

Minutes
Meeting of the Planning Board
Regular / Work Session
Village/Town of Mount Kisco
Tuesday, June 26, 2012

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

Members Present: **Chairman Joseph Cosentino**
 Vice Chairman Sturniolo
 Stanley Bernstein
 Sol Gibbons
 Doug Hertz
 Enrico Mareschi
 Ralph Vigliotti
 Karen B. Schleimer

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

Special Discussion:

Westchester Burger
353 North Bedford Road
PB2019-9, 69.43-2-3
Outdoor Dining

There was no one at the meeting representing Westchester Burger.

Vice Chairman Sturniolo: I would like to enter into the record that Westchester Burger was asked to appear tonight in front of the Planning Board.

Chairman Cosentino submitted the following letter for the record and read the following:

Chairman Cosentino: The Westchester Burger site plan has been modified without amortization from this Board, and the proprietor has initiated outdoor dining without having secured formal approval. The Planning Board has been extremely lenient in that we honored the request of Westchester Burger to temporarily allow limited outdoor seating while you were addressing the following:

1. An approvable landscaping plan
2. Repair of guard rail fencing
3. Lighting repairs
4. Necessary repairs to the side exit
5. Finalizing all other aspects of site compliance.

It has been months without any of these times being addressed, and the site has become a fiasco. Additionally, there are now issues with the dumpster. With no enclosure, as required, the dumpster, trash

cans, vats/cans for discarded oil and random, unauthorized debris are all fully exposed to the patrons, neighbors and rodents. The dumpster is an atrocity.

This simply cannot continue. It should not take more than a week for these items to be rectified and in compliance with the plan of record. To the extent that additional submissions are needed (amended site plan to address landscaping changes, etc.) those complete plans should be submitted in a timely manner for our next meeting. If these items are not completed, I will request that the Building Inspector/Code Enforcement examine the site plan of record against what is out there at the site and take appropriate action.

As far as the outdoor dining goes, as one member of this Board, I regret that we even afforded temporary use of a limited number of tables. Before considering any permanent authorization, we will require written confirmation as to the maximum seating capacity, maximum physical occupancy (including staff) of the building, and the intended number of outside seats.

The parking at Westchester Burger is out of control. People are parking across the street, on adjoining properties and even on remote properties. This is a serious issue, as patrons are crossing a state highway near the crest of a hill without the benefit of any crosswalks. Westchester Burger is required to approve ALL PARKING ON SITE. This is not happening. We may need to consider the propriety of authorizing any outdoor seating. In fact, outdoor seating may need to come at the expense of indoor seating. Until we see complete numbers, there is nothing we can do. The one area where this Board was assured that interconnected parking lots would exist was with Sleepy's. As of today, access continues to be blocked.

It is incumbent upon the applicant to provide us with this necessary information as well as a copy of the written agreement with the neighboring property owner before we take any further action.

I also request the building inspector verify that there is sufficient escrow for a thorough review by our professionals.

It is unfortunate it has come to this, but we are simply not receiving the follow-through that was promised.

Again, a representative from Westchester Burger has not appeared here this evening. I would like to stop the outside seating as of tomorrow. I want to shut him down on outside seating.

Vice Chairman Sturniolo: Mr. Chairman, I support your suggestion 100 percent. This has gone far enough. There are too many violations. Enough is enough.

Chairman Cosentino: Also, I would like code enforcement in your (Mr. Cassidy's) office to issue violations on the property. I have totally had it with this place. They don't get it. They don't comply, and (I am concerned with) the safety of the people that go into this building, park, cross the road, park at neighbors and the oil company and the side streets. This is not right. We welcomed him as a good neighbor, and unfortunately, he did not comply. I do not consider him a good neighbor right now.

Ralph Vigliotti: I have visited the site several times. Everything that is in your letter is right on the money. It is unsightly to say the least. It's dirty. The dumpsters within in the area are overflowing. He has taken over another 10, 15, or 20 feet to store restaurant furniture and debris. He has not finished any landscaping in the back of the building or in the green space next to the dumpsters. I do not think he has complied with the landscaping plan for the front of the building or lighting. I am in total agreement with everything in your letter, and we've come to a point that the outdoor dining is a risk until he complies.

Austin Cassidy: I would like to get a consensus from the Board. You have Chairman Cosentino and Vice Chairman Sturniolo. Is it a Board consensus that you are withdrawing this outdoor dining? Is that correct?

Doug Hertz: I am fully supportive.

Stanley Bernstein: Yes, close them down.

Vice Chairman Sturniolo: Yes.

Karen Schleimer: Yes.

Sol Gibbons: Yes.

Ralph Vigliotti: Yes.

Enrico Mareschi: Yes.

Chairman Cosentino: Yes.

Vice Chairman Sturniolo: There are two other points that I think would be encompassed in your dissertation under #5, Finalizing all other aspects of the site compliance. The applicant stated on the record that the outdoor dining patio umbrellas were going to be plain black, I believe. Currently there is advertising, and that is in violation of our village code. Also the hand-railing steps for the emergency access doors in the front, where it goes down, two steps are missing.

Chairman Cosentino: Mr. Cassidy, it is the Board's concession that we close him down on outside seating until further notice. This should be monitored as well.

Austin Cassidy: It will be served tomorrow.

Continuing Review:

**27 Radio Circle
Little Garden Childcare Center
PB2012-11
Site Plan Approval
Special Use Permit 80-64-1-2**

**Present: William R. Spade, AIA – LEED AP, Sasaki & Spade
Architects**

Mark Santora & Beatrice Santora, Owners of Little Garden Childcare Center
Steven Corrigan, Realtor, Princeton Realty Group
John R. Martabano, Property Owner

Chairman Cosentino: We have already seen your plan, but please explain it for the record.

William R. Spade: We prepared this plan to show the playground in the rear of the building as a way to demonstrate the issues that come out of that. In quick summary, this plan shows a playground of equal size to the one we proposed in the front about 3,200 square feet, that is about a 56 foot by 57 foot square. It is up against the rear of the building as would be required by the state in terms of access to the playground. It is completely over parking that is presently in that location. We think the attributes that result from this are that any access to that playground would have to be across and in front of the rear tenant's entrance; therefore we would not be able to secure that access. Kids coming out of the rear of the childcare center would have to walk across open area to get to the enclosed playground. Secondly, we lose about 18 parking spaces there to accommodate that playground area up against the building. The plan shows an alternative of building additional parking in the front where the front playground would be proposed and where parking was shown as future parking on a prior plan, we can pick up six spaces if we were to do that parking in the front, so still a net loss of 12 parking spaces which otherwise cannot be recovered on this site plan. There is some additional green space all the way at the back of the property, but because of the layout and dimensions, there really isn't anyway to create additional parking out of that green space, so it would be a net loss of 12 parking spaces. The dumpster, which would have to be relocated based on locating the playground there, would still be very near the playground. The only way of accessing the dumpster and maintaining the parking that could be maintained there and that proximity to the playground, we believe would be an unsanitary condition. One other idea that was suggested at one point about accessing the rear playground was to bring an access out of the side of to a rear playground. As we've pointed out, there are interior steps up to that access. The state requires that all access to the playground be available for everyone to be ambulatory. The steps create a problem for that access. At the end of the day, we think there is a collection of sufficient reasons that the rear playground is not the right solution. Ultimately, it is a marketing problem. We think all of these detractors to that location and the security and proximity of the parking and proximity of the dumpster would just be all negatives in terms of trying to sell the playground as an attribute with the child care center.

Michael Santora: There is also a parking area above here. There is a big incline and adjacent to the play area there are huge trees blocking any potential for a car except for that one area, and that one area happens to be right about that parking area. There is a big gap there, and a small car would be able to jump that and go right into the parking area. There would have to be some type of barrier that would have to be placed there for that.

William R. Spade: This would be the west side of the property to this one. There is parking along that property line and there are no barriers.

Chairman Cosentino: You're talking about going up the other driveway. There are trees going all the way up?

William R. Spade: Yes.

Chairman Cosentino: So you are saying that if a car comes down or up there is a possibility it could go into the parking lot?

Michael Santora: It's a possibility.

Steven Corrigan: He also has an eight-foot grade indifference from the finished floor of this driveway to what would be the finished floor of the playground area, which is harder to secure.

Doug Hertz: Thank you for doing this (drawing). I know you resisted, and I appreciate why, but I appreciate that it is before us because we can at least better understand what the positives and negatives are so we can see if we all can get to an agreement. I do have some questions about the feasibility of this, were it to be somewhat modified. You are doing a tremendous amount of interior work anyway such as repartitioning. Would it be feasible to change the access to a side door at all there, such that there could be a ramp?

Steven Corrigan: There is a utility room with all the sensitive sprinkler systems and watering tree, primary panel system that are on both sides of this door. If you put a ramp here, you are now blocking accesses to the sprinkler system, most importantly, besides that the water intake and the electrical.

Ralph Vigliotti: That's assuming you use that door.

Steven Corrigan: Yes. There is no other door, because then we're in Kombine's space.

Doug Hertz: Is there anywhere along this wall at all?

Beatrice Santora: No. Kombine is immediately after that.

Doug Hertz: Is there anywhere on this wall? You have 85 feet. Would there not be a conceivable way down this hallway to shift this storage or in some other fashion create a reasonable access to that outside space?

Steven Corrigan: In order to hit the size of the classrooms required, that is not feasible. We would lose a classroom.

Beatrice Santora: We shifted it every which way possible.

Steven Corrigan: The grade from the corner here is zero, and it goes up, so no matter where we hit, anywhere in this area past Kombine's there is a grade difference, which this point is about 4 feet. I'm guessing between this point and this point is 2.5 to 3 feet, still. It's not even to the back.

Doug Hertz: It could be an exterior ramp.

William R. Spade: We cannot go out at floor level. Floor level is 1.5 below grade along that side. They already have substantial drainage issues along there. We would not want to dig into the grade to create that exterior access. You are correct, we could build an interior ramp, and it would take up more space on the inside of the plan. The point though is that the negative is really the exterior walkway as well. You would have to march the children all along the exterior of the building for 100 feet along what is kind of a gulley, along a very unattractive side of the building. Yes, we could get people out onto grade there.

Doug Hertz: I appreciate that you have issues. This is landscaped in here; it's plain at the moment. It's not meant to be seen. You have trees in this section; there is a grade change in there. I was thinking this playground could be pulled back slightly so that you are walking almost right into it.

Steven Corrigan: You are asking for more runoff. The runoff that is going to come down off this hill is going to collect in this playground. You're building the playground into the bank, so even if we did a retaining system, anything that is coming down here, when they do snowplowing, the building is on this side, and they are going to dump all the snow on this side. Where are they going to put all the snow?

Doug Hertz: Right now they are not burying it into the dumpster. There needs to be snow storage space in general, so my guess is that they are using this area for snow storage.

Steven Corrigan: Now that they can, they can pull it up here and then push it back down here. It is not compiled back in here, but my point is if you put more into the hill, there is a grade. When you did your site walk, if you walk back up here, you are at least two feet above the finished walk out here, right at that curb.

William R. Spade: That back retaining wall around the dumpster is already five feet tall. If we pushed the playground into that, obviously we'd have to build a larger retaining wall all along.

Doug Hertz: I don't want you to go into that setback here. All I was saying was if you follow the setback line, you're into the playground instead of walking around. The other problem with the dumpster is my guess is that it is not a functional dumpster spot, because no truck is going to be able to back into this, so they are going to relocate the dumpster to another, more accessible spot, putting it farther away from this area. My guess is this parking lot is going to get configured in some way; of you look at this maybe head-in parking so it's more accessible. Were this to be the place, you may not be that positive, and I appreciate what the negatives are, but I don't think they are insurmountable. I realize they are real. This area for me has similar negatives; they may logistically work, but it has other negatives related to it.

William R. Spade: I would say the biggest disconnect would be the fact that coming out the back, we cannot secure kids crossing in front of that other tenant's entrance. That doesn't work, so you would look at, therefore, that side passageway as the alternative and again, we feel that is unmarketable. It's not an attractive way. Parents would see

that their kids would walk that pathway to get to a playground is unattractive.

Steven Corrigan: Another important value point is if you look at the plan we dense, all of the administrative office space is at the front. There is nothing in the back. If we were to locate the playground area in the back, physically the staff would have to navigate several hundred feet to get back to the rear playground area. Whereas, in the front, it's a matter of ten feet.

Doug Hertz: You are putting your admin space there with the assumption that the playground is in the front.

William R. Spade: We put the admin in the front because that's the entrance to the building. We need to control the entrance to the building, parents coming in dropping off their kids; admin certainly has to be at the front door.

Steven Corrigan: This is an admin station. When they come in the front door, they are greeted by Reception. They have to either have to scan it or be recognized in to get into the reception area to bring their child into the space. If we do it in the back, there is no way to physically do that and have the parking along the front.

Doug Hertz: I'm not following.

Steven Corrigan: In the beginning, we were trying to be sensitive to pick up and drop off activity that was to be created at the site. I think we've done major steps to accommodate that, and we've now established reserved parking in the front of the building. Now, we are dropping kids off and putting them on the sidewalk to go in the front door. Now we are intermingling spaces in the back, now we are crossing over the other tenants, crossing over parked cars to get to a door that is going to get into an admin area, which is going to get into a space. You need to look at our design on the inside, and why I think we are so focused on putting the playground in the front, because besides the playground, there is an integral flow of what is going on inside that space. Your major points were the safety of the children getting from that car to the front door, as well as the playground; there were two major issues. We think we have accomplished the safety movement of the traffic along with the bus stop so the kids can get into the space and out of it without hitting blacktop. The location of the playground becomes a sensitive point to the operation of the space. That is why we've been so strongly supporting the location in the front. We have shown in the back that there is a negative impact on parking. We have now increased the impervious area, so now we have greater fights to deal with the Zoning Board. Now we lost 18 spaces instead of 12.

Ralph Vigliotti: As you have outlined, I'm seeing this as 12 spaces. We don't need to argue that at this point. I've seen the side of the building, and I think the side of the building with a little bit of landscape could be quite attractive, in all honesty. There is a good size setback of the property. It's about 75 feet or so to the playground area. I don't think you need to use the rear door to get to the playground. I think the side door could be the main door, with perhaps an emergency exit if that's what you need, but I don't think you need to use that rear door and those parking spaces at all. I think

the playground can go a little bit further south by a half dozen feet, to shrink the number of parking spaces that you may use. I don't think you need to change the front entrance of the building and the office staff. I don't know how many minutes the children will be spending in the playground area; each of the groups.

Michael Santora: About a half hour twice a day.

Ralph Vigliotti: If the playground were in the back it could be pushed over, which would help to bring us four or five parking spaces on the table. I am concerned about going into the right of way or buffer area, which you may very well need a variance. How does the square footage work out?

Beatrice Santora: It's by the number of students you have on the playground at any one particular time.

Ralph Vigliotti: How many children can be in this playground area?

Beatrice Santora: Roughly two classrooms, about 36 kids. Two classrooms will be brought out at one time.

Ralph Vigliotti: But it's not necessary to bring two classrooms out?

Beatrice Santora: For the spacing and timing of the day, it is necessary.

Ralph Vigliotti: How many classrooms would you be bringing out at a ½ hour pace in the morning?

Beatrice Santora: We have eight classrooms, and then the before school/after school would be in the afternoon only. That is an additional two, but they would probably only use it in the afternoon.

Steven Corrigan: The infant area, which is a large part of their business, is located in the front of the building. Due to grade, egress, infants have to be able to get out of that room with their own dedicated door and hit the sidewalk at grade. The strollers cannot go downstairs. Now we are taking infants from the front of the building. Being sensitive to the infants, we are now walking these kids through the entire facility to get to a playground area. Its safety and control. In the front of the building, there is more staff involved with the safety of those infants. A large part of the business is pre-school; children who are not five and over. I hope you have looked at the floor plan and gotten an idea of the flow of the space. The rear of the building may be an alternative, for lack of a better word, I fret to use "logical," because we don't think it's logical. I think the front solves the interior flow of the space and works as far as how the kids are coming in and out of that building. If you had to look at the distance of that hallway, it's 170 feet. We are walking kids down a 170-foot corridor to get to a door, down a ramp, across another tenant's space that is active. If you have not seen Kombine, they are a successful training facility that brings children in to train there. We are impeding upon another tenant, we are taking away parking spaces, and we are now taking children, mostly under the age of five, in and out of a space with two control parents. To me, it makes so much more sense to have the kids enter from the building into the playground area and not have any threat of anyone being near those children. That has been our biggest

focus. The fact that we are now dislocating that safety feature because of what may be a rear yard solution, doesn't make sense or work to us.

Michael Santora: The bottom line, Mr. Chairman, as I've said before is that for safety, security, direct observation and marketability, we still feel the front better area is to put this.

Beatrice Santora: Just think of any parent coming in, and the enormous marketability impact of having the playground in the rear.

Chairman Cosentino: I view the front playground as favorable to the health, safety, and welfare of the children. That what this Board is responsible for doing. There may be good points of putting it in the back, but the front outweighs them all. I think the playground should be near the staff.

Michael Santora: For safety, we have this exit here by the two pre-school classrooms that open directly into the front area. It's a new door. There is an exit in the infant room on grade. In case of emergencies, we can wheel out our especially designed, state approved cribs to get them outside onto the sidewalk and be pushed over the playground for emergency purposes.

Chairman Cosentino: I base my wanting it in the front because of the safety of the children. They are next to staff, they are closer to the building, you don't have to walk in the back of the building, and aesthetically, I think it will look good.

Steven Corrigan: I implore the Planning Board members to please look at our demised plan. If you look at the names on these classrooms; the front rooms are pre-school, they are the youngest children. They are around the admin staff. To have the admin staff in the back, we cannot surround these children with that staff. There is just not enough area. When you go to the rear, we get to the toddlers. When we get to the back, we are in the afterschool program. So, these kids are older. They are 5 to 13 years old.

Ralph Vigliotti: I appreciate the safety aspect more than anything. I'm just looking at the planning aspect; which is impervious surface, whether or not a structure can go on the front lawn between the structure itself and the curb, and what variances you may need to make all of this happen. Knowing all of that, I have some problems trying to help you move forward because of the safety aspect. I am looking at this as a planning piece more than anything else, and as close as this may be in the buffers, the fence line, or the shrub line being of the curb onto Radio Circle.

Stanley Bernstein: I was very annoyed when someone said there were not enough people at the site visit. I had gone there twice because I wanted to see what was happening. I walked in the back, and my stomach dropped. I know there is no way you want to build anything back there. It's disgusting. I wouldn't want kids back there. Also, people today can build anything, anywhere, under any circumstances. That parking lot can be built, rearranged, and made beautiful, but I don't know how deep your pockets or your landlord's pockets are. That is a definite consideration. We could make this a landscaped parking lot; it's the depth of your pockets that count. As far as any

access on the side, I walked up and down that also, and that is a drainage disaster. It can be done, anything can be done, but the drainage there is going to be a big problem. Now, with due respect to all my colleagues, as far as the aesthetics in the front, you are dealing with a business park. I think anything you build here is an improvement. Drab, commercial buildings are not a wonderful thing to look at. I think it would look very, very well in the front, and I think that is the only place it could be. Not only that, it will enhance the landscaping. As far as the safety, I have a lot of confidence in the way you are building this with the guiderail and plantings. I am also very strongly opposed to parking in the front of any building in Mount Kisco. Unfortunately, great deals of buildings in Mount Kisco are completely covered with parking. It's a sea of cars. When I moved to Mount Kisco it was a nice, comfortable lovely place with plenty of parking. But it's growing like everything else. Even in the old days, it was a hub, and now it's going to be a bigger hub. We have to think in new ways now, and I think your proposal is probably the best way.

Beatrice Santora: Thank you.

Karen Schleimer: You talk about the administration area being close to the playground. Why? What difference does it make?

Michael Santora: Being in front of the building, all parents are required to bring in their children and sign in. As far as the playground, from the front we have direct observation for management, which we won't have in the rear.

Beatrice Santora: Quicker access if there is an emergency. Obviously there is supervision on the playground, but if they need support from the interior it's much quicker.

Karen Schleimer: In most schools that is not the case.

Michael Santora: In this particular case with the playground in front, it's a mirror look up into the window. Also, under the Disability's Act, we are required to apply medications. Some of those children have extreme medication (requirements) where they might have to be hit with epinephrine to save their lives.

Beatrice Santora: There is definitely ample supervision on the playground, but visibility from the pre-school classrooms, from the administrative portion of it (is favorable).

Karen Schleimer: I would hope you have enough staff.

Beatrice Santora: Absolutely. That is not even a question.

Michael Santora: Student/teacher ratio is the highest priority. It has to be.

Karen Schleimer: My concern with having it in the front, and it's always been my concern, is that you have cars and buses and Frito-Lay all turning in that area. I appreciate that it's a guiderail, and I have no idea – as I'm new to all this – what is required, and what is above required. My hope, and maybe we could get some guidance on this, is that we would have the highest and best protection available if

it were to be in the front to make sure – if a Frito Lay truck blew a tire – they would not end up in your playground.

Chairman Cosentino: That would be in Austin's department, and he would make sure any engineering of it would be safe.

Anthony Oliveri: Be aware, it's a guiderail. Those railings are not designed for that. If you want to design for that, you are talking about something much more substantial.

Karen Schleimer: I appreciate that.

Anthony Oliveri: I cannot sit here and tell you, as I review this, that I cannot guarantee that cars are not going to be able to get onto the property.

Karen Schleimer: That's scary to me.

Anthony Oliveri: I don't want you to have the wrong impression about a guiderail.

Chairman Cosentino: There are guiderails when you go across bridges.
Karen Schleimer: Yes, but kids are not standing there.

Anthony Oliveri: A guiderail is designed for a car travelling along a path, to guide them along. A direct impact is a little different.

Beatrice Santora: There will be trees in front as well, in addition to the guiderail.

Anthony Oliveri: There are also barriers made for that. If that is what you're looking for, that's a little different.

Vice Chairman Sturniolo: I, along with several of my colleagues on this Board, wanted to see the alternative plan by putting it in the rear, and I do appreciate the time, expense, and effort that you did. I express my concerns about the safety in the front and I listened carefully about the safety issues if it were located in the rear. It appears to me that both of you are comfortable with the safety aspects of having the playground in the front. That is surely not my bailiwick, nor do I have the expertise that both of you have. This is an economic endeavor; I believe you said you were contemplating a ten-year lease.

Michael Santora: It is 10 year initial, two five year after.

Vice Chairman Sturniolo: That is a consideration for the property owner and me as well. I am not 100 percent concerned about showing parking in the front as an eyesore, but I do appreciate listening to you, and obviously, when we got the plans in the packet, looking at the distance that you calculated before about 170 feet to walk from the administration area to the back of the parking lot area. The back parking lot area is not visually the most desirous place in the world,

but as Mr. Bernstein said, anything could be done with money. We kind of all know where money is today with you starting up a new business. I think it's upon your shoulders to feel comfortable with the safety of the children in the front. Yes, we are charged with the safety and welfare of the village of Mount Kisco, but more importantly than that, it is upon your shoulders to show the safety. There is a legal terms that gets bantered around at village meetings called a "hard look," and that means that the Planning Board has looked at every alternative, etc., and that is what we see in front of us now. That hard look, that second time around, showing what it would look like if it were located in the rear. I, for one, had to be satisfied that we did the hard look before blessing it in the front. I wanted to see all the options, the pros and cons, how it balances out, and I do appreciate your presentation tonight.

Chairman Cosentino: Thank you, Vice Chairman Sturniolo. Our applicants have been here quite a few times now, and I can appreciate us kicking the ball back and forth from the front to the rear. We will schedule a public hearing for July 10th, and I would like to ask for a draft resolution on the same night. Tonight, however, I would like to take a straw poll for the front or the back. It is needed for this applicant.

Straw Poll:

Chairman Cosentino: I prefer the front.

Sol Gibbons: I prefer the front.

Ralph Vigliotti: For the reason that I outlined with regard to our zoning regulations in our village and the variances that may be needed to make this work, I am opposed to the front at this point.

Enrico Mareschi: I support the front.

Vice Chairman Sturniolo: It is a little difficult to make a decision front or back. I am not inclined to go with straw polls, because sometimes things can change and mislead, but I am marginally supporting of having it in the front.

Stanley Bernstein: Front

Doug Hertz: I am sorry, but I do not have an answer at this time.

Karen Schleimer: I (have not decided) right now.

Steven Corrigan: I would like to bring up one other supporting feature to the desire of the applicant before. All of the interior improvements, all of the new walls, new construction, whatever is going to be provided in this space is solely at their expense. They are also personally guaranteeing this space. They believe in their business.

Chairman Cosentino: I believe what they say. They are hardworking people. I am sure they have spent a great amount of money already into this. I want to make sure that we have a public hearing and have a resolution without some support. I believe Mr. Hertz and Vice Chairman Sturniolo will consider all the options. I honestly believe we probably might have some good luck on this.

Chairman Cosentino set the public hearing for July 10 as well as instructing Ms. Bourne to construct a draft resolution to be voted on at that same time.

Doug Hertz: Are we, and is the Building Department, convinced that we have a plan that can be voted on?

Austin Cassidy: Identifying a plan that you are committing to, that you want to finalize all zoning questions, including coverage, which has already been identified on the record as requiring a variance, the Zoning Board does not meet until after the next Planning Board meeting. I am trying to look at protocols here as to how this is going to line up. I will defer to counsel, but I don't see how this Board could act, pending a variance. I don't know that it can.

Whitney Singleton: Ms. Bourne has informed me that an EAF has been submitted recently. Does the EAF identify that the Zoning Board is going to be involved, and if so, this Board needs to identify itself as its intent to declare lead agency.

Nanette Bourne: Which can be done? All the Chairman was asking was whether or not a draft resolution can be prepared for the Board to review on the 10th, not to approve it on the 10th. Between now and your August meeting, variance aside, there is enough time.

Chairman Cosentino: It saves time by having the resolution looked at.

Steven Corrigan: The amount of increase in impervious area that is based on the site plan and based on what we provided is less than one percent of the overall coverage, if that amount forces us to go to ZBA.

Chairman Cosentino: Where did you get that?

Steven Corrigan: From the bulk tables that we provided to Austin.

Chairman Cosentino: And you did that?

William R. Spade: Yes.

Steven Corrigan: Also, the new curb cut contributes to that. So, we comply with this new curb cut that adding new blacktop, which is a safety measure, to get people in and out of the parking lot to queue better. So, we complied with that which is now adding to our impervious area.

Anthony Oliveri: It's still an increase in the impervious area.

Whitney Singleton: If it's one square foot, you need a variance.

Steven Corrigan: I understand I am trying to identify the facts.

Anthony Oliveri: Also, you have to understand we have been asking for a survey on this. I don't know if it was supplied yet.

Steven Corrigan: It was supplied two meetings ago by me, personally delivered to your office and to Nanette.

Whitney Singleton: We need an identification of what the building coverage is, what the development coverage is, and what the number of spaces are. This needs to be based upon, 1. The approved plan of record, not what is being shown here tonight, and 2. What is being proposed, which I identified on the first evening of these meetings. You are proposing increased development coverage, yet your numbers are going down, which makes no sense. You have portions of building shown on this plan, which were not shown on the plan from last week.

Steven Corrigan: I am not aware of that.

William R. Spade: You have the chart on the plan that shows the development coverage calculations.

Whitney Singleton: As less than under the approved plan of record?

William R. Spade: Correct. The approved plan of record used a lot area that was less than the town's own records as the lot area.

Whitney Singleton: The town used whatever records the property owner supplied. So you're telling me that one of the applications that the property owner supplied is incorrect. We don't determine those things, they are provided with certification from you as to what they are.

William R. Spade: The plan that I based these numbers on: A: Is that the approved site plan that was supplied by the owner with the chart that we derived from. The lot area in that chart is the square footage of the property.

Anthony Oliveri: The numbers should be based on the survey and not on the site plan. This number is probably going to change.

William R. Spade: We will acknowledge this number is going to go up. We know because of that little piece of driveway we are going up.

Whitney Singleton: Not only is it necessary for this Board, but if you're going to go to the Zoning Board of Appeals seeking a variance of .28 or 28 percent, you are going to need to demonstrate to them what it is.

Austin Cassidy: As a segue on that, I pointed out that it appears this might turn out to be so fractional that it either is or it isn't a zoning matter. You could make additional green space that is presently impervious and get that number to where you want it to be.

Steven Corrigan: We have explored that, and there are miniscule portions at best that allow us to return back to green.

Austin Cassidy: Perhaps you can get an aggregate of that to get you where you want to be.

Steven Corrigan: Are we 100 percent clear on the fact that that playground area, although pervious, is still considered an impervious area?

Austin Cassidy: Yes. Now that we've got an identified plan, the playground surface is definitely development coverage. It has no effect, but the play area actually qualifies as a building, but it's within the maximum building coverage.

Steven Corrigan: I will re-direct the question. In front of the Planning Board, as far as their ability to vote, that impervious vs. pervious area is a Zoning Board question, not a Planning Board question?

Austin Cassidy: It is important to identify and finalize as you look at options, exactly what plan - including any nooks and crannies landscaping conversions - which I have to look at to finalize all aspects of zoning. I would think that you would pursue that very hard, being that the potential for being over the development coverage is fractional to be able to neutralize that with putting more green space on this property. To neutralize it, you have to go to the Zoning Board.

Nanette Bourne: Now, we can still go along the same course. It won't be a final resolution, it will be a draft resolution for you to look at that any problem they have as they get through their variance process, they would come back to you for the vote and whether or not it's in your late August meeting or first September meeting.

Austin Cassidy: If I get a plan that is compliant to the zoning, there is not going to be any Zoning Board in the picture.

Chairman Cosentino: Once you work that out, we will know what we are going to do on the 10th.

Nanette Bourne: Just getting real about this, the improvements that are proposed are not insubstantial, do you have an idea how quickly you can get the driveway completed?

William R. Spade: We have a very motivated contractor in tow that would like to start working tomorrow.

Nanette Bourne: Again, just following the sequence, best case scenario, you are approved by the Planning Board in August, you need to turn around construction drawings for renew and approval for getting permits.

Austin Cassidy: With that point, where do you stand with DEP?

William R. Spade: Frankly, obviously we needed to know that this is the plan or the other one is the plan. So, now we're giving DEP the front playground plan.

Vice Chairman Sturniolo: I think you are a step ahead. You heard a lot of information after the straw poll. One of the pieces of information is July 10, the next meeting; the cut off date for any submission for that meeting is June 29. It's a straw poll, and the straw moves.

William R. Spade: To Mr. Cassidy's point, if, for some reason we would have had to go to this plan; obviously it's a huge difference for DEP.

Personally, I wanted to know for sure we are doing the front plan. So, that's what I'm going to give to DEP, but I take very seriously your suggestion about seeing if we can find offsets, which of course would be something DEP would be very happy with.

Doug Hertz: Forgetting offsets, forgetting development coverage – aren't you building a structure in a front yard?

William R. Spade: It will comply with the setback requirement.

Doug Hertz: There are two front yards on this property, and that is considered a building. Isn't that automatically a zoning issue?

William R. Spade: It's a 30-foot setback requirement, and its 60 feet to the face of the building, so we have 30 feet.

Doug Hertz: Aren't you building a secondary structure in front of a primary structure? Isn't that an automatic kick to the Zoning Board?

Austin Cassidy: No, if it's within the setback.

William R. Spade: The playground structure will comply with the setback requirements.

Nanette Bourne: The ball is now in your court, and you have a lot of dribbling to do to get there. I will do the Notice of Lead Agency and get it queued it up for the Planning Board to review on the 10th. But, you have a lot of work to do.

William R. Spade: It's a development coverage issue, if we come up with a development coverage offset solution that does not need to kick us to the Zoning Board that will affect what you're creating in terms of Lead Agency?

Nanette Bourne: Lead Agency goes not matter what. I will cover the bases. If the ZBA drops off, that's fine.

Anthony Oliveri: We need the calculations based on the survey. You have to show a dropped curb. The turning radius needs to be shown, you have the template, and maybe you could make a separate inset on the drawing to show us more clearly.

Whitney Singleton: Were you talking about the ingress/egress or the corner?

Anthony Oliveri: There are two spots. Coming in the new entrance and this turning radius. It needs to be shown on a template.

Nanette Bourne: Are you proposing any grading for the playground?

William R. Spade: No, we are using the existing grading there. There is a bit of a hillside as it goes up towards Radio Circle, so we are just going to let that natural grade stay. Its grass, and then that pervious surface, so it drains right through.

Anthony Oliveri: Also, there are a no right turn sign that needs to be moved onto your property.

Mr. Martabano: I wanted to make sure the Board knows we are addressing a complete traffic study.

Continuing Review:

**The Mount Kisco Diner
252 Main Street
PB2012-10 80.33-6-9 & 10**

Present:

**Harry Georgiou
Frank Georgiou - Owners, Mount Kisco Diner
Despina Georgiou**

Anthony Monteleone, Monteleone & Monteleone, Attorneys at Law, Attorney for the Applicant

Russell A. Davidson, AIA, KG&D Architects, Architect for the Applicant

Russell Davidson: Thank you for putting us on the agenda. We submitted late, and I appreciate the leniency. We are here tonight to talk about our meeting with Mr. Cassidy and Ms. Bourne about finalizing the parking plan. We did go through the capacity and square footage calculations, and I will let them speak to the results. Capacity is the governing method that determines the number of parking spaces. I wanted to point out a couple of things that are important, because a lot of people feel that the existing building is stressed for parking. You are absolutely correct. The numbers bear that out. One of the key points is that right now they have 134 seats and 49 spaces. By capacity, that actually required them to buy two spaces to get to 51 to make it work by the numbers. The reason things are a little bit different in this proposal is because we are decreasing the density of the seating in the existing portion of the building. There will be 10 fewer seats in the existing portion of the building in this proposal, and we have demonstrated that by a seating plan and a seating count than exists today.

Vice Chairman Sturniolo: Versus the previous application?

Russell Davidson: Correct. It is a key point. That's why this number now works, because of the decreased seating. We also talked about the peak use. I want to let you know that we are trying to work through the idea of moving the bus stop. The dialogue is ongoing with the county. That may yield some additional on street parking in front. It was pretty much acknowledged that the peak use of this facility is on weekend mornings. There is a public parking lot down the street as well as on-street parking, and that is generally a lower use period of time for other businesses, so it is generally easier to find parking in the neighborhood on Saturday and Sunday mornings. Also, we do have an off-street loading area, which is unique to many restaurants in Mount Kisco. It is a requirement that is being provided, because now parking on-site exceeds 50. That is not included in the parking count. Functionally it can be used many parts of the day as an additional parking space. Lastly on the parking, we wanted to point out that a owner of the diner also owns a house right here (pointing) and some

employees live there and actually walk to work. There is some parking on that site for those employees.

Doug Hertz: You are using a monitor or someone onsite currently to keep other – assuming this goes forward as planned, do you think you're still going to have to do that?

Despina Georgiou: Yes, I believe so.

Anthony Monteleone: I think the same problem will exist as it exists now, so we will have to have that same surveillance in order to prevent, it.

Doug Hertz: You will have slightly more ability to monitor. Paul's Power lot won't be open to the street.

Russell Davidson: Correct. The curb cuts will be eliminated. We are moving a single curb cut up to Paul's Power and building curb and a little rain garden by the street, so it will be a little more separate.

Doug Hertz: But you imagine that even with that you will still have to keep other people from using your lot?

Anthony Monteleone: Yes, but we do have the one-way in, one-way out so they are not going to be able to sneak in. They will have to come around.

Doug Hertz: Do you imagine it's going to be easier to monitor that or the same?

Harry Georgiou: Same.

Anthony Monteleone: From a business point of view it makes sense for us to monitor, even though it costs money.

Russell Davidson: If there are no other questions on parking, we came to, on our meetings with Mr. Cassidy, the same issue that you just addressed, which is that we are very close to the development coverage requirements. We are actually lessening the development coverage, because Paul's Power is 96.7 percent covered now. The aggregate of Paul's Power and the diner today, this proposal has reduced coverage, but it's still over 90 percent. We do need to get a variance. We wanted to come back and talk about the parking. Even though we played with the landscaping here; we made the ramp wider to eliminate redundant walkways here. That saved a few square feet. We have done everything we can do in terms of coverage, and we are going to need to get that coverage variance for less than two percent of coverage. In order to meet the coverage, we'd have to actually eliminate seven parking spaces. I don't think anyone wants to do that, and we wanted to confirm that you don't want us to do that. Normally when you eliminate a parking space, you can also eliminate a drive lane, but because of the one-way loop here, we cannot get rid of the drive lane. We are going to have the drive lane anyway, so that is why, in order to meet coverage, it becomes a pretty significant loss of parking spaces.

Chairman Cosentino: Are you marrying the two lots together now?

Russell Davidson: Yes. It's done already.

Whitney Singleton: No, it's not.

Anthony Monteleone: From a tax point of view, I don't think they are, but I think they are separate tax lots.

Whitney Singleton: It's still the same old zoning. The mayor has authorized the zoning map changing the zoning from what it was to CV-2 upon the two lots being merged. When that is done, this will be deemed to be CV-2. This Board made a recommendation to the Village Board that the Paul's Power should not be marked as a CV-2R. It's all set up to happen, but it just hasn't happened yet. You need to make sure they are common ownership of one another and not separate entities.

Anthony Monteleone: We present the deed to the town clerk?

Whitney Singleton: Yes.

Anthony Monteleone: In regard to the Zoning Board of Appeals, we anticipated this. I've already talked to the Zoning Board secretary, we are in the process of doing it, and it will be submitted for next Wednesday and should be on the July agenda. Based on the criteria for an area variance, I think we meet all those criteria, so it should get through and hopefully be passed at that meeting.

Russell Davidson: Even though it doesn't count, we are still proposing this as a pervious pavement system. That doesn't buy you anything by the letter of the zoning coverage, but it should actually help from an environmental point of view.

Chairman Cosentino: Excellent.

Russell Davidson: Also, we are in the process of getting through the engineering comments. The Department of Transportation has been slow to respond, and we are having trouble getting a return phone call from Department of Environmental Protection. We will keep pressing. We've put some of them on the drawings. We are showing the turning radius does work with the 30-foot truck. Our plan is to get zoning and be back here. Hopefully in August or September we can show you exteriors. The Georgiou family has hired an excellent restaurant interior designer. We are trying to make the exterior compatible. It is going to be a little bit more restaurant, a little less diner, but still some look of a diner.

Chairman Cosentino: You can address that when you go before the Architectural Review Board.

Russell Davidson: We are showing the terrace and wider handicapped ramp and a little bit less pavement in this area. That is the only difference in the plan that you are seeing tonight. Everyone agrees we should not reduce the parking.

Vice Chairman Sturniolo: What is the impetus in reducing the seating capacity on the new extension?

Russell Davidson: It's actually reducing the seating capacity in the existing. It is to provide for a nicer restaurant; a little bit more fixed seating, a little less of the open movable seating. The overall seating count still meets the goal of the owner, which is critical to their economic model. It is just a different way of achieving it.

Vice Chairman Sturniolo: When will you have the photometric lighting plan?

Russell Davidson: We worked with manufacturers, and there are a couple of problems to get to the 0.5-foot candles at the property line. That is going to be kind of impossible to achieve when you have a zero lot line parking lot. We really think, from a safety point of view, it's more important to have light. This is a building wall for a lot of it, so we don't think we are really disturbing anybody when we exceed that a little bit. We are going to try to get as good a cut-off as we can with these two fixtures, but I can tell you right now we are not going to be able to get to the 0.5 foot candle at the property line. You just can't make light cut off quite that sharply, and we think it's important to have some light in those parking spaces.

Vice Chairman Sturniolo: Could you forward to the Planning Board copies of the correspondence with Westchester County regarding the moving of the bus stop?

Russell Davidson: Mostly it has been phone conversations, but we can certainly document that and share that with you.

Vice Chairman Sturniolo: To the staff, in this memo – when you've had the meeting together – is this factual? Does the memo represent what you three discussed accurately?

Nanette Bourne: Yes. The only thing that is not in the memo was a discussion that we had regarding the policy issue implications of paving for parking for peak use hours. We describe it a little bit like, if you don't provide the parking that is required for the holiday season. If you did that, it would be empty for 11 months out of the year.

Austin Cassidy: The example used in the discussion was the church at Christmas.

Nanette Bourne: And funerals. It was recognized, and this was a significant improvement from the discussion from a previous application in that it was recognized that the existing parking – not the previous proposed plan – your intuition that the previous proposed parking plan was stressed, and that this one doesn't eliminate the stress, but reduces the stress so that the two times that it is recognized by the applicant, and when all of us know it to be the case: that parking is stressed and the demand needs to exceed the supply is Saturday and Sunday mornings. Those are the times, and that is the reality. Parking will spill over to the existing parking lots that are available and street parking.

Chairman Cosentino: That seems to be the way it is here in Mount Kisco now.

Nanette Bourne: I would argue that it would be a different situation if their spillover and excess demand occurred when the village was at its

bustling point. In this particular case, it is when there is a little bit of breathing room in the village on Saturday and Sunday morning.

Russell Davidson: The capacity calculation that I refer to is the same one that was submitted in May.

Austin Cassidy: On the zoning table, your tally is of what numbers?

Russell Davidson: I'll have to check that. This is a survey based drawing, so all of the calculations are done based on the survey. We are trying to be as precise as we can.

Nanette Bourne: Is there a driveway easement along the side?

Anthony Monteleone: No.

Nanette Bourne: What is that? A property line indicates it.

Russell Davidson: I think that is an older separation shown on a survey.

Anthony Monteleone: Previously, there was a driveway going right to the houses in the back. That was the easement. The easement doesn't exist now.

Nanette Bourne: So that should be eliminated.

Whitney Singleton: How does the house in the back gain access?

Chairman Cosentino: Off Hyatt Ave.

Anthony Monteleone: It has frontage. It's a flag lot. There is a driveway coming in from Hyatt into the property. I don't have a record of it. I can search, find it and extinguish it because we own both parcels. I'll look into that. It has not turned up in my prior searches.

Whitney Singleton: Please provide it on an area map. I want to make sure that we see that the lot in the back has frontage on the street.

Anthony Monteleone: I can do that.

Chairman Cosentino: When you subdivide two parcels, doesn't that eliminate the old driveway going up?

Whitney Singleton: No. A lot has to have frontage on the street.

Anthony Monteleone: That is not part of this application; however, I will provide you with survey.

Nanette Bourne: On the site plan – at C-1.3 – the southwestern corner, it says its asphalt and you're proposing landscaping.

Russell Davidson: That's what happens when you use a survey. You get two layers of notes. We will clean that up.

Whitney Singleton: I will retract that last statement. Just let me know the subdivision and the tax information.

Nanette Bourne: It says the site lighting plan is to be revised.

Russell Davidson: We looked at it pretty carefully. You asked for a grid layout, so we're going straight to the lighting manufacturer. It takes a little while, but we will get you exactly what you're asking for. We are not going to be able to achieve precisely that .5-foot candle drop off at the property line. We think we can add either a little additional cut off by customizing just the features with a little deflector and get close. Our goal is that while we are at the Zoning Board, we will fully address all the engineering comments submitted well in advance of the next time we appear, so you have time to review it before we appear again so we take as little of your time as possible.

Nanette Bourne: You're planning on leaving your existing trash enclosure where it is?

Russell Davidson: Yes. We tried to see if we could get rid of some of the impervious surface in that area, but it is really hard and would require a lot of additional drainage work. I don't think it would result in a better looking property than it is now.

Doug Hertz: How does that get picked up?

Anthony Monteleone: It is one thy pick up with levers.

Doug Hertz: So you work out a time when you know those spaces are not going to be in use?

Harry Georgiou: He comes very early in the morning.

Nanette Bourne: On the site plan, I assume you are going to put in new fencing?

Russell Davidson: We'll have to figure out exactly whose fence it is and work on that.

Anthony Monteleone: If they are not our fences, we will try to talk to the property owner.

Russell Davidson: We happen to be aware that the adjacent property owner is in the process of re-facing the exterior of his building in anticipation of Paul's Power going away.

Chairman Cosentino: I thought it was a dead issue.

Russell Davidson: He's actually hired my other partner to do it. He is in front of the Architectural Review Board with that.

Anthony Monteleone: I think there is some other fencing back here for another abutting property owner. If it's our fence we will clean it up, if not, we will talk to the owner and put up something that is compatible.

Nanette Bourne: You will do a landscaping plan with this.

Russell Davidson: Yes.

Whitney Singleton: Is this application fungible at this point, or is it set in stone? I want to make sure they will be granted some degree of

relief, which is going to set the stone for the development coverage permissible to the site.

Anthony Monteleone: I have to go in with a specific plan and specific numbers.

Whitney Singleton: The layout of the site has to be kind of locked in place.

Austin Cassidy: I actually have an answer, and I want to defer to all the stats that are in this letter. There is a sentence here that I had to read about five times – it is somewhat of a double negative that I do not agree with, and yet I don't think it undermines what I've said.

"A potential mitigating factor introduced in this design proposal is to utilize a pervious pavement system for 12 of the parking spaces. This material is not recognized in the Village's Zoning definitions as a pervious surface, so it cannot be taken into account when calculating site development coverage. If it were counted the overall site development coverage would be 87.5 percent."

Russell Davidson: We cannot get under 90. I'm sorry the language was confusing.

Whitney Singleton: (to Mr. Cassidy) Are you going to make a determination as to the extent of the variance that is needed? How do they get to the ZBA?

Austin Cassidy: They are going to have to get there very quickly.

Anthony Monteleone: Do I need a denial from you to go to the ZBA?

Austin Cassidy: Yes. This is the plan we are working from, correct?

Russell Davidson: Correct. I want to check the numbers in the front as per your question and get them dead-on.

Anthony Monteleone: I will have the Zoning Board application ready, so when ever your denial comes in, hopefully before next Tuesday, we can proceed.

Doug Hertz: I want to confirm that they are asking that any additional input that this Board wants to have as to circulation or anything else on the site plan, you've given them that input at this point, so they have a plan that they can get denied and take the proper steps.

Anthony Monteleone: We've done our best to maximize parking.

Nanette Bourne: (to the Chairman) You are requesting that I submit a Notice of Intent to be Lead Agency?

Chairman Cosentino: Yes.

Anthony Monteleone: Thank you very much.

Correspondence:

New York Metropolitan Transportation Council Meeting regarding
Regional Transportation Council dated July 10, 2012, 10 AM – 1 PM

At this time, Mr. Cassidy asked for a show of hands for the August 28, 2012 meeting attendance. Mr. Bernstein and Mr. Vigliotti could not provide an answer and will inform Mr. Cassidy at a later date. Mr. Hertz will not be here.

Ralph Vigliotti: On the actual property at the Sherwin Williams building, they were going before DOT to eliminate or obtain a new curb cut. I do not know what the status is on that.

Austin Cassidy: I actually had an email exchange today with Mr. Oliveri and DOT.

Ralph Vigliotti: Are they progressing?

Anthony Oliveri: The last happening was that DOT was cleaning the drain line out. DOT emailed us requesting if we got anything new or heard anything else, and we haven't. They haven't either.

(Multiple Voices – could not get Mr. Cassidy's response)

Ralph Vigliotti: I believe the owners of the Dunkin Donut site was going to work with the neighbor regarding painting the retaining wall. We were waiting for the good weather to make that happen.

Austin Cassidy: There was an outreach on their part to Mr. Diamond, who is the property owner. I don't know if they have had a meeting of the minds yet.

Ralph Vigliotti: The site looks great, and that is the last piece. Thank you.

As there was no further business to be discussed by the Planning Board, on a motion by Vice Chairman Sturniolo seconded by Mr. Bernstein, the meeting was adjourned at 9:30 PM.

Respectfully submitted,

Stanley Bernstein,
Recording Secretary

dm