

Minutes  
Meeting of the Planning Board  
Regular/Work Session  
Village/Town of Mount Kisco  
Tuesday, May 14, 2013

*Chairman Cosentino called the meeting to order at 7:55 P.M. at the Municipal Building Mount Kisco, New York.*

**Members Present:** Chairman Joseph Cosentino  
Vice Chairman Sturniolo  
Stanley Bernstein  
Enrico Mareschi  
Ralph Vigliotti

**Members Absent:** Doug Hertz  
Sol Gibbons

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

**Staff Absent:** Austin Cassidy

**Meeting Minutes:**

**April 23, 2013**

**Motion:** Stanley Bernstein  
**Second:** Enrico Mareschi  
**All Aye**

Chairman Cosentino stated that the agenda will not be followed as originally presented.

**FORMAL APPLICATION**

**BDM Properties**  
**28 Britton Lane**  
**PB2013-7 (SLB) 80.24-3-1**

**Present:**

**John Diotte, Owner, BDM Properties**  
**Tom Kallish, Tenant of company, which is in the Building**

*Chairman Cosentino was recused from this application discussion.*

Vice Chairman Sturniolo: We have a formal application, proposed site plan improvements, the survey and a memo from our Planning Board consultant and engineer. I know why you're here, but let me hear it from you.

Tom Kallish: We have rapidly built a business. We employ 50 people that all come from some local, but mostly outside of Mount Kisco. Our business is growing so rapidly. We like it here a lot, and we are forced with a choice. We either have to make it accessible for our people to come and park cars or we have to ask our people to run out and put money in meters. We think we have enough with this plan to keep us here for quite awhile. I asked Mr. Diotte if we could expand the parking area to accommodate more employees that we have to hire. For us, logically it's a win because they are well-paid people coming to the village.

Vice Chairman Sturniolo: So you want to expand it beyond what it is now?

Tom Kallish: No, sir. Just change the way it is right now. Right now it's dirt. Cars have gotten stuck in the mud there.

Vice Chairman Sturniolo: How come you opened up without all the permits and without coming to us?

John Diotte: This area, that 28-foot length, has always been a parking lot, for 50 years. I went to the building inspector one or two years ago. I told him what I wanted to do, which basically we were not parking any more cars in the parking lot. There was debris coming up through the ground so I went in with a small backhoe and we dug out. All we basically did was change the grade of the parking lot from being on a hill to going flat. I asked Mr. Cassidy if that was okay, and he said, "Yes, as long as they don't blacktop it. Give me a little sketch of what you are going to do." I gave him a sketch of what I was going to do. I did it. Mr. Palmer came to me at the site and there was a whole ordeal over it. This is what took place.

Tom Kallish: We were basically told we could not put our cars there.

Ralph Vigliotti: Please identify what parking lot you are talking about.

John Diotte: It's 28 Britton Lane. (Indicating) Everything that is here has been used as a parking lot. All they did, in this area here (indicating) from one to eight is lowered the grade and put in item four. I did not put in any more macadam or any of that, and that's when they told me I could not do it anymore. I had to stop the work.

Ralph Vigliotti: I've been in the village for more than 30 years, and I do not recall parking there.

John Diotte: It was not a public parking lot.

Ralph Vigliotti: No, but it was never used even as a private parking lot.

John Diotte: Yes. Every one of my tenants has used that.

Ralph Vigliotti: They used this area, which is grass now?

John Diotte: This was grass with item (sic) underneath it, and Mr. Palmer saw it.

Ralph Vigliotti: The area in question in which you are proposing parking, you are stating that it was always used as parking.

John Diotte: Yes. It has always been used as parking.

Ralph Vigliotti: I do not recall it, and I travel that road on a regular basis, and I have been driving through for years and years. I do not recall cars parking on that grass area, whether there is stone below the grass or not. I don't recall that. I only recall parking there over the last year, since Tommy Copper.

John Diotte: There has always been parking. We've owned the property for 50 years. It's not that we just bought it. I am not saying to you that it has had the amount of cars that is in there now, which never was.

Ralph Vigliotti: I don't recall any cars being there for years.

John Diotte: I have to disagree with you on that, sir, because we had a furniture store there. Our customers were parking there.

Vice Chairman Sturniolo: I believe Mr. Vigliotti is correct. I've driven by that place for years and years, and we have never seen cars parked in such a haphazard manner.

John Diotte: I disagree with you.

Tom Kallish: Given that is your perspective, we understand it.

Stanley Bernstein: It's not a perspective, because I drive passed that all the time and only recently did I see cars there. There was not even one car.

John Diotte: That is not right. You can't sit here and tell me that we've never parked cars in that parking lot.

Stanley Bernstein: I've never seen them.

John Diotte: I gave Mr. Palmer a Google map, and there were five cars parked in that parking lot. I don't see how every one of you people can sit here and tell me that it has never been used as a parking lot. You are sitting here calling me a liar.

Vice Chairman Sturniolo: No one is calling you a liar. Let's move on. We said there are a formal application and a site plan improvement. We have a memo from Nanette (Nanette Bourne) and one from Anthony (Anthony Oliveri). Who filled out the site plan subdivision application?

John Diotte: I did.

Vice Chairman Sturniolo: If you could follow me along with this: Page 2: Do any easement agreements, property covenants or deed restrictions apply to this property? This question is left blank.

Tom Kallish: We could answer it now if you'd like.

Vice Chairman Sturniolo: No. It should have been on the paper.

Tom Kallish: Apologies.

Page 2: Will the action require approval from the New York City Department of Environmental Protection (DEP)? You checked off "No." Anthony, Nanette, is that correct?

Anthony Oliveri: Actually, it would require a Department of Environmental Protection (DEP) permit. It is in the designated Main Street corridor.

Vice Chairman Sturniolo: You need to change your application again. Now we are in the full Environmental Assessment Form. On Page 2, where it says "Present Land Use," all that is checked off is commercial, but there is residential as well.

John Diotte: Not on 28 Britton Lane.

Vice Chairman Sturniolo: It's not all the same property?

John Diotte: No. There are three separate pieces of property there; 78 South Moger Avenue, 74 South Moger Avenue and 28 Britton Lane.

Vice Chairman Sturniolo: Under approximate acreage, it's all left blank. On Page 3, Number 8 refers to "Water Table," that's left blank. Number 17 is left blank. Under Project Description, Letter a, "Continuous acreage owned or controlled by project sponsor," that's left blank. This form goes on and on with a lot of blanks left over. On Pages 4, 21, "Will the project result and increase in energy use?" it's checked off "no." But it will increase in energy use once you submit a photometric plan, because you are going to have lights outside. On Page 5 it talks about zoning classification and that's blank. Number 6 talks about recommended land uses; that's left blank. Number 7 is left blank and Number 12, "Will a proposed action result in generation of traffic significantly about present levels?" I believe it will be based on the amount of cars that are there now. It goes on and on and on to Page 7, and it talks about "Will the proposed action after drainage flow or patterns or surface water runoff," is checked off "No." That really has to be answered once we see your storm water run off and all the drainage calculations from your engineering team. At this point, Nanette, would you like to go through your memo?

Nanette Bourne: There is a memo in the packet which follows up on (*what was said by*) Vice Chairman Sturniolo. It is not a complete enough packet of information for there to really be an analysis or review what you are proposing. It appears there are several lots connected by perhaps an easement.

John Diotte: I don't understand what the easement has to do with separate personal property.

Nanette Bourne: This may be a great idea. This may not be a great idea. The information that was provided makes it impossible for me to understand what you are planning to do.

Tom Kallish: Nanette, is it fair to say by your memo here that if we addressed each one of these items we will be in a better place to make a cogent decision on if this is do-able or not? If it's a good idea or a bad idea?

Nanette Bourne: Absolutely. If you look at Article 9, what Vice Chairman Sturniolo has pointed out on the application and the EAF. That EAF admittedly does not apply to a project like this, but there just simply is not enough information to have any understanding of what your current use is and what you're proposing. We've made some assumptions on what we think is happening and permits that you probably need, but there is just simply not enough information.

Tom Kallish: I want to be very clear. I noticed two things. I was not part of filling this out, but obviously I have a reason to want to be here.

Vice Chairman Sturniolo: It's the property owner, not the tenant that is responsible for the accuracy of this submission.

Tom Kallish: Right, but I am just asking questions for both of us at this point. This list, one through eight, needs to be addressed, correct? And that application needs to be more thoroughly filled out, correct?

Vice Chairman Sturniolo: Before this Planning Board can continue and take a rubber band off a plan and unroll it and take a look at it.

Tom Kallish: Duly noted.

Nanette Bourne: There are two memos. One is from me with five items on it, and one from Anthony Oliveri, who is the village engineer, with many items on it. Between the two of us, we cover the serious areas that you need to pay attention to. In our opinion, it is simply not a complete application.

Anthony Oliveri: One of the things we touched on before was the DEP. This property is what is called "Designated Main Street" area and under the New York City DEP jurisdiction. To pave or develop the parking lot, you need to get a permit from DEP.

Tom Kallish: Is that just to pave or to lay down gravel? Is it different, because the idea was never to pave.

Anthony Oliveri: They might view the gravel differently. It is still somewhat of an increase to just grass in terms of run-off, so we may still require something. Either way, you have to go to them with the plan and get a determination from them. Another thing I mentioned is that this does have to be reviewed by the building department in terms of zoning code issues. I know they didn't have a chance to look at it yet, and I think Rob was going to do that in the coming week or so.

Vice Chairman Sturniolo: Rob, we will need all the different uses. The square footage, the parking floor to support it, what the easements show, why the easements are there, how many apartments are there?

Everything that will impact, because all these numbers impact parking spaces.

Anthony Oliveri: I mentioned in my memo about including the floor plans with this, so an analysis of the parking can be waived. We should have some floor plan. There are three addresses involved here.

John Diotte: I don't know why three addresses keep coming up into the project. 28 Britton Lane is the only one.

Anthony Oliveri: You will need to make that clear in your analysis that this is just 28 Britton and it's pertaining to only 28 Britton, and this parking lot is not used for the other parcels.

John Diotte: Tommy Copper's employees park in 28 Britton Lane.

Anthony Oliveri: That is one thing that has to really be discussed as far as the site plan, if it's going to include the three addresses.

Whitney Singleton: You've changed the use on what you have marked as Number 74, correct?

John Diotte: It is a retail store.

Whitney Singleton: Wasn't it a furniture store?

John Diotte: It was a furniture store, and then it was a kitchen cabinet place.

Whitney Singleton: It's a different use then. It's not retail sale of bulk household items. It's a retail store.

Tom Kallish: Yes, sir.

Whitney Singleton: And, you are using the Britton Lane parcel to support parking for your South Moger piece.

John Diotte: It's always been used that way.

Whitney Singleton: So, those sites are being treated as one for purposes of a site plan. They are all under review. The vice-chairman is saying is correct. I wholeheartedly acknowledge what you're saying that the first floor does not have an associated parking requirement. That is not the issue. But, you can't just change the first floor and ignore the second and third floor. We need to make sure how many parking spaces you have; do you have the supporting parking? I see you have parking not only there, but you have it on the other end of the property as well.

John Diotte: There are three spaces there.

Whitney Singleton: We don't have to examine every nook and cranny of the property, but we have to make sure that they all constitute one site plan and they are operated together.

John Diotte: I understand.

Whitney Singleton: Parking alone is not a principally permitted use on your property. It has to be in conjunction with some other use on the property. That part of it is okay, but it just needs to be part of the overall plan. Make sure that while you have no parking requirement for the first floor that we show that you have your providing parking for the overall site. That is all we need.

Tom Kallish: Makes perfect sense.

Anthony Oliveri: Also, I believe there was no site plan of record on file. Whatever parcels were involved here have to be brought in. I think that is why you were asked to include the other buildings. You now need a site plan that shows how the parking is handled from each of the addresses. It is not just 28 Britton Lane.

John Diotte: Now I understand.

Anthony Oliveri: At the end of all this, you'll have a site plan of record, which will define what should be there and the parking that is associated with each area. That will be on the record, so in the future, if there is another change of use we have a basis in which to start.

Whitney Singleton: If there is an area of non-compliance that you are not increasing the degree of non-compliance, that should be shown here. Hypothetically, if you are required to have 20 parking spaces and you said, "I only have 12 but it's been that way for the past 60 years," show us on the plan that that is the way it was. The only thing that you can't do here is increase the degree of non-compliance. You can't triple the parking demand with the same parking. To the extent that something pre-dates, let us know that it pre-dates. We need to know how many apartments, how much square footage for retail, items of that nature so it can all be memorialized in your site plan.

Vice Chairman Sturniolo: You also included a photometric lighting plan, Anthony?

Anthony Oliveri: Yes, as part of the site plan you have to show lighting, landscaping and different elements of the site plan that you have to include in your site plan. You want to make sure you have all that complete, showing your existing condition and then your proposed condition, so the Board can easily understand what you are proposing as new. Have your engineer go through the code carefully, and get everything on the plan that needs to be on the plan. Our memos are guide to start with here, at least. You should go to the DEP and approach them on this and see what they require.

Vice Chairman Sturniolo: I would suggest that once you get all this information and have everything together, sit down with the building inspector, Nanette and Anthony and make sure you have everything before you come back to the Planning Board.

Tom Kallish: Absolutely understood.

Ralph Vigliotti: I'm certain that all of this, as it goes through the process, will work. The concern I have is good, as this appears to be very successful. Right now it has a lot of parking in that area in

question. This is addressing X number of spaces. There are 25 plus cars. Where are the other cars going to go once this is developed? How will you manage the other 15 or 20 cars?

Tom Kallish: It's a great question. So far, my genius plan is that every hour or so they will go to the parking meter. The good news about what is happening in our company now is that the hires have been centric up to now. Very quick - Economics 101. I had to build an infrastructure. The infrastructure is 90 percent local people. The reason I took this spot was for commuting purposes. I have now 17 employees commuting from New York City that requires no parking. The talent pool - just from my business, me growing this where it needs to go - the talent pool now is commuting. It's reverse commuting from the city, which people also love. We are having no problem in filling these spots. I want to say to the Board that we are like the good guys. You don't know it yet, but we really are. We are taking kids in this town and starting them off at salaries where they are moving out of their parent's houses. There is nothing but a good culture being built here, and we take that very personally. This is our backyard. I only asked John to sit in because I want to know the process and help expedite what needs to happen or not happen and not waste anyone's time. To your point, we are pulling a lot of people out of the city now.

Ralph Vigliotti: So, once the parking lot is in place and all the improvements have been made, we are not going to see cars parking on the grass? It's gotten slightly better, I've noticed.

John Diotte: We put them in the other lots.

Tom Kallish: John came to me and said, "There is an issue." I said, "I don't want to kick the horse. I know there is an issue. Until we get this resolved, let's make everybody happy at what we are doing." So we have people jockeying stuff around, because truthfully, we want to come to what Nanette said, "Is this a good idea, or a bad idea?" I will have to make a decision based on that decision. We also don't want to be bad neighbors. It's just not who we are.

Ralph Vigliotti: Thank you.

Stanley Bernstein: Can you tell me what you do?

Tom Kallish: I am an inventor. I have a few companies. This is non-solicitation; buy the way, unless you want to buy something. I invented the ability of putting copper into yarn, permanently embedded into yarn. I could go through the science that I understand about how a human body works and how negative and positive ions work. I would never market that because it's too complicated. I had a serious accident, and I am 48 percent titanium and metal. I really invented this for me. I had two choices, come up with a solution or live on pain medication for the rest of my life. I invented copper clothing to mitigate pain. Not only does it work, in one year two million people have told me, "You saved my life. My life is a different quality of life." I actually have invented clothes that make your physical body feel better.



Stanley Bernstein: That is the retail portion of it?

Tom Kallish: Yes. We also sell it on line.

Stanley Bernstein: You don't sell anything else?

Tom Kallish: No.

Stanley Bernstein: I was not aware of what it was.

Tom Kallish: I wasn't either, three years ago. It is really one of those great American stories. Thank you very much for your time.

**Continuing Review:**

**Grand Prix Bowling  
333 North Bedford Road  
PB2013-2 (SLB) 69.50-2-1**

**Amendment to Site Plan**

**Present: Jim Diamond, Diamond Properties, Property Owner**

**Michael Landler, Senior Associate, Fredrick  
P. Clark Associates, Inc.**

Chairman Cosentino: We have a cover letter from Jim Diamond dated April 5. Please explain.

Jim Diamond: The last special permit approval we had from this Planning Board in conjunction with Spins Bowling approval was for 25 arcade games within Grand Prix New York. If you recall, at that time we had submitted for approval for 75 arcade games. There was concern by the Board that the arcade games may have a traffic impact, and we were instructed to return six months after Spins Bowl opened up to the public and the new arcade games were installed to discuss increasing the number of approved games from 25 to a larger number. Spins Bowl has now been opened a year and a half, and we are back to the Board requesting approval once again for 75 arcade games. As you know, we completed a traffic study at the end of last year, which showed our peak AM trips running at 354, peak PM trips at 374 versus 450 approved trips for this site. I think it's clear from the traffic report that the site is operating within compliance of its site plan approval, and that the arcade games are not having any negative impact on traffic generation of the property.

Chairman Cosentino: We did say, at the time you were here and according to our minutes, etc., that you would come back and increase the arcades 25 to we didn't know what number then. I don't know what number it was. I welcome comments from the Board.

Michael Landler: You spoke earlier about requesting the traffic study, showing the results of what a net increase of 50 machines would be. There is nothing that really shows if any increase would be generated

by the additional 50. We are waiting for additional traffic study information that will show what the 50 machines will generate.

Jim Diamond: Our feeling is that there is zero impact. I don't think there is any way a traffic study can quantify anything because there are no physical changes actually proposed either inside or outside the property. Right now, according to a count by the building inspector, we have 47 games, but that is question marked in terms of what is counted because we have a number of driving simulators, which we would argue are not arcade games. Irrespective of that, I don't think the arcade games have any impact on traffic, and I don't think John Collins could quantify that because it is so intangible. It's like whether or not you had a soda vending machine. Is that going to generate more traffic?

Michael Landler: There is one thing we'd like to say that if there is anything in advance that will show any kind of increase with additional generation. That is my only comment.

Vice Chairman Sturniolo: The question with the people using what was formerly known as Ice House Road, do they predominantly make right hand turns heading southbound?

Jim Diamond: Correct. The traffic study showed that in the evening, 68 percent of people turned right, leaving the property in the morning it was 63 percent. So two-thirds of the people leave the property to go south. The other part of the application that is currently before the Board is seeking approval for Easement One, which I do not believe is on the agenda for this evening. That is exactly why we think opening up Easement One for exit traffic makes sense, since a little bit more than two-thirds of our people head south when they leave the property. If you look at the inbound traffic as well both AM and PM Peaks, two-thirds of the traffic, give or take, is coming from the south as well.

Ralph Vigliotti: I believe the word instead of "arcade devices" would be "coin operated devices." It's any machine that takes a coin. You may choose not to use coins and provide tokens. We need to clarify that. At some point you may be referring to it as arcade devices, and eliminating those machines that in your mind are not arcade machines but could be simulated or some type. We need to clarify that. I know we talked about 25 devices at some point, and meanwhile, you have 47. It seems that you didn't comply with our earlier number and not only you, but also the business there made a decision to move to 47. Correct me if I'm wrong, it's not your business. Do you lease the space or do you have some kind of ownership in the business?

Jim Diamond: I have an ownership interest in the business. I am responsible for the business.

Ralph Vigliotti: The concern I have is that all along it was an accessory use to the businesses that were approved. Once you move from 25 machines to 75, it's not accessory anymore. It's an arcade. It's a separate business. We've had arcades in this village. I'm not sure if we had 75 in one particular establishment that was the sole use. I have a concern with that. This is something that the Board has to look

closely at. I think the 47 that you have now, which is not compliant with the 25 originally, in my mind may be beyond the limit as an accessory use. Is it accessory to the bowling or is it accessory to the cars or both?

Jim Diamond: To address a couple of those points, as you probably know, we don't use coins in any of the machines. The vast majority of the machines have a swipe card system. The simulators that I am talking about do not. There is no swipe card, no coins, no nothing. We do charge for them, but you pay at the same desk that you pay to go racing in the go-carts. It's less an amusement device and more like a professional race-training type device. It really is a different type of product. In terms of the accessory, clearly bowling and racing are the primary uses for the site, and that's why people go there. With the 75 games that we are proposing, no physical changes at all to the inside or the outside of the property – not a single wall – changes. The arcade room as it currently stands remains the exact same arcade room going forward. We are in a horrendously bad economy that has now gone on for five or six years. We need to do everything we can as a business to try to remain viable and figure out what the right mix of attractions within the business is to keep the business viable. To me, the concern that this Board had two years ago was about traffic generation, whether or not a larger number of games would result in a higher trip generation issue than the property could support, per our restriction of 450 trips per hour. We spent a lot of money doing another study at the end of last year which showed that we are 20 percent below our maximum cap. The property is 96.8 percent leased at this point. For a number of years this Board was in a challenged position of trying to evaluate what the future may be when the property was 50 percent occupied and there were hundreds and thousands of feet left to go. Now, the cake is baked.

Ralph Vigliotti: I understand that. If a group would like to come either to race or to bowl, they can use the arcade. But they can't come – correct me if I'm wrong - and not bowl and not race but exclusively use the arcade. Is that correct or incorrect?

Jim Diamond: Technically yes, but it is not something that we can really and practically enforce.

Ralph Vigliotti: If a group of young people, whether they are 18 or 28, choose to go to the establishment where racing is occurring and bowling is occurring, and they choose not to do racing or bowling, will they be accepted and allowed to purchase a card to use those machines?

Jim Diamond: Yes.

Ralph Vigliotti: Now that is not an accessory use. That is my concern. It's not the traffic so much as the use. When you get to 75, it's going to become more of a destination and it is not an accessory use. It's a main use. Early on, you indicated that it was an accessory use, there were only 25 machines, this would allow young adults waiting for their parents who may be racing or who choose not to race, to play some machines; and then, those who did not want to bowl or did not want to race while they were there with their parents or their group could just

walk over. Now it is, "Let's go on over and play at the arcade." This is my concern.

Jim Diamond: Obviously we see it differently. As you recall, we did not come in two years ago seeking approval for 25. We came in seeking approval for the same 75 as we are seeking approval for now. We are actually in exactly the same spot that we were two years ago.

Ralph Vigliotti: But you're not. It was 47 devices and months ago. It's beyond what we had established.

Jim Diamond: Right, in terms of what we are looking for is the same 75 we were always looking for, which we felt was the right number for an accessory use.

Ralph Vigliotti: It's not an accessory use in my mind. I'm only one member of the Board, but when you start to get to 75 machines, it's not an accessory use anymore.

Chairman Cosentino: If I'm not mistaken, when you first came in, you had the bowling, racing and actually people that were going to race – until their turn came up, they were using the machines. It was something for them to do while waiting.

Jim Diamond: Correct. That is the idea.

Chairman Cosentino: Now that you have the bowling, would I be correct to say that people are waiting to bowl so now they are using the machines while waiting to bowl?

Ralph Vigliotti: Absolutely. But when you have enough machines to service those people who are waiting, is 25, 50, 75 or 100 the number?

Jim Diamond: You are almost answering the question. The point is, any number you pick is sort of an arbitrary number that we are all just pulling out of the air. To the extent that it is not having any negative impact on the property or the village at all, why put an overly restrictive number on the business that harms the economic ability of the business to survive and prosper in the community and provide 85 jobs like we currently do? Any number you pick is completely arbitrary.

Ralph Vigliotti: What is the current annual device payment that is paid to the village? As the legislation that was prepared 15 years ago, to have each device, there is an annual fee. Do you recall what the fee is?

Jim Diamond: I have no idea. We can check that with the village manager.

Ralph Vigliotti: I hope that fee has been paid over the years, but there is a fee established.

Jim Diamond: I didn't know that.

Ralph Vigliotti: There is a fee, unless the legislation was changed. It was either \$25 per machine annually or \$50. I'm not sure, but there was a fee.

Chairman Cosentino: Now you have the bowling, which compounded the matter of people waiting. Maybe the machines are being used more now than when you just had the racing. Maybe, I don't know.

Jim Diamond: I think that's a fair statement, but another way of looking at it, which I don't know the extent to which it's meaningful or not, but around 85-90 percent of our revenue currently comes from racing and bowling, which I think would support the argument that the arcade games are an accessory use.

Ralph Vigliotti: Okay, that's fair.

Vice Chairman Sturniolo: Also, the traffic count would support arcade games as an accessory use, because that appears to be well within the guidelines. So, are more people using the arcade games as opposed to bowling? Are more people using the arcade games as opposed to racing cars? As you said earlier, it's something that you cannot get a handle on per se. The only number you can get a handle on is the traffic count.

Jim Diamond: I do think that is the major issue. I have been in front of this Board now – hard to believe – eight years. The concern from the beginning above and way beyond anything else has been traffic generation. That was always the major concern with this property. We said eight years ago that we are going to live with a trip count, which we are the only trip limitations and I believe the only property in this entire village that has a limitation on the number of trips that are allowed in and out of our property. We agreed to that because we were confident that we could come up with a tenant mix that would work. We said no to a bunch of tenants, and yes to tenants that we thought would work, and we are there. We are now at 96.8 percent, and we are below our trip count by 20 percent. I think we have done everything right. To put unnecessary restrictions on the businesses that are there just doesn't make sense, particularly in the world we live in now.

Chairman Cosentino: What other restrictions are there?

Jim Diamond: I am speaking specifically about the arcade games.

Stanley Bernstein: The trip count was important to us, that is true, and the restriction on the trip count being the only business that was saddled with it was because we were very, very concerned of the magnitude of property and the tenant mix. The whole situation turned out very well. I think it was a smart thing to limit the trip count. As far as the arcade games, I do believe that no matter how many you have, I still think it's an accessory use. Some of our concerns are not merely trip count, but that it might become a teen hangout with problems that could be involved with that. Your experience is that it has not become a teen hangout, is that correct?

Jim Diamond: Absolutely.

Stanley Bernstein: I remember the conversation very clearly. I think I was the one who came up with the 25 as a compromise number. It was an arbitrary number only because we wanted to see what would happen. Perhaps we let it last too long and it should have been taken care of months ago. I have no problem with the additional "arcade games," especially since you do verify the fact that it's not a teen hangout nor probably will not become one.

Jim Diamond: Thank you. I remember saying a couple of years ago, and I will say the same thing again now. Check with the Mount Kisco Police Department in terms of police activity on our property. We have no issues at our property. If we were having problems that would be a different matter. We have had no issues with the police department.

Ralph Vigliotti: On the count, if it were to be 50 or 75, how many simulators do you have?

Jim Diamond: Ten.

Ralph Vigliotti: In an effort to avoid any kind of confusion if the Building Department or code enforcer needs to stop by to check compliance, I think every machine should be part of that count. The simulator is a coin-operated machine to some extent. It may not be an arcade machine, but it is a machine. I would tend to lean in that direction myself. At one point do ten become twenty or thirty? Where do we say this is an arcade machine as opposed to a coin-operated machine, so we can monitor and regulate this if we decide to go with the 75? Even now, you're up to 47.

Jim Diamond: There is a real difference. Whatever we include in there, it is just a factor of what the overall number is. You can define it however you want. There really is a difference. The arcade games are more entertainment devices. I believe the code defines them as amusement devices. The simulator has no payment mechanism attached to it whatsoever. You have to go to the same front desk that you purchase go-kart racing from in order to use the simulator. It's a product that professional racers use to train for races because they actually take race courses, measure them using lasers and put them into the system so that you can race an actual course you'll race in a race and compete against other racers. It's a real simulator product. It is not an amusement device. I understand your point.

Ralph Vigliotti: I would certainly be amused by the way I would use this.

Jim Diamond: It's extremely difficult, and you will find that you crash, at least if you're like me, within the first few seconds.

Ralph Vigliotti: What is the duration of time on one of those units?

Jim Diamond: You pay by the minute, so it's as long as you want. It's not like an arcade game where you put money in or swipe a card and it lasts for a few minutes. You can race for 30 minutes. We sell it by as long as you want.

Ralph Vigliotti: How much is a minute?

Jim Diamond: One dollar a minute. It's not inexpensive.

Chairman Cosentino: I would like to set up a public hearing on this.

Whitney Singleton: It would also be helpful if the applicant could provide us with all the accessory uses that go inside the premises. Based upon comments from the public in the past, that might be relevant to know everything that goes on inside this place. There are limitations on what is allowed under membership clubs as far as accessory uses, and they should all be unpaid you are allowed to have three accessory uses.

Michael Landler: Also, to piggy-back on that, on your floor plan, are the machines going in the same general areas or are you making changes to your floor plan?

Jim Diamond: It is exactly the same. No change whatsoever. We did submit a new drawing a couple of weeks ago to Nancy. She asked for a drawing highlighting the area for arcade games, but it's exactly the same area that was on the bowling submission. That had been designed for 75 games, the Board approved 25. There are no changes required.

Vice Chairman Sturniolo: Designed for 75 games, the Board approved 25?

Jim Diamond: Obviously we had submitted the drawings to the Board pre-approval, so it had already been designed for a larger number of games.

Vice Chairman Sturniolo: If new games that comes up that is popular, does the mechanics of the simulator remain the same, or is it a software change?

Jim Diamond: On the simulators, yes. It's all software.

Chairman Cosentino: I was in there once, and it's so large you don't really notice a lot of cluttered machines.

Jim Diamond: The space is 120,000 square feet and its three acres in size.

Chairman Cosentino: I don't have a problem with the 150 machines.

Ralph Vigliotti: I believe its \$15 per machine annually.

Jim Diamond: Thank you.

Enrico Mareschi: I'm fine with it.

Vice Chairman Sturniolo: I'm fine with it.

*A public hearing was set for June 11.*

Stanley Bernstein: Are we not going to discuss easement #1?

Jim Diamond: We could. Nancy had indicated that tonight we will only discuss arcade games.

*Discussion followed to add that item to the agenda for June 11.*

**Continuing Review:**

**350 Lexington Avenue Realty LLC  
350 Lexington Avenue  
Sebastian / Steven Giner  
PB2013-5 (SBL) 80.48-5-2**

**Present: Leonard E. Lombardi, Esq., Law Office of Leonard E. Lombardi, P.C., Attorney for the Project  
Steven Giner, Owner, 350 Lexington Avenue Realty  
Sebastian Giner, Owner, 350 Lexington Avenue Realty  
Brian Hildenbrand, Kellard Sessions Consulting - Site Planner  
John Kellard, P.E. – Kellard Sessions Consulting, P.C, Site Engineer**

Nanette Bourne: You asked me at the last meeting to draft a resolution; this draft resolution was sent around yesterday. It reflects the changes the applicant has been making. The resolution before you reflects a question I have regarding the parking fee.

Whitney Singleton: The parking fee is \$79. There was a site plan amendment that exceeded a certain threshold of the overall site value then it would be through the major application (sic) and it would be applicable but since there is no modification to the building ----- . I re-confirmed that with the building inspector.

Chairman Cosentino: Did we go over the memos?

Nanette Bourne: There are no new memos.

Leonard Lombardi: After the last meeting, we addressed all the outstanding comments with the consultants and re-submitted the drawings along with a storm water pollution prevention plan.

Discussion followed as to who received copies of the resolution.

Whitney Singleton: It was discussed to have this on the agenda, but I had not prepared a memorandum by your Friday meeting.

Nanette Bourne: May I make a correction to that? I had prepared this and was given an agenda that had this off the agenda. I did not submit it, and we had an email discussion on whether it should be on or off the agenda. I was given information that it was off the agenda, so I did not submit the memo.

Vice Chairman Sturniolo: We discussed it Thursday at the staff meeting.



Anthony Oliveri: I would add on the site plan to include the lighting photo metrics plan. I could not find the pole heights listed anywhere. Please make sure that is on the final version of the plan.

Vice Chairman Sturniolo: Also a description that the fixtures are all full cut-off fixtures.

Brian Hildenbrand: I believe it is in a table on the photometric plan.

Chairman Cosentino: We now all have a chance to read it, and we will vote on it at the next meeting.

Leonard Lombardi: We are fully satisfied with the resolution.

Nanette Bourne: You submitted your storm water pollution prevention plan to the DEP?

Brian Hildenbrand: Not yet.

Nanette Bourne: Normally it is a condition in the resolution, but we need to have some feedback from DEP. They will not give you completeness, but they will give us an indication that is generally acceptable.

Chairman Cosentino: You can make that a condition, right?

Nanette Bourne: Normally we don't. Normally we get feedback from the DEP. In the event that their view ends up making some site plan change but then doesn't come back to you.

Leonard Lombardi: There is a condition in the resolution, and any significant changes we would have to come back to the Board anyway.

Nanette Bourne: It's up to you.

Leonard Lombardi: It's not that it's a vacant site. It's a fully paved parking lot.

Chairman Cosentino: Make that a condition and make it for the 29<sup>th</sup>.

Nanette Bourne: It would be helpful if you would submit it and give us feedback for the 29<sup>th</sup> and make it a condition.

Brian Hildenbrand: It will be a condition.

Whitney Singleton: I think what Nanette is saying is to the extent that you have the ability over the next two weeks to have DEP provide something for the time being.

Brian Hildenbrand: Rather than just submit to the DEP we would schedule a meeting, sit down with them and walk them through the project. We will try to do that before the next meeting.

Chairman Cosentino: You will be on for the 29<sup>th</sup>.

## **Continuing Review**

**21-27 Ward Avenue  
Charles Morgan  
PB2010-13 (SBL)  
80.26-1-5  
Lot Line Change**

**Present: Brad Schwartz, Attorney at Law, Zarin & Steinmetz  
Peter J. Gregory, P.E., President, Keane Coppelman  
& Gregory, Engineer  
Chuck Morgan, Property Owner**

Brad Schwartz: Chairman and members of the Board, the last time I was here was about a year and a half ago on this application. This is a single-family residential project. When we were here last time we walked your Board through a series of lot line changes that had occurred over the years by metes and bounds descriptions and various deeds that affected both Chuck's property as well as the lots on either side. These lot line changes again occurred through metes and bounds descriptions in deeds. The problem was that there was never a map that was prepared to reflect those lot line changes that ultimately got recorded in the county. One of the approvals we seek from your Board is what we have been referring to as an "after the fact" lot line change. We have a filed map in the county records that reflects what has been in the deeds for over 40 years. In those deeds, Mr. Morgan owns a 60-foot wide parcel along Ward Avenue on which he proposes to build a single-family home. The other component of the approvals that we are seeking is a road improvement plan under New York State Village Law to access the proposed residence. We are proposing to improve a portion of Ward Avenue, which is an unimproved paper street. We are seeking to improve it minimally in order to obviously minimize any potential environmental impact, whatever is absolutely necessary in order to access the house. When we were here last with Anthony and some of the neighbors, we all know that there was some storm water issues regarding this project. I think your Board essentially directed us to go away and don't come back until we work out the storm water issues with Anthony. It has taken some time, but Peter has been in some regular contact with them. We met with Anthony and Jim Palmer on a number of occasions. We think it's a good time to be back before your Board. We have addressed the storm water, we believe, on site and it is also going to coincide with the improvements that the village is proposing on Brook Street. Peter can describe where we would be in terms of the storm water improvements and how that will coincide with the village's project.

Peter Gregory: Our intention originally was the development of that lot to ultimately connect into the town's utilities. We are proposing a single-family residence with water, sewer connections and also a storm water connection out to Brook Street. Originally, when we first looked at this we were made aware of the problems that were occurring out here by some of the neighbors. My initial thought was that we were experiencing problems where sediment and debris were interfering with the inlet going into the Brook Street drainage system as well. Even at the discharge point, there may have been sediment and debris. We were told that occasionally it is cleaned out before large

storms and it would help the water go through. In looking at the drainage system, we actually discovered that there were limitations on the existing drainage system based on the diameter of the pipe, and the slope that exists along Brook Street. Also attributing to the large contributing drainage area that is feeding into Ward Avenue and Brook Street we were finding, in fact, that there wasn't necessarily problems with the pipes plugging, it was more of a capacity issue with the existing system on the street. We had done a preliminary analysis on this where we actually went out with the surveyors and located the drainage system on Brook Street and we studied it. Over that time since we've been looking at this, we found that our analysis was consistent with what the village was finding out as to where the critical points were along that drain system. Specifically on our site, we were directed to demonstrate how we could handle and mitigate the runoff that is being generated on our site without impacting the neighbors downstream and be able to tie into a system that wasn't necessarily adequate sized to handle what we were doing. We were fortunate that there is a plan to improve that drainage system which would coincide with the work that we are doing. Initially, our understanding was there were three phases to this project. Phase one being working on the brook to the rear of the homes on Brook Street. The second phase, improving the drain line along Brook Street up to Ward Avenue. Phase Three, which was going to extend that drainage system up to the rear of our property. As part of the plan that we have prepared, Chuck is willing to provide drainage to capture what is coming in from the rear of the property and tie it into the Brook Street drainage as part of our site plan, which in effect would be accomplishing the third phase of what the village had been thinking about proposing. I think in doing so, it helps to provide a bypass or another means for the water to get from the rear of the Ward Avenue properties out to Brook Street and help improve what is taking place to the property on each side of us. During large or significant storm events when that pipe can't handle that flow, we are seeing that there is an occasional flooding that is taking place, backing up out of the pipe that is feeding to the rear of the Ward Avenue properties, and it's subjecting to the people on each side as well as to the rear of the properties along Brook Street. They are experiencing that overflow condition. We have also discovered that along the rear of those properties a lot of people have made improvements on their own. They have created swales and even have installed some piping to help facilitate to keep that water moving through there. Our plan proposes to capture and store an underground detention system for any additional increases in runoff that will be generated as a result of we are proposing here and not have any impact downstream. We have prepared a report that discusses what we are proposing, and we have had a chance to see Anthony's memo, looking for some additional information and detail on that system. I think this project, working in conjunction with the village project makes sense and allows us to kind of improve to the maximum extent possible what we can do out on the site.

Vice Chairman Sturniolo: Going back, you said Phase One, Phase Two and ultimately Three. Phase One is Brook Street. Where does that lead to?

Peter Gregory: I believe it leads to a culvert. The brook is going back into a pipe underground out at East Hyatt and ultimately going down

to Main Street. That project is taking place from that inlet, working back north to where his system currently daylight and discharges to rear of those homes. That Phase One was continuing up to a certain point in here (indicating) and then Phase Two is going to take it from these (indicating) catch basins up to here (indicating).

Vice Chairman Sturniolo: Anthony, when is this Brook Street tying into East Hyatt, etc., going to be completed?

Anthony Oliveri: That project has been awarded at the last village board meeting. We will probably see construction starting on Brook Street in a couple of weeks. Essentially, what Mr. Gregory said is accurate. We did a storm water analysis study and did come up with a lot of the same conclusions that their analysis did. The project that we proposed is a new pipe system in Brook Street and some buildings to Brook (sic). Essentially we initially had it structured with the concept phase and kind of a three-phase project. The village's project is essentially the first two phases. The improvements on the Morgan property they are proposing would essentially be the third phase, in that it is going to pick up storm water runoff which comes down off the Guard Hill property. There is a pipe that runs through, the Pietell property, which runs down his driveway, which doesn't have enough capacity. The system is surcharged, backs up, water runs overland across Mr. Morgan's property. Their system is a system of inlets and piping along the property line, which will essentially pick up that overland flow. It is not physically connected to the Guard Hill inlet, but it would serve the purpose of picking up that overland flow and then directing it into our improved piping system in Brook Street and ultimately down to East Hyatt.

Brad Schwartz: Peter is the sizing of our system oversized?

Peter Gregory: Yes. We have been asked to take a look at sizing the system for the maximum potential development on the site, which I believe was a 40 percent development number. That would be approximately 3,000 square feet of impervious surface. The plan we are proposing now has approximately 1,500 square feet of roof area, and then another 1,000 square feet of driveway which right now is proposed as gravel. It would be gravel coming in from a point after the entrance, which would be a paved apron, and then we would bring gravel into the site.

Anthony Oliveri: Gravel on the driveway?

Peter Gregory: It's proposed as gravel, but our drainage system is being designed as if there were an all impervious surface.

Anthony Oliveri: As far as the calculations go, he is maxing out with the maximum impervious surface and demonstrating the system based on that. If the gravel is something the Board doesn't want, it really would not change the storm water analysis. That is more of a planning question.

Chairman Cosentino: Gravel driveways in the village?

Robert Melillo: They are calculated in development coverage.

Chairman Cosentino: Is there anything about paved driveways versus gravel driveways?

Robert Melillo: I don't know off-hand. I will look it up.

Whitney Singleton: I believe they are required to be paved.

Chairman Cosentino: I thought so. I thought it was paving and not gravel.

Vice Chairman Sturniolo: Then that logic would apply to the previous applicant at 28 Britton Lane.

Whitney Singleton: Yes.

Peter Gregory: We proposed gravel to help for that purpose, but again we have sized it for the maximum development. We can pave it.

Brad Schwartz: We will double-check that.

Chairman Cosentino: We are going to require paving anyway.

Anthony Oliveri: I have some technical issues. The detention gallery is shown in the right of way area. It should be totally contained on your property.

Peter Gregory: We can adjust that. At one time we were proposing some thing and we didn't think it was going to be a problem because it was unimproved. We can definitely realign that and bring everything into the site plan.

Anthony Oliveri: There are also detail items I asked for. I have no problems with it conceptually in terms of the storm water. They are detaining the storm water down to pre-existing rates, which is all they can do in this watershed. When we did our analysis, we found the Guard Hill water was not a big culprit in terms of flooding issues. The Guard Hill water is really regulated by their pond. They have a substantial pond. It's really the Ward Avenue/Brook Street neighborhood that computes the big numbers in terms of the storm water runoff. In our project, we maximized the pipe size and make the slope consistent to get a good flow through the piping system. That now gives them an opportunity to connect to a working pipe system. Also, they have a requirement for mitigating their own runoff increases, which they are doing. The rest of my comments are pretty self-explanatory.

Peter Gregory: Are the plans that have been prepared will be available for us to coordinate with our drawings?

Anthony Oliveri: Yes. All you really need to know is your point of connection, which I can tell you, the invert that you have on your plan works. I will get you a copy of what we have. It's public record.

Nanette Bourne: This application was submitted in 2010, and Brad submitted another copy of your letter from 2010. Included in that was your formal application. This has not changed?

Brad Schwartz: I don't believe so. I will go back and double-check to make sure there is nothing that would require updating.

Nanette Bourne: And your short EAF probably doesn't change either.  
Brad Schwartz: Exactly.

Nanette Bourne: I have no record that you intend to be Lead Agency to initiate SEQRA.

Brad Schwartz: SEQRA did not commence.

Nanette Bourne: If the Board is comfortable to initiate your intent to be Lead Agency, at the next meeting a copy of the formal application as well as the short EAF should be resubmitted.

**Motion for the Mount Kisco Planning Board Declare its Intent to Become Lead Agency for the 21-27 Ward Avenue, Charles Morgan, Lot Line Change**

**Motion: Vice Chairman Sturniolo**  
**Second: Ralph Vigliotti**  
**Aye: Stanley Bernstein**  
**Aye: Enrico Mareschi**  
**Aye: Chairman Cosentino**

Whitney Singleton: Please refresh my memory on a few items. Proposed Lot Number One has taken several feet from Lot 155 and several feet from Lot Two, for purposes of a subdivision not by the deeds. Is that correct?

Brad Schwartz: It was already done back in the 70's, and its ten feet from 155 and five feet from Lot Two. If you go back to that original subdivision map, Chuck's Lot Number One was 45 feet wide. We get to 60 feet by the 10-foot easterly portion of 155 and the five-foot westerly portion of Lot Two.

Whitney Singleton: What issues of non-compliance are created by virtue of that?

Brad Schwartz: None. There are existing non-compliances that I could point out.

Whitney Singleton: But the 9.3 foot setback from the existing residence fronting on Grove Street that is not being reduced from 13.3 to 9.3?

Brad Schwartz: No, because that 9.3 is measured to the line that has been affected on the deed and what we are showing on the map. In fact, back in the 80's when this applicant went in for the Zoning Board of Appeals variance; it measured the extent of the variance to that point.

Whitney Singleton: You don't need to do a -----, but if you have not previously provided a copy of that variance, could you provide that to me?

Brad Schwartz: Absolutely.

Whitney Singleton: The next thing for this Board to consider, which I don't know that it is earth-shattering but the degree of improvement that is proposed for Ward Avenue. I realize that you are focusing on the proposed lot to be improved, but this is also going to create a corner lot for Ford, and whether or not that creates any non-compliance issues. Does the corner lot go from a paper street or an improved street? That is what we need to know. More importantly, other than your drainage that Anthony already mentioned, are there any other improvements that you are placing ----- and are the right-of-way privately owned or publicly owned.

Brad Schwartz: Privately owned.

Whitney Singleton: So you own to the centerline on it?

Brad Schwartz: Yes. Because it's shown on a filed map, it would be easement rights with respect to all the adjoining owners.

Whitney Singleton: Is there a reason that the storm water goes passed the centerline of the right-of-way for the Ford property as opposed to over here (indicating).

Anthony Oliveri: They have to connect at the drain line that comes off the detention galley (sic) it would go passed the center line of the paper street, but will that then be Ford's responsibility to maintain?

Brad Schwartz: It would be our responsibility, and we have the easement right to go on at that half of the paper street. It is implied easement right by law just by virtue of the paper being shown on the filed subdivision plan. It is shown on the subdivision map that is filed, and the deeds and the lots that join the paper street make reference to that subdivision map. It is implied easement right under the law.

Stanley Bernstein: It is not actually written, but it is applied by either State or Village law.

Vice Chairman Sturniolo: Is Ward Avenue a paper street in its entire length?

Brad Schwartz: This portion (indicating) is improved. It's only from Brook Street over.

Chuck Morgan: I think there is also way up above, too.

Peter Gregory: In addition to those utility connections, there is a sanitary sewer service connection. We are providing a sanitary sewer connection for the Grove Street property to be connected into the Brook Street/Ward Avenue sewer line. A separate line dedicated to them. We would then abandon the existing septic system that is serving the Grove Street property right now. This is located to the rear of the Grove Street site.

Brad Schwartz: Chuck actually sold them this property, so he knows them. There is a relationship, and its part of his application. He indicated, "We will take you off the septic and hook you on to sewer," which is an improvement.

Whitney Singleton: I am not disputing this, just thinking out loud. Does that carry with it any implied right for somebody with frontage on Grove Street to run sewer lines through somebody else's private property from a separate subdivision? I am trying to figure out potential objections from neighbors. Clearly if that is on your client's side of the property at (sic) the centerline that is an issue.

Brad Schwartz: I hear your point. I will look into that.

Whitney Singleton: Right now it looks pretty close to being on your client's side of the right-of-way. It should not really present that much of an issue.

Anthony Oliveri: To what extent would the drainage system be built or not built? What is your timeframe on building the house and the drainage system? Is that something that you want to pursue right away or until you have a buyer or is this for yourself?

Chuck Morgan: I would pursue it right away.

Anthony Oliveri: I am thinking of the bypass drainage line. Is that something that is not going to happen for a long time, or is it going to happen immediately?

Chuck Morgan: I am projecting the fall.

Chairman Cosentino: Are you selling this house or are you going to be living in it?

Chuck Morgan: There is a pretty good chance I am going to move into it. I may have a buyer for my current house, which I live in now. If that goes through, yes. If it doesn't, I'm not sure.

Anthony Oliveri: I would suggest you go through my comments. I asked to separate some of the elements of the plan out. It is hard to read some of it. We will continue our review.

*The applicant was instructed to contact the Board Secretary and work with her on a next meeting date.*

Brad Schwartz: Thank you.

#### Special Discussion

- Memorandum from Nanette Bourne & Susan Jainchill, RLA, AICP to the Mount Kisco Planning Board dated May 13, 2013 re landscaping at Westchester Burger.

Stanley Bernstein: I was over there, and this does not look like what is there, what we accepted as the landscape plan. They have a lot of shrubs, but they don't have too many trees. If you count the trees that are there, you will see there is a discrepancy. It is also not filled in. There are big open spaces to make sure people see their sign.

Nanette Bourne: It's thin. It needs to fill in. They have planted what was on here. It will look like that once it grows in.



Stanley Bernstein: The count has to be the same. It looked to me like it was really deficient. I didn't look for species, because there were few leaves. I just went by the count.

Nanette Bourne: It would be nice if it were a little bit more robust. They planted what was on here. We called the landscape architect, and he had no involvement in it.

Stanley Bernstein: I remember at one of the meetings he said his father-in-law was the landscape architect.

Nanette Bourne: He gave it to another landscape architect.

Ralph Vigliotti: Isn't it their responsibility as a landscape architect to ensure what was put in?

Nanette Bourne: Yes and the landscape architect did not even know it was being planted.

Anthony Oliveri: It is only his responsibility to the extent that the owner hires him to come out and check.

Stanley Bernstein: I will go by and count what is there. I will not look at the species. It looks very, very loose.

Ralph Vigliotti: He did say in the minutes he would put some plantings in the green space near the dumpster. He needs to be held to his word.

Vice Chairman Sturniolo: There is a handicap exit facing the front of the building. Do they need a rail?

Robert Melillo: It has to be a ramp, and the wall has to be more than three feet.

Stanley Bernstein: I would like to talk about Little Kabob Station. We put in the resolution they were not to move food out in the street from one place to another. We said they have to have a covered tray. I was there the other day and there is no covered tray. There were ten waiters walking in and out with uncovered trays.

Vice Chairman Sturniolo: Saturday they had outdoor dining.

Stanley Bernstein: I didn't know about that.

### **Special Discussion:**

#### **16 East Hyatt Avenue**

- **Conversation and recommendations for the Zoning Board of Appeals**

Chairman Cosentino: I think we all know what this is all about. This originally went to the Zoning Board of Appeals. The ZBA referred it back to the Planning Board.

Whitney Singleton: The ZBA solicited your Board for your advice and input relative to whether or not a variance is truly necessary for this application, and whether there was a way to satisfy the aims and objectives of the zoning ordinance with regard to parking requirements, impervious surface and development coverage without the necessity of a variance. Your Board has done a site visit and has met with the applicant on numerous occasions discussing various items. Anthony has reviewed this and provided your Board with a memo. At the last meeting, your Board asked me to draft a form of a memo to the Zoning Board of Appeals incorporating comments that you previously made for your Board's review and consideration tonight. Before you get a draft of that letter for your consideration to send back to the Zoning Board of Appeals. Without reading the two-and-a-half page letter, it talks about your Board's site visits, the history of how the application came to be, what the misrepresentations were in the application, and what your Board's concerns are relative to meeting the aims of the zoning ordinance while at the same time not presenting undue burden on the community with regard to impacts offsite on the property. Specifically, there are four different analyses provided. One proposed to provide parking underground so that it is not on the surface and does not exceed the maximum development coverage for the site. As we previously discussed, that is feasible given the fact that the building was designed with nine-foot ceilings, but it will result in some site alternations. To do that that are not inexpensive, but they do have some benefit. Secondly, there is a consideration to eliminate the necessity for the four parking spaces by reducing this from a two-family home to a single-family home, thereby cutting the parking requirement in half, thereby cutting down on the impervious surface and bringing it back into conformity with the underlying zoning regulations with regard to maximum development coverage. The third consideration is removing the structure in its entirety and bringing something to the site that is more appropriate with the scale and the zoning requirements for both building and development coverage, so that the parking can be met while still meeting the permitted uses in the zone. The fourth consideration is a combination of some of the above, and that would involve instead of consideration of exceeding the maximum development coverage, consider waiving certain other requirements, in particular, eliminating some of the impervious coverage in the form of waving one parking space, eliminating the side entrance, eliminating the turn-around and other areas that bring impervious coverage to the site. A consideration there would put further restrictions on the property. All of these solutions involve your Board's comments with regard to landscaping and referral back to the Architectural Review Board as far as the aesthetic appearance although that was somewhat beyond the scope of what the ZBA sought from you. The only overriding theme, which is set forth in the letter, was that your Board as I was directed, did not wish to see any alternative which involved exceeding the maximum development coverage.

Chairman Cosentino: That being, there are four paragraphs, and in each paragraph it states what could be done and what could be sent to

the ZBA. We have to put this together. Out of all four, I seem to like four. It states that if you took the house and obtained a variance for three automobiles; one in the rear, two on the side facing the house to the right, eliminating the stairs going to the basement and eliminating the turn-around in the front of the house. Also, refer this to the ARB for possibly reconsidering the aesthetics of the front of the house, and curbing. Does anyone want to add anything to that?

Whitney Singleton: There were two things I was requested to put in the draft that you did not mention. I don't know whether you not mentioning it or if you want to eliminate it or continue to incorporate it. That was the restrictions that were offered up by the applicant on the lack of occupancy of the basement. That it would not be occupied space.

Chairman Cosentino: Yes, that goes along with it too.

Ralph Vigliotti: How do we insure that they comply with that statement, which is no occupancy in the basement?

Whitney Singleton: As is set forth in the recommendation that can be incorporated not only in any variance as a condition of approval, but it can also be incorporated into both the building permit and the Certificate of Occupancy.

Ralph Vigliotti: I would certainly like to see that be done. I agree with the Chair, which is Item 4, which is referring to the ARB with regard to anything that may be done with building façade that faces Hyatt Avenue. Also, we do not have a landscaping plan. I think for this particular site, it will go with Item 4, which I am in favor of. But we do need a landscaping plan. For me, probably the most important piece of Number 4 is the effort to reduce pervious surface and clear up that variance with the removal of the turn-around in front of the building and the rear staircase entrance, the side yard entrance to the basement be eliminated. Otherwise, I'm okay with the recommendation of Number 4.

Enrico Mareschi: I agree on Number 4, and I refer it back to the ARB.

Vice Chairman Sturniolo: I totally disagree with option Number 4. Options 1, 2 and 3 address the more immediate concerns, and we even heard it from the previous applicant. Where is the water going to go from Ward Avenue? East Hyatt (repeated). We need to reduce the amount of impervious surface on this application. We also need to make sure that this is not something that is a burden on the Building Department to check for compliance every other Tuesday with an alternate Wednesday as a substitute date, is how many people living here? Oh, no, I promise they are not going to live here. That is totally weak, and I would support items 1, 2 or 3 only.

Stanley Bernstein: I agree with Mr. Sturniolo. I do not support Item 4 at all. Not only that, they still need a variance if they use item 4. I will agree to the first three recommendations, My gut feeling is in order to resolve this properly for the village, the recommendation I would give to the Zoning Board would be either demolition and put

something that is compliant or convert to a single-family home. Those are the two that I think should be recommended.

Chairman Cosentino: When you say demolition, are you saying tearing the house down?

Stanley Bernstein: Remove the house and put in something that is compliant or turn it into a single-family residence.

Vice Chairman Sturniolo: Should we vote on this formally?

Whitney Singleton: Your Board is saying that from the perspective of a referral, your Board is generally in favor of any of the first three options, and there is a minority or a plurality of your Board tonight that is amenable to the fourth option. A minority of you are not in favor of the fourth option. I can convey that in the letter. I do not think you are going to get a majority in favor of Item 4 or Item 2.

Vice Chairman Sturniolo: Wouldn't that make it easy for the ZBA to come to a decision, if they hear what the hard vote is?

Whitney Singleton: I will incorporate this into the letter.

Vice Chairman Sturniolo: I'm saying we need to vote tonight.

Whitney Singleton: What are you going to vote on?

Stanley Bernstein: I disagree. I do not think there should be a vote. This is a recommendation, and to vote on it is just complicating the issue.

Chairman Cosentino: There is no vote.

Stanley Bernstein: Each of us made an opinion, and just as the Supreme Court, each one has its own opinion which will be relayed to the ZBA. That is the way to do it.

Chairman Cosentino: There is no vote.

Vice Chairman Sturniolo: Nothing has been accomplished.

Whitney Singleton: You don't have four people voting in favor of one particular alternative.

Vice Chairman Sturniolo: How do you highlight that verbally?

Whitney Singleton: I will say that there was not a majority in favor of any one of the alternatives. There was a uniformity of your Board that you do not wish to grant a variance which would exceed maximum development coverage. That it can be accomplished through any one of the following four measures. While there was support by everyone for the first three measures, less than a majority but a plurality was in support of alternative Number 4. I do think your Board should make a motion and a second and carry a majority of the Board that a recommendation should be drafted by me in accordance with what was discussed tonight and forward it to the Zoning Board of Appeals.

Chairman Cosentino: Why don't you word that? And, you want us to vote on that?

Whitney Singleton: If you want to vote. If you want to wait another two weeks to see a draft, that is up to you.

Vice Chairman Sturniolo: I'd like to see something before it goes out. Because then I can attach my dissenting opinion to it.

Whitney Singleton: I will draft it. In light of the fact that we will not be relaying it to the Zoning Board this month, at what point in time do you want this to be available to the applicant? The applicant has called or emailed my office numerous times for a draft of this letter.

Chairman Cosentino: We would like to see a draft.

Whitney Singleton: I'd like just a little bit more clarification. Rather than you see a draft, at what point in time is it authorized for me to release it to her?

Vice Chairman Sturniolo: I would like to see her get it after the Zoning Board of Appeals receives it.

Whitney Singleton: So it will not be available for her for the next two weeks.

Stanley Bernstein: The ZBA should tell her.

Chairman Cosentino: We are doing this for the Zoning Board of Appeals, not for her.

Whitney Singleton: At some point in time you are going to authorize this memo.

Chairman Cosentino: After the Zoning Board of Appeals reviews it; she can get a copy of it. Why would I want to give it to her before I give it to the ZBA?

Whitney Singleton: I just want clarification from my perspective.

Chairman Cosentino: I think that is improper.

Whitney Singleton: There was a suggestion in a series of emails to me that it had been authorized to release it to her earlier than that.

Ralph Vigliotti: Can you have our recommendation memorialized prior to the ZBA meeting?

Whitney Singleton: Of course. I can have it tomorrow.

Ralph Vigliotti: There is not much to add to this.

**Correspondence:**

- Minutes of the Mount Kisco Beautification Committee Meeting April 3, 2013.

*As there was no further business to be discussed by the Planning Board, on motion by Mr. Vigliotti seconded by Mr. Mareschi, the meeting was adjourned at 10:00 PM.*

Respectfully submitted,

Stanley Bernstein,  
Recording Secretary

dm