it away.

Chairman Cosentino: This dumpster will be inside the building?

Michael Tierney: It's inside its own room. There will be cans.

Chairman Cosentino: Will the floor inside be all tiled so you have a drain for hosing it down?

Michael Tierney: We have not gotten to that yet, but I presume yes.

Nanette Bourne: The Board for years now has tried to encourage these double fronts and doing whatever can be done to the back of the building to make it look like two fronts.

Anthony Oliveri: The plan does point out the before and after model.

Whitney Singleton: Obviously we are going to focus on the parking requirement utilization.

Vice Chairman Sturniolo: I address this to my fellow Board members that we have to be extra careful with this food preparation area that currently is not approved. There are other businesses in the immediate area that will jump upon the opportunity and have food preparation in their basement where we have previously stated that cannot take place.

*At this point, Chairman Cosentino requested a site inspection, which was scheduled for 9:00 A.M. the following morning, May 12, 2010.*

Vice Chairman Sturniolo: How far along with the demolition are you? It seems the demolition jumped ahead of the conceptual project.

Michael Tierney: You can see from front to back. We encountered some metal lath on the block, as it is a block building. We are going to start pulling that off.

Vice Chairman Sturniolo: It's somewhat risky on your part to go through all this demolition prior to a conceptual.

Michael Tierney: We have a time line and we're trying to keep going with our client's desires.

Vice Chairman Sturniolo: I hope there is not a pre-conceived notion on your part that just because you got a demolition permit that the rest of this is going to flow along. I'm not saying its not, but you're kind of extending yourselves.

Chairman Cosentino: Your next step is to go to Nancy and come back with a formal application.

Paul Krause: Thank you.

## **Formal Application**

**Jim Han Bon Ann LLC  
117 Smith Avenue  
PB2010-7**

**Present: Frank J. Veith, Attorney at Law, representing the  
Applicant  
Thomas A. Nugent, R.A., Architect, on behalf of the  
Applicant**

Frank J. Veith: You may recall we were originally before this Board on October 13, 2009 for a conceptual application, when the applicant's request was to relocate his Sylvan Learning Center to the site in question. When we presented that concept to the Board, to put it mildly the Board was not in favor of that use for this particular site, especially given the parking configuration that exists there. Since that application, the applicant has revised his application for the use of the site as an office on the first floor, which is approximately 1,000 square feet and an office on the second floor, which is approximately 700 square feet. This particular building is in the OC Cottage Office District, which you may be aware was created with the specific intent to encourage the change from residential to office use. The original site plan that was approved by the Planning Board in 1978 was approved with conditions; one, there be an easement put in place between the then owner of the premises and the adjoining lot owner at 121. That premises is now owned by a Judge. That easement was never put in place, and in addition there was a restriction on the original site plan passed in 1978 that any change in ownership or change in use had to come back and get approved by the Planning Board. Approximately three years after that site plan was approved, the property changed ownership and the use was also changed from an office to medical offices. That owner never went before the Board, never got approval. So conceptually there is no approved use from that 1981 period to today, where it currently has no approved use. My client purchased this property in 2009 knowing that it had these issues. We then started the process of coming before the Board correctly. I put in place the easement between the two lots and we are coming before you now with the current application. We have been before the Zoning Board to discuss some of the parking issues. Currently as the application shows, the current site has four legal parking spaces in the rear. We come before this Board now asking the Board to approve the use of the premises for a first floor non-medical office and a second floor non-medical office. If the Board was not in favor of that, then a first floor non-medical office and a second floor residence. Ideally we would prefer to have it consistent, not a mixed use, but if this Board is inclined to give us the approval we still have to go back to zoning. If this Board were to approve the use, either as an office use first floor and non-medical second floor, or as a mixed use, we would still have to go before the Zoning Board for variances for parking. While we were before the Zoning Board, they did not take a binding vote on any matter but they did indicate a preference. They would prefer that, although it has no binding applicability to the Planning Board, that it be a non-mixed use. Both offices would be their preference. They thought the consistency of the usage as well. They were favorably inclined to grant the variances for the parking if we were to come back to them if you approve the use we are applying for now.

Chairman Cosentino: If it was residential you would need two parking spaces. If I see it being an office you have a secretary, clients and the attorney. You will utilize more parking spaces if it were an office.

Austin Cassidy: I believe the second floor is 700 square feet. That is essentially three parking spaces per code minimum versus the same area, two spaces for a dwelling.

Chairman Cosentino: Just looking at that perspective, residential fits.

Frank J. Veith: It would be a smaller variance that we would need, but the Zoning Board took that into account and tried to weigh that versus what is in the neighborhood; what the other buildings around have.

Chairman Cosentino: If the landlord is fortunate enough, he can get a tenant with one car and not two and it would help you out with the parking spaces for downstairs. The secretary, the lawyer and the client. I think going office space would be desirable if you have the parking, but since there is a parking problem, the residential would use less parking.

Frank J. Veith: The code requires a smaller minimum that is correct. I am not certain from a practical perspective your analysis would necessarily be correct. I don't disagree with the calculations.

Chairman Cosentino: Do you agree that they are going to have a secretary?

Frank J. Veith: We do not have a tenant yet. It's got no approved use right now. I don't disagree conceptually that that makes sense. I know many attorneys who have secretaries and some who don't. This cannot guarantee what we are going to have in there.

Chairman Cosentino: I think the residential would be better because of the parking situation. If he rents it to someone that has one automobile, it's a plus for him. Then he will have three parking spaces. I think the Zoning Board would be in favor of that more.

Frank J. Veith: You can read the minutes, but the flavor – and they were unanimous in their feeling – was that they would have preferred not a mixed use. They went to the site, saw what was next door and how the same size building and lot is two offices on the first and second floor. The building on the other side is similar; there are no residences in that area for that reason. I certainly don't want to quote them, but I saw the minutes from the Zoning Board and it's pretty consistent they would prefer one use.

Doug Hertz: I think its better planning to have this as office space where that is possible. Why don't we look for a moment at what is possible with regards to parking? I'm looking at your plan. I cannot for the life of me see how you can use spot number six and get car number five out. Clearly you cannot back it out and turn because there is no room without hitting this car, and you still can't turn. You will have to back all the way out this way and in. I don't think half the people in this room would do that successfully, let alone on a daily basis. I can certainly see how you might get five in here. I think six is wishful thinking. This brings up a host of other questions like what happened to the buffer space. What happened to the stockade fence

that was there? How are you going to prevent those cars from going over that existing retaining wall?

Austin Cassidy: Having been at both meetings, I am totally confused right now. The way this was left in the Zoning Board forum, you were coming to the Planning Board with a fully compliant parking plan for the maximum number of spaces that you can install compliant with. Is that correct?

Frank J. Veith: Yes.

Austin Cassidy: So, the number of spaces before this Board that are compliantly configured is what?

Frank J. Veith: Four.

Austin Cassidy: Thank you.

Doug Hertz: Aren't spaces one through five on your proposed compliant?

Anthony Oliveri: The plan is a little confusing because it shows existing parking stalls for them. I took that as being the existing plan, the proposed being the six. I'm not sure what the six is.

Austin Cassidy: Please identify for the Board what plan you want to put before this particular?

Thomas A. Nugent: The one with the six parking spaces.

Chairman Cosentino: I don't think the one with the six is going to work.

Austin Cassidy: It is totally incongruous with the position of the Zoning Board.

Doug Hertz: In what way?

Austin Cassidy: In the initial whereas relative to the Planning Board's resolution. It was that the maximum number of spaces that would be able to be provided would be four. There was a variance window of two spaces.

Whitney Singleton: Perhaps we can back up a little bit further. In the presentation to the Zoning Board of Appeals there was discussion about how could you minimize the extent of a variance by maximizing the number of spaces. However, it became evident as you look at the development coverage for this particular site that they are already in excess of what is permitted under the code. The Zoning Board felt a degree of comfort in granting relief from the parking requirements physical constraints of the site. However, they did not wish to put any constraints on your board as to how to best design it. The way it was left at the Zoning Board of Appeals was to go back to the Planning Board, design a layout that works from their perspective which is workable, and at the same time try to minimize the number of variances that would be required. One of those variances that you're going to be looking at is if there is any increase in development coverage; you're going to be looking at further variances. I thought

when they left it was very clear; whatever you come in with, make sure it's compliant so that there would be fewer variances.

Chairman Cosentino: In stating what I did, because I preferred residential, downstairs with the two parking spaces – even though it's going to be office – you are going to have the same problem downstairs as you have upstairs. I overlook that right now, but you don't want to compound the problem with the other office upstairs. I'd rather have office and office, but I'm trying to use common sense here with what is going to work. That is the reason why I said the two spaces for residential, or someone that has one car, works better for you; not that it might be the right thing to do.

Vice Chairman Sturniolo: Let's not forget that the words client and attorney can be pluralized.

Chairman Cosentino: Yes, as in a closing.

Doug Hertz: I'm confused. If we believe it is only possible to put in four compliant spaces here without creating additional coverage, they have a unsigned variance for two additional spaces?

Whitney Singleton: There was a very clear indication given to the applicant and staff that the Zoning Board of Appeals would likely act favorably on a request for -----, however they did not want to tie it to a particular plan, because they wanted your Board to have the flexibility to distribute the layout. When your board feels comfortable with a design for this site which is otherwise compliant, whether it's two parking spaces or twelve parking spaces, they can then go back to the Zoning Board to seek relief.

Joseph Morreale: Why are we presented with the six parking space diagram?

Chairman Cosentino: We were, but it's not going to work.

Joseph Morreale: Suppose they use the upstairs for attic space with no occupancy and only use the lower level for business? Does that work with four?

Whitney Singleton: Yes.

Joseph Morreale: That strikes me as your other option.

Ralph Vigliotti: That may be the only option.

Frank J. Veith: The only way it could work for more than four is we have to go back for a variance.

Chairman Cosentino: True, you are entitled to go for a variance, but they weigh the five factors. As far as hardship, as you stated, Mr. Han knew what he was buying when he bought it. There is no hardship there, but there are the five factors. We have to consider the four parking spaces.

Stanley Bernstein: We're talking about either six or four parking spaces?

Chairman Cosentino: We can only consider the four.

Anthony Oliveri: If you go to five, the development coverage will increase.

Frank J. Veith: To go to five would increase the development coverage from 68 percent to 72 percent. 60 is the match for the site. It's non-conforming to begin with.

Ralph Vigliotti: Is there a basement?

Frank J. Veith: Yes.

Ralph Vigliotti: On grade in the back?

Frank J. Veith: No.

Ralph Vigliotti: If it was on grade an option would be to put two spaces in a garage in the basement. I don't know if that could be engineered or not. We are very hard pressed here.

Doug Hertz: What really are our options? If we concur that the four spaces are the most that can be viably put on the site that would comply without increasing development coverage, what happens next?

Whitney Singleton: There is no site plan of record right now for this property by virtue of the prior variances with the change of ownership. The code requires that any commercial use in the village have a site plan. They have to get site plan approval from you anyway. They are here before you to show the existing condition of the four spaces or whatever else your board is inclined to entertain and to get site plan approval subject to whatever variances may be required by the Zoning Board of Appeals.

Chairman Cosentino: I was on the Board in 1978 when we approved the original site plan. When the new owner bought it, he used it for medical and never came back before the Board.

Doug Hertz: Is there any place to remove development coverage that would off-set that little corner to get you that fifth space?

Thomas A. Nugent: You can add some greenery where the basement access door is. It's all pavement there.

Doug Hertz: That is really the only other thing I can come up with. If you can not increase or decrease the development coverage in any way, then you can make that five work.

Austin Cassidy: The Zoning Board had the abutting property owner attend their public hearing and they had very specific concerns. Subsequently, the ZBA posture would not support anything that brought site utilization any closer to the person abutting it.

Doug Hertz: I think we are going to be at that four.

Joseph Morreale: When you came before us, is it your idea of the possibility that if you needed six spaces, that you could get a waiver of two?

Frank J. Veith: Not get a waiver of two from this Board, but in general.

Joseph Morreale: You've been trying to tell us that you know you need more space and you'd like to do two stories, so if we agree with you, you can go back to the Zoning Board and ask for the waiver of two spaces. That is what I thought you were doing.

Frank J. Veith: They discussed that and gave us a sense, without binding anyone, that they would approve a maximum of two.

Joseph Morreale: So they would have gone with the equivalent square footage inside per use for six spaces with this proviso that they would waive two. We're saying that does not seem viable to us.

Doug Hertz: The one argument is that it is on Smith, which has on-street parking on one side.

Chairman Cosentino: How many square feet do you have upstairs?

Frank J. Veith: 700.

Chairman Cosentino: How many square feet do you need to get to the .70?

Frank J. Veith: Currently it is eight percent.

Chairman Cosentino: If you cut the square footage upstairs less and made it storage, would that help the situation?

Austin Cassidy: Mathematically it may. Its diminishing returns because it is a dwelling regardless of footage.

Joseph Morreale: Let's say it's an attic or storage. Then he wouldn't need anything.

Chairman Cosentino: If he cut the space upstairs in half – half office and half storage - how would that work?

Austin Cassidy: It's actually shaving maybe a point. If it's half, 350 are going to be two spaces anyway and the storage is now a space.

Chairman Cosentino: To summarize, we are at four parking spaces. We are at residential upstairs with two.

Doug Hertz: I am not really in favor of residential upstairs. Residential does not limit how many people are going to be living up there.

Chairman Cosentino: He only has two parking spaces. We are not talking about how many people are going to be living there. We're talking about parking spaces.

Doug Hertz: I don't know if that is what we want to create on that street.

Chairman Cosentino: We're not talking about people who are going to be living in the house. We're talking about how many people are going to park there. That is the issue.

Ralph Vigliotti: It would seem, Mr. Chairman, that business on the first floor and storage for that business on the second floor for four parking spaces would work.

Vice Chairman Sturniolo: The residential opens up another can of worms which we have no control over.

Frank J. Veith: The whole intent of the OC District was to create and provide incentive for the transition of certain neighborhoods from residential to office space. It seems to me that by your decision, you make it economically less of an incentive to have that happen. To have one tenant in that space, when clearly every other building of almost the exact size if not the exact size has more than one tenant, or one office on the first floor and second floor, it does not make it economically viable to do what the code is encouraging. The exact same building, same size, exact same parking space and possibly the same requirements we have within that site plan approval back in 1978 has an office on the first floor and an office on the second.

Chairman Cosentino: You may come back to us someday and we may feel that it's not adequate. You are coming in now without a site plan and this is our chance to make it comply.

Frank J. Veith: It is not consistent with the intent of the code.

Chairman Cosentino: We are going by the code.

Vice Chairman Sturniolo: We are also going by the comprehensive plan, specifically about that particular zoning district.

Joseph Morreale: So you are arguing that because there exists situations that are just like yours that are legitimate, this should be legitimate?

Frank J. Veith: No. Absolutely not. I am arguing that the intent of the zoning district within which this property lies as well as other similar or exact properties lie – if the intent is to create a commercial or a business environment for the occupants of these buildings – if all the Planning Board will allow would be one office on the first floor, I'm not sure economically how that is consistent with the intent.

Chairman Cosentino: Your relief is with the Zoning Board. You have to argue that with the Zoning Board.

Frank J. Veith: The Zoning Board has to follow your lead as to the permissive use.

Chairman Cosentino: This Board is bound to go by code, and we are going by code.

Frank J. Veith: I'm not asking for you to compare.

Chairman Cosentino: You compared it, I didn't.

Frank J. Veith: I'm saying what the zoning district is.

Chairman Cosentino: We know what the zoning district is, but within that same zoning district, you're telling us that we are not complying because it's OC and it should be "office upstairs" and "office downstairs," and we should forget about parking. I wish I could agree with you.

Doug Hertz: What is the parking count per square foot for office?



Austin Cassidy: 1 for 250.

Frank J. Veith: The first floor is 1,000, that's 4, and the second floor is 700, so it's at least 2 more.

Ralph Vigliotti: You almost need 7.

Doug Hertz: I was going with if it was being rented as a single space, but it doesn't help. If it was rented as a single space, you might need fewer vehicles.

Joseph Morreale: I suppose from an economic point of view, if you got a client who needed the storage space and did not want another business above him or her, you can charge them a higher rent. That makes it economically feasible.

Ralph Vigliotti: Also if you have a client that requires storage. If it's an architect it could be a lot of storage.

Frank J. Veith: There is a third floor with storage as well and you can walk right up to it also.

Chairman Cosentino: Again, we are talking about four parking spaces and the possibility that the ZBA is going to give them a relief.

Austin Cassidy: The ZBA has indicated pretty unanimously that it is inclined to grant up to a two-space variance for a mixed use of the site.

Chairman Cosentino: It is a possibility that he can get a variance for two parking spaces, but that doesn't mean there are two parking spaces there. We are still dealing with four.

Anthony Oliveri: Another thing to consider is that I believe you need at least one handicapped space here. Now you're talking about an eight-foot aisle that has to fit there as well.

Chairman Cosentino: So you will be missing another space if you put the handicapped in.

Anthony Oliveri: There is some disagreement as to whether the handicapped is required. I will leave that up to the Building Inspector.

Austin Cassidy: I will look at it with respect to the nature of the use of the size of the spaces. I will get back to the Board on that.

Ralph Vigliotti: What is there now?

Frank J. Veith: It is unoccupied.

Doug Hertz: Are you concerned that you would try to rent out these spaces to these two potential offices and not have parking to handle them? What happens on a functional basis?

Frank J. Veith: The same thing that happens to the space next door.

Doug Hertz: Right now they can park in your space because there is nobody there.

Frank J. Veith: They could, but that is not what they do. They are parking in their five spaces as well. They have essentially the exact same layout.

Joseph Morreale: What kind of business are they?

Frank J. Veith: Two law offices. One lawyer on the first floor and two on the second.

Chairman Cosentino: When their client and their secretary comes, they park on the street.

Ralph Vigliotti: At some point we run out of street parking even if we had it. On a weekday there is no parking, as there is only parking on one side.

Stanley Bernstein: I don't like the idea of mixed use. I think it should be two offices. If there is anything that we could possibly do; if we really think hard and work together and try to get this resolved, I would much rather see two offices.

Chairman Cosentino: We all want to see two offices, but we are trying to make it work.

Stanley Bernstein: I know it's a difficult situation, but we have to think of a some sort of a solution. On-street parking is difficult there, it's true. You can't chase him away.

Frank J. Veith: Also, some other buildings pre-dated your current parking requirements and their lots are set up in such a manner that they don't have the distance between spaces that were now in trying to be in compliance with and they can fit more cars in the same amount of space that we have, the way they've lined their lots.

Chairman Cosentino: Until this Board or you can think of something more, unfortunately I don't think two offices fit. On the other side of the coin, even if it was residential, they could have three cars. Either way I think he's entitled to have something there, but how can we fit this in without going against the code? Austin, maybe you can sit with them and think of something?

Austin Cassidy: I sat down about four times with them. Here is a synopsis: it is a grossly under-sized lot. There are about three of them on the tail of Smith Avenue on the north side. That is because all the other lots on Smith Avenue back up directly to the lots on Gregory, so they are far deeper with more land area, etc. Those conversions went well, and you have physical land to support the conversions. Here, between Gregory and Smith Avenue, there is an intervening street off Lexington Avenue, Maplewood, that foreshortens these lots from adequate. This particular lot as well as the others are developed to their maximum, beyond what is allowed in terms of physical anything on the site. In my opinion, you have no options. The only thing physical left is interior utilization. There are legal options for variances in which the requirements get varied. The degree of the variance – the Zoning Board was very cognizant of the percentage. When you start getting a lower variance for three spaces out of a requirement of seven that is a pretty substantial parking variance. A parking variance is one of the toughest variances to get in town; however, this is a particularly unique site. The other thing we

have not even brought up because we don't want to complicate issues, is that the written word also reads a five space proviso that somehow became applicable to office in addition to medical. Numerically it requires much higher but the Zoning Board is of the opinion that that is not applicable in this scenario. So we are dealing only directly with the square footage only. The bottom line is the Zoning Board had said in a perfect world they would like to see this 100 percent office. You are saying the same thing. The issue left is a degree of variance that everyone is comfortable with. One of the critical reasons why this is here is because the Zoning Board has clearly communicated at length it's understanding of the uniqueness of the sight, and it's open-mindedness to granting a degree of variance. However, in acknowledging that, the Zoning Board has said, "but we are not planners, so we are not going to plan this site – put this space there." That is why it's here. The caveat was this was to come here with a fully complying plan to the maximum one could engineer, and you take it there from a planning perspective, so they could return to their forum relative to the amount of relief that would be necessary to accomplish that.

Chairman Cosentino: Nanette, I would like to hear from you on this, as you are a professional planner.

Nanette Bourne: As I stated in my memo, as far as the use and you're trying to calm the uses on the site, not create potential conflict, and I think there is a very potential for parking and circulation and intensity conflict if you're going to mix both an office and a residential use. I think, as Austin very eloquently stated, this is a grossly undersized parcel, and we're trying to make the best of what is a very compromised site, whereas the sixth parking space does not work for a whole number of reasons, the least of which, they have bollards in the way that have to be moved. The sixth space does not work in any way. In trying to maximize the number of parking spaces, if you were to maximize it out as I see it, it would be five spaces and create a very lush edge in place of the setback that is required. You add that fifth space, which gets a little bit more comfortable in terms of parking. It's not going to be the worst case scenario, but I think you can deal landscaping wise creating an edge condition that adequately buffers and separates the uses. I think you can have five fairly compliant stalls. If you look at the partial plot plan – what you refer to as the plan that had the six parking spaces – x out space number six, and you have five parking spaces. You only need to have 24 feet of depth from the end of the parking space to the building. You actually have 29, so you could even pull those parking spaces back so that you can have a fence and some landscaping that separates the uses. You still have to look at maneuvering the cars out to avoid the bollards. Or maybe you just have to re-locate the fuel. It's not perfect, but it gets five spaces, which is better than four. You have an office, a non-residential use next door, so you don't have to be as concerned about the landscaping, but you still have the opportunity to create some kind of dense green. You save the green in the front and you simplify the site.

Doug Hertz: Don't we allow for long-term parking for employees at the spaces that are nine feet? These are at 9.6. You can certainly put one transient space in.

Nanette Bourne: I think five is still the most you can get.

Doug Hertz: You could possibly have less development coverage, not push it as far to the edge.

Nanette Bourne: The edge that is of more concern is the edge to the rear next to the residential. That is not going to get used.

Frank J. Veith: As a follow-up, the applicant is prepared to remove the oil tank, abandon it from its current location in order to accommodate the parking situation.

Doug Hertz: I take it its underground?

Frank J. Veith: Yes, it is. Not quite in the middle, but close to it.

Anthony Oliveri: I would suggest they come back with the four or the five. The five sounds like it could work. It might work better in terms of the types of variances. You would need a development coverage variance, and come back with a compliant site plan. In my memo I stated there are certain required elements of the site plan that you need to fulfill. You need to come back with a full site plan with details: the curb, the striping, etc. If you consider any increase in impervious area, technically you have to provide storm water detention. It may be a very small amount, but consider that as well.

Frank J. Veith: We have an existing drainage system with a grate in the middle of the parking lot.

Anthony Oliveri: That goes directly out to the storm drain?

Frank J. Veith: I believe it does.

Stanley Bernstein: Since this is not a Main Street area, you don't need a stormwater pollution prevention plan.

Joseph Morreale: If I understood Nanette's idea, they would need a landscape plan as well.

Chairman Cosentino: Yes. Landscaping and low lighting.

Chairman Cosentino: We will see you when you return.

Frank J. Veith: Thank you very much.

### **Formal Application**

**BMW of Mount Kisco  
250 Kisco Avenue  
PB2009-16**

**Present: John Slaker, Landscape Architect  
Rich Stavridis, Owner, Premier**

John Slaker: Good evening gentlemen. We are back before you tonight. We were here two weeks ago with our four-car display area, and in the meantime we have completed the plans and are here tonight to request a public hearing be scheduled for our steep slopes application. Since the last time we were here, we've added a little more clarity on the grading of the walls; we've done a complete landscape plan for the property. There are thousands of flowers and

shrubs to be planted. We also re-did the steep slopes plan. Obviously this was the steep slopes area. We provided the cross-sections that show typically each of the areas. As you can see, we've tried to accomplish balancing the cuts and the fills of the walls and the way we've graded it. We are pretty close to balance with grade, but we are going to have to bring in gravel and maybe some topsoil. We do not think we are going to export or require fill other than the gravel that we will be putting in for the parking area. We did the tabulation, the application is in and we think we are ready for a public hearing.

Stanley Bernstein: Last time we discussed replacement of trees. Has there been any consideration of that? They do not necessarily have to be replaced on that property.

John Slaker: We had the village arborist give an evaluation of the trees across the front. He recommends some pruning and thinning and removal of the one oak tree in the middle and then thinning out the other so they have a better chance of canopy. In reading what he says about the maple trees, they are in very, very bad shape. Even though they are right on the edge of the right-of-way, we have to coordinate with the Town.

Austin Cassidy: I would contact Jeff Econom tomorrow regarding that.

Rich Stavridis: Obviously I do not want to replace the trees. We've actually done this before in the past when we've done our other things and gave money towards the village. Are you telling me that I have to?

Stanley Bernstein: I would say so, unless this Board votes not to do it.

Rich Stavridis: And the reason is?

Chairman Cosentino: It's not mandatory. It's up to you.

Stanley Bernstein: I think it is mandatory.

Chairman Cosentino: Is it mandatory that he replaces trees someplace else in the village?

Nanette Bourne: Yes.

Rich Stavridis: If the trees are coming down because they are diseased and have issues, and they are actually not our trees; that's our fault?

Austin Cassidy: On that note, not to speak for the village, typically if a tree has been identified as a hazard, then the village takes the initiative. You need to coordinate with Mr. Econom.

Chairman Cosentino: I apologize, Mr. Bernstein, I did not know that it was mandatory.

Doug Hertz: We talked at the last meeting of doing some elevation.

John Slaker: I tried it, and because of the way the topography is, you have four flat plains all in front of each other. You see different lines, and I don't think it gives you that sense of really what it is. I plotted it out to scale, and it's just a flat plain with three levels – street level,

the bottom of the wall, the top of the wall, the top of the next wall and the driveway. All were put together.

Doug Hertz: That is kind of our concern. I realize we are going to have a public hearing on steep slopes and not on the visuals, but they are interconnected. Part of the concern is what is going to look like to the guy on the street driving by. Is it going to feel like a series of stacked walls?

Rich Stavridis: Obviously it's going to have some depth to it because you are looking at a space there.

Doug Hertz: I know once you drive around it, you'll see the depth.

John Slaker: When I drew it, it felt like everything was right on the street, and you don't get that depth perception.

Doug Hertz: Can you draw it from an angle?

Rich Stavridis: It's going to be the rendering and John doesn't do that, unfortunately.

Doug Hertz: I don't want to spend your money, but I think we need to understand what it's going to look like.

Rich Stavridis: If you look at the renderings that we did in the past, it's basically a scaled down version of that. You're taking it from 12 cars to 4 cars, so the appearance that you have is going to be very similar, just on a smaller scale.

Ralph Vigliotti: That is a computerized rendering. Can you go into the computer and program it to eliminate cars?

Rich Stavridis: I'd do it, but it's done in Chicago.

John Slaker: He has the base and all the existing information in the computer. He'll take my grading plan; remove the previous proposal and computer generate these four cars, and then implement the landscaping. This plan is totally different than what we rendered the first time.

Rich Stavridis: I wish we could do that. I looked at it before seeing if I could blank out some of the stuff, but it just doesn't happen.

Joseph Morreale: Has this been done anywhere else?

Rich Stavridis: I know of other Land Rover dealerships that have done similar things, because they actually tried to do this to promote the visual of the car doing different things. Their cars are actually on angles, ours are going to be on a platform. Other than that, I have not seen any others. I am sure you can visualize, and hopefully we are going to be able to present it that it is going to look a whole lot better than we have right now, and it's going to showcase that area, being a beautiful site. Realize we're landscaping this whole thing.

Joseph Morreale: I don't think anyone is denying that. In fact, I applaud you for having to come to this position. We've been talking about this for months. We are trying to say we would like to see some kind of pictorial so we can see what we are looking at from the street.

It has to be three-dimensional. It cannot be two-dimensional, as that will look like a layer cake.

Rich Stavridis: So you're telling me if I do the rendering, we move ahead. If I don't do the rendering, what happens?

Doug Hertz: We are trying to look for some options.

Chairman Cosentino: Each time he does a rendering, it's between four and five thousand dollars. That is what he's trying to say.

Rich Stavridis: And I'm not supporting John at all. It's supporting Chicago somewhere.

Vice Chairman Sturniolo: Would a water color suffice?

John Slaker: You need to get everything in the proper perspective. That is the big problem.

Ralph Vigliotti: Couldn't Chicago just eliminate the other eight cars and then leave it? Then you are still seeing the layering and the slopes and the four cars only.

Rich Stavridis: I'd be glad to talk to them. It is not going to match the whole picture.

Joseph Morreale: We understand.

Nanette Bourne: You don't need the color. We would like to see everything in a perspective draw. You've provided prospects that shows the one, and if you really look at the cross sections, you're trying to turn your brain around to figure out what it looks like.

John Slaker: Maybe that is the way we could say it. If we just didn't put all the color and pizzazz, just the basics.

Vice Chairman Sturniolo: On the short EAS, should it be changed from four vehicles to currently eight?

John Slaker: Yes. I will change that.

Chairman Cosentino: I would like to set a date for the public hearing.

*At this point, a public hearing date was set for June 8, 2010.*

Anthony Oliveri: There are a number of comments in my memo that have to be addressed. In general, it's mainly bring in conformance with the steep slopes code requirements. I did notice you have a proposed slope of two on one. The code requires no more than three on one, and you're using wall. You have to look at that.

John Slaker: Even though the existing slope is existing at two to one?

Anthony Oliveri: Yes. That is what the code says. There are a lot of items in my previous memo that have not been addressed. I would suggest going through them and answering them all point for point.

John Slaker: We are not going to be able to comply with the three to one, because then the walls are going to get phenomenally tall. Everything is being planted.

Nanette Bourne: Look at the details of this and see what can be waived.

Joseph Morreale: I think you have done a great job, as we get to the end here. What did we ever decide about a sign?

Rich Stavridis: The Board suggested that there be a sign on that back wall. We need to go before the Architectural Review Board for that. At this point, I want to get everything here up and going before I appear before them.

Vice Chairman Sturniolo: A moment ago we talked about a public hearing. At our last Planning Board meeting, we also stated we are going to have a public hearing for Mount Kisco Athletic Club at the second meeting in May. I'm assuming notices are in place and they have all gone out?

Austin Cassidy: The burden is on the applicant.

Vice Chairman Sturniolo: Have we followed up with them and made sure that they have done what they need to do so it's on the agenda?

Nanette Bourne: It is up to Mount Kisco Athletic Club.

Vice Chairman Sturniolo: I understand, but to make sure we are all on the same page for the same date.

Chairman Cosentino: Since there is nothing else, we will see you on the 8<sup>th</sup>.

John Slaker: Thank you very much.

**Special Discussion:**

**Gail and Ed Smilkstein  
340 Spring Street  
PB2010-4**

Whitney Singleton: One of the problems here is that the applicants have not submitted a petition, per se. You have not had anything referred to you in the form of a formal petition, like the normal applicant would. This is a property owner who is not represented and not present. It is going to be a re-mapping of the site. Does your board want them to walk in here with an attorney, planner, architect and a petition, or do you simply want to regurgitate costs and memorandums, recommendations and reports knowing what their application is as they have been before you before. Perhaps between Austin, Nanette, Anthony and myself we can work on some sort of recommendation for your board to submit to the village board.

Chairman Cosentino: That would be fine.

**Correspondence:**

- Minutes from the Mount Kisco Beautification Committee



There being no further business by the Planning Board, on a motion by Mr. Vigliotti seconded by Dr. Morreale, the meeting was adjourned at 9:50 P.M.

Respectfully submitted,

Stanley Bernstein  
Recording Secretary

dm