

Minutes  
Meeting of the Planning Board  
Village/Town of Mount Kisco  
Wednesday, May 29, 2013

*Chairman Cosentino called the meeting to order at 8:00 P.M. at the Municipal Building Mount Kisco, New York.*

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

**Members Absent:**     **Enrico Mareschi**

**Staff Present:**        **Whitney Singleton**

**Staff Absent:**        **Anthony Oliveri**  
                              **Susan Y. Jainchill, RLA, AICP (for Nanette**  
  **Bourne)**  
                              **Rob Melillo**

*There were no meeting minutes to be approved.*

**Continuing Review:**

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

**Present:**

**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**

John Keller: At the last meeting, I believe the Board was had a draft resolution before them, and there was one issue, which was outstanding with New York City Department of Environmental Protection (DEP).

Chairman Cosentino: I have some items on the draft:

- On the tax map identification it should be 80-48-5-2. The 6 has to be eliminated.
- The first "Whereas" 107 has to be deleted. There is no wetlands issue here.

- On Page 2, the building inspector cannot be TBD. We need a date on that.

Whitney Singleton: I don't know the actual date that the building inspector issued a memorandum on it, but I will make sure to insert it.

- On Page 2, it needs to say, "proposed to be multi-tenant," not "proposed to be a multi-tenant."

Whitney Singleton: So it should read, "the building is a multi-tenanted..."

Chairman Cosentino: That's right.

- On Page 3 at the top, on the "Whereas the applicant proposes improvements including the site plan," between there is the site plan improvements.
- On the third whereas, where it says, "the applicant proposes," leave "will" out. "Proposes to install drainage.
- On Number 6 – All applicable county, state and regional permits shall include the DEP. It is because of a Main Street issue.

John Keller: We had a meeting with DEP this afternoon, and because we are not increasing impervious surfaces on the property, they made a determination that there will not be a DEP review of the project.

Chairman Cosentino: We will need documentation on that.

John Keller: They will issue a letter, which we will provide to you.

- I would like to insert another sentence in Number 16. "All construction materials, storage equipment and other items shall not be placed in the public right-of-way, nor shall same obstruct traffic."
- On Page 5, #21. Add "including access parking planned for patrons, occupants and visitors during construction."
- Page 5, #23: Please add, "Applicant shall submit revised plans indicating the height of the light poles, which will not exceed ---- feet." We do not want them putting up a 30-foot light pole.

Doug Hertz: They have to stay within the village illumination guidelines.

Chairman Cosentino: How many feet is that?

John Keller: We are proposing 16 feet.

Vice Chairman Sturniolo: As Doug said we could stay within the village guidelines.

Chairman Cosentino: The idea of this is the lighting guidelines specifically say 15 or 16 feet.

Doug Hertz: They absolutely say maximum height available for poles.

John Keller: We will comply with that.

Whitney Singleton: Why don't we simply say they shall comply with the village illumination guidelines and shall not exceed 16 feet?

Vice Chairman Sturniolo: We are not sure, if that's a hard number.

Chairman Cosentino: There is a reason I am saying this.

Whitney Singleton: I don't have it with me. He said he could not ascertain from any of their plans what the height was, and he did not see any restriction. He was asked to look at that, and he did not see any restriction of height.

Doug Hertz: There is absolutely restriction on that. We've had discussions about height restrictions.

Chairman Cosentino: For reasons beyond my control, if it's 16 feet, put 16 feet here.

John Keller: We believe its 15 feet. That is our recollection that is what is on our plans.

Chairman Cosentino: Whatever number it is, that's what we should put.

Whitney Singleton: And those are full cut-off fixtures?

Chairman Cosentino: Yes. Those are all the changes I have on the resolution.

**Motion to Approve the Resolution for 350 Lexington Avenue, PB2013-5 (SBL) 80.48-5-2, Subject to the Revisions that were just Enumerated in the Site Plan Approval Resolution with the Amendments and Various Changes**

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

**Continuing Review**  
**The Hearth at Mount Kisco**  
**270 Kisco Avenue**  
**PB2012-**

**Present: Mark P. Miller, Attorney at Law, Veneziano & Associates, representing the applicant**  
**W. Charles Utschig, Jr., P.E., Langan Engineering**  
**Christian Sexton, Vice President, Development, The Fortus Group**  
**Anthony Marcus, Village Trustee**  
**Karen Schleimer, Village Trustee**

Mark Miller: When we were here last to discuss the technical memo, we discussed how, during the "gestation period," if you will, that we were examining various options to reduce some of the environmental impacts. We identified essentially flipping the building and moving the memory care section over where the other building was. That allowed us to eliminate a significant section of the road leading around the building. As we examined that, we saw an opportunity to address one of the lingering issues, which was the switchback access drive. Given the previous configuration, there was no way to avoid the switchbacks. Now, with the new configuration, Chuck and the fellows at The Hearth have figured out a way to address that issue and completely change the access drive. As Chuck will explain, it has significant benefits with respect to impervious surface, increasing the amount of undisturbed area; the visual impacts from Kisco Avenue are almost entirely eliminated. It helps us address the DEP issues, the tree removal and just about everything. When we were here last, we talked about tree removal and the two potential secondary access points; one from BMW, one from Curtis. I can tell you that we now have an agreement with Curtis. That will provide both a construction easement to allow us to come into the site from two points as well as a permanent secondary emergency access, which gets us up to the site in case there is a double emergency.

Chairman Cosentino: I think further up on the access is better than downward.

Mark Miller: We agree. It also has the benefit of giving us the opportunity for a second construction access to come into the site and minimize the amount of time we are actually under construction. With that, we understand there will be some necessary revisions.

Chairman Cosentino: Whitney, have you examined the agreement between (The Hearth) and Curtis?

Whitney Singleton: It will be finalized this week.

Mark Miller: We have the agreement as of this afternoon and I'm working with John Marwell on the actual easement agreement. We will share that with you once we complete it. We are working on revisions and updates to the technical memo to provide the information based on this plan. We hope to have that to you very shortly. Chuck is working on the site plans with this layout. We intend to be on your July 9<sup>th</sup> agenda with the full set of revised site plans for this layout.

Chairman Cosentino: On that plan, it would be good if you took the access road from the point of egress and ingress all the way down to Kisco Avenue.

Mark Miller: The emergency will connect with Curtis.

Chairman Cosentino: We want to see how it is connected, so we don't get a surprise later on. This way, it will be on the site plan.

Mark Miller: Understood.

Chuck Utschig: This is kind of an evolution of a plan that really started with a reduced building size brought forth by The Hearth. We initially put that reduced building within the loop road of the original

Westchester Residence plan. We then realized that they were potentially some advantages that we could take as a result of the different design. The parking was laid out a little differently. We didn't need to get into the building from both ends. That led us to the next version, which was the flipped building and access at that end (indicating). We have now taken it one step further. This comes from realizing the benefits of not having to bring a road around the far end to both ends of the building. The design that we presented to the Board basically reduces one of the switchbacks coming up the hill. There are some changes in how that gets graded, but there are clearly benefits, which we hope to explain tonight. This is a glimpse of the plan with a little color, which the chairman suggest I do, the comparison of the original site plan of Westchester Residence and this revised drawing. This is the plan that is part of the DEIS and the FEIS finding statement which represented a loop around the entire building with the tennis court and had the building footprint that was discussed and the impacts evaluated in the Environmental Impact Statement. The only difference between these plans is that we had an emergency secondary access that went all the way up to the water tank. This plan shows a connection to the Curtis property. We did that because one of the conditions in your finding statement was that the plan had to have it. We are trying to make sure we are comparing apples to apples when it comes to impacts like clearing, grade and tree removal. We are using this as the basis to compare it against the new drawing. This was a required part of the plan as far as your finding statement goes, and we are using this as the basis to compare it against the new drawing. We have overlaid in blue the new layout. The single switchback is going to be around the far end of the building to a cul de sac at the main entrance. The emergency access road from Curtis property is in blue coming into the site. You will notice the difference primarily in the area of disturbance is highlighted in yellow. By eliminating this switchback here (indicating) we gained a very large area in a very important location that we can preserve a good amount of existing vegetation. We also were able to pick up a fairly significant spot as a back up to the BMW parcel. We have also been able to preserve a fairly substantial area in the direction of the Curtis building, which was an important aspect of our neighbor. There are some small areas where we have been able to pull the grading in. It is really a function of this building not being as wide from front of back as the other one. As you all know, the grade change as we go down here (indicating) is substantial. In the original plan, from the front to back, there was probably 70 to 80 feet of grade change that we were trying to create this plateau in. It meant tiered walls at the bottom, the building, and a significant cut in the back. By virtue of us being able to squeeze this building in a little less short dimension in this direction, you can see how the fingers stick out further; we do not have to go around the end. We condensed the whole thing and it allowed us to put that same building footprint on an area that only has 40 or 50 feet of grade change. The differential on the high side and the low side has gotten much better. If you really started to look at the number of walls that we need, for example, the cut in the back of the building has all gotten in some cases substantially less. If you recall, around this corner, you can see how far out we had to come to make this circulation roadwork. The cut on the high side here (indicating) was about 30 feet. There were two 12-foot retaining walls on the low side. Both those numbers have been cut about in half. Again, as you work your way around the site, at any one point these numbers change a lot because of the topography. I am giving you general representations

of the kind of changes that we are seeing. I put together a quick table which is a quick comparison of what we felt were the significant environmental impacts that this Board dealt with in the process and compared them. The comparison is between the red and the blue plan as you see them; the red plan being what was being analyzed in the DEIS and the FEIS, and the blue plan being one that we currently have presented to the Board tonight.

Mark Miller: With the understanding the red plan, the so-called FEIS plan, incorporates to avoid comparing it. Nanette raised a legitimate issue that this Board had never really approved the water tower emergency access. The numbers that Chuck is going to give you on the FEIS plan are as if the Curtis access were in that plan as well, so it's apples to apples.

Chuck Utschig: In terms of the number of trees that we were able to reduce the impact of removal, there are about 600 trees that we can save as a result of this plan. There is about a 91,000 square foot reduction in impervious area, which is starting to approach two acres. That has helped us also as it relates to the DEP and their requirements for storm water. As you recall, there is a small wetland pocket here, (indicating) and the buffer extended way into the site. By virtue of eliminating the switchback, we were able to reduce the impact on that buffer, although we made the case that that was not a significant wetland, so we are just presenting that as a difference between the two plans. The disturbance is 1.4 acres less. The roadway length reduces approximately 1,300 feet. You can look at some of the percentages, they are substantial, we think. We think this plan has moved in a very positive direction in terms of trying to reduce to the extent that we can give the nature of this site some of the significant impacts that this Board was concerned about. The second page is supplemental calculations that went into creating the summary. It is a comparison of the various plans that we presented to the Board, so it kind of went through each iteration as I started. We got the FEIS plan, and then we have this modified plan that has the Curtis access but it has the same layout. We then presented to you a plan with the technical memo and then finally this Plan Four, that we are calling it. The real comparison here is between Plan Four and the original what we call the Westchester Residence plan. The second page is just the analysis that we went through to get to the summary. Although we did not have enough time to actually do a model, we tried to create a perspective of the site to give the Board a sense of how this road looked as it came up. As you can see the shadowing, you are looking at a cut section as you come up. As you come around this edge, the tone starts to change and you can see the road configuration, the two basins and the differential in grade that we have to create at the back tier of this building. As you come around, you can get a perspective of the cut in the back. This provides at least some sense of the connection point of the Curtis property. That is the upper Curtis building (indicating). We will continue that picture down all the way out. This also represents the BMW site. The goal here was to at least try to give the Board a sense of how this grading may look if you took a birds-eye view at it. Rally, the intent was to get a sense of where the cuts were and the fills were, and how each of these pieces fit together. This picture really gives you a good sense of large areas that are being preserved in fairly good locations. For example, when you look at the sections from Kisco Avenue that I have, you will see the topography is so significant that looking up from Kisco Avenue you

would look up at all the improvements on this site. You won't even see the building as you look up from Kisco Avenue. As you move further away and across the valley you will, but close up, there is not really going to be a visual impact of what we are proposing. To give you a sense of that we projected two sections. These are both from Kisco Avenue. You can see the dark line is the grade going up. That is the first switchback in the road. This is the second one (indicating) up by the parking lot. This line that goes above it all is actually a site distance, so if you took a measurement standing at Kisco Avenue looking up, what occurs down here in this area is that we are now able to preserve the trees, which block your view because of the grade of seeing anything above that. The same thing holds true if you go from a point here and you cut a section through the building. By virtue of the topography, the site distance projects you above the building. From close, you really are not going to get a view of this building. You are going to be looking at the grade going up. When we get all said and done and the vegetation has an opportunity to mature, you might see something like this (indicating) as you are standing away from Kisco Avenue looking into the roadway. This is the entry drive (indicating), this is the rock cut, this is the first switchback, which now kind of gets hidden behind that pocket of trees that get preserved. You ultimately will see it back up at the top, where we come back around to the parking area. This was done at the same angle that we had in one of the exhibits in the DEIS, it wasn't purposely done in this direction. We wanted to match the perspective, so the building is actually off up in this corner of the picture.

Mark Miller: When we submitted the technical memo, one of the exhibits to that was the graphic from the FEIS taken from that angle, which showed all the walls and the switchback. You have that as part of your package.

Vice Chairman Sturniolo: A moment ago you said this view is one of the corners of the building in the color photograph. You pointed to the upper left hand corner.

Chuck Utschig: The building is actually off the picture to this angle.

Vice Chairman Sturniolo: What was the area you were referring to as a corner of?

Chuck Utschig: I compared these two. They are now both orientated the same way. This perspective is here (indicating) looking in this direction. You look at a view that comes up in this direction. It basically skirts the end of the building. The things you see in this picture are this curb, then disappear, then come out again up here. The two pieces that you see are the start of the first switchback and they are way up at the top. This end of the building is a one-story building. We have the photo simulations from across the valley and when we revise the technical memo, we will adjust those to reflect this layout.

Vice Chairman Sturniolo: Will we be able to see the perspective of the emergency access road from Kisco Avenue in a photographic representation?

Chuck Utschig: It will be entirely behind either BMW or the Curtis property itself. It is actually behind (Mr. Utschig took out another

drawing for display). This is the BMW building and parking lot. This is the upper Curtis building. The connection point runs along the length of the BMW property behind it. There is a substantial amount of vegetation that stays in here. You will not see any of this from Kisco Avenue.

Vice Chairman Sturniolo: The vegetation will mask it?

Chuck Utschig: Between the existing building of BMW and the vegetation that is being preserved, you will not see the emergency access to this secondary connection drive. There may be a faint view if you are looking straight up between Curtis and BMW. You might see it, but I doubt it.

Ralph Vigliotti: On the access road that will be visible from Kisco Avenue, what materials will you be using for the walls?

Chuck Utschig: It is anticipated that will be a natural cut stone fence. If you drive by the site, you will see the rock there. We anticipate up into the curb to be a natural rock face.

Ralph Vigliotti: At some point, will you make available to us a rendering of what the stonewalls will look like? What you're saying is wonderful. The project is not going to be visible from Kisco Avenue, but the road and the entrance will. That interests me. I am very happy with what you are proposing and the changes you have made. You've come a long way, and I'd like to thank you personally.

Chuck Utschig: We will come up with some example pictures in detail, which I think is the best way to do that.

Doug Hertz: How come it took us seven years to remove a switch hook?

(Discussion followed)

Chuck Utschig: What really drove that design is the complication of coming around this side of the building in terms of how we can grade that piece of road. Given that we had a slope on this and it had to be flat at this point, because we had entryways into the building, it basically dictated that grade at the intersection. If you take the allowable slope of the road and the grade differential, you needed that lineal footage to make the grade change. When we disconnected it, (showing another panel) no longer does any of the grading around this corner affect how we were able to bring this up. In essence, I did not need as much roadway to get to the elevation that I was shooting at back here. I took this piece out that really controlled that. That is why we didn't really see it until we started knowing that this was a viable option. We then figured out what we could do with this grade. There are things that happened with the removal of the switchback. There were a series of walls both on the low side and the high side and the double switchback configuration. This cut in here (indicating) is a little deeper and a little longer, so there are offsets to it. But, we thought that the benefit of gaining this as undisturbed area was a tremendous plus.

Doug Hertz: I concur, as one member of the Board. Having that area of non-disturbance has really changed the visual of the whole thing.



Chuck Utschig: Probably not a whole lot from the perspective from across the valley, but very much so from the localized view.

Doug Hertz: You are also able to preserve an area above BMW that is much larger than you would which does affect across the valley.

Vice Chairman Sturniolo: The original drawings were really on the money considering the limitations and the requirements?

Chuck Utschig: Yes.

Vice Chairman Sturniolo: Last time we were together we were talking about a secondary eight-inch water line that loops through the complex. Is that still part of the plan as a back up to the 12-inch off Kisco?

Chuck Utschig: It is, as a supplement. There will be a secondary water main brought into the site coming up this leg (indicating). If you recall, this property and the remaining town-owned property has a 50-foot wide leg that goes down to Kisco Avenue. The design is to make an additional tap for the main at Kisco Avenue, bring it up into the site and complete the loop so it will be fed from two ends.

Vice Chairman Sturniolo: Thank you.

Whitney Singleton: You mentioned the technical memo. There were a couple of outstanding comments from Nanette in your technical memo. How are you going to address those in light of this?

Chuck Utschig: I'm trying to recall what the outstanding items were.

Mark Miller: One of them had to do with not making the comparison from the road to the water tank. Chuck has basically done that already.

Whitney Singleton: With this change now, you are still going to have issues that this visually may address but maybe not technically. You are still going to have storm water issues, retaining walls, road elevation issues, etc. By flipping this, what is that going to do? By flipping the building, you put the higher number of stories facing ----- -. How are you going to address these with the Planning Board? These are impact issues.

Mark Miller: We submitted photo simulations as part of the technical memo showing the flipped building, and we'll update those to reflect this final plan.

Whitney Singleton: From a ----- perspective are you going to be able to get to that portion of the building if you need to?

Chuck Utschig: Yes. The requirement in the new code is 300 feet at that point in the building. The distance from any location where we've had to drive is less than 300 feet so we can access the building as required by the fire department.

Whitney Singleton: Finally, visually on the southerly side of the building, I notice that while the emergency access road will probably not be visible at all. It can be minimized as far as ----- except if the

Planning Board wants it, either created on the 3-D model, it appears as though you are creating quite a bit of a change in grade there. Is that going to be able to be utilized for any sort of screen, or is the building simply going to be too high at that point? It seems as though it's really going to stand out if it's on a plateau at that point.

Chuck Utschig: The heights of these trees are such that they do provide screening, so we are talking about trees that are 40 or 50 feet tall. The photo simulations show how this pokes above the tree line. It has before, we amended it for the foot building and we will do so for this amended design. Between the photo simulations that show what is sticking above the tree line from across the valley and what the site line sections show, you will not be able to see when you're at Kisco Avenue or close proximity to this looking up to grade. We are thinking that gives the Planning Board some information to decide whether supplemental screening of some kind is necessary. I will point out that this terraced condition here (indicating) was part of the original plan and is still part of this. We would like to present those things in the technical memo, updated to reflect the comparison, address Nanette's concern that we not incorporate the water tank emergency access road, which is what we tried to at least get a start on with the table that I provided the Board. Some of the more site plan related issues like the texture of the walls, actual heights and some of the detailed landscaping plan, we would hope that we could incorporate that in the site plan approval package and go through that process like you normally do with a site plan.

Whitney Singleton: Before you submit that site plan your proposal on the emergency access road -----material -----?

Chuck Utschig: No, it is proposed to be gravel. We are trying to be as sensitive to the impervious issue as possible. It will be stable to handle fire equipment. It is understood that it has to be plow-able. The width as described in the code is 15 feet because it is a secondary access point. It will be gated, chained above fence (?) although this is not where there will be a lot of traffic where someone may want to try driving in. It will be protected. It is understood that it has to be kept free and clear at all times, including during the winter for snow.

Doug Hertz: Thus new plan proposes two sections of green roof. Please talk about that.

Chuck Utschig: There are two sections of the building that are green roofs. The one in the Memory Care Unit is a one-story unit designed as a center corridor so there is an open space feeling when you're inside the building looking in.

Doug Hertz: So there is level change?

Chuck Utschig: Correct. This is on the same level as the finished floor. It's not really a "green" roof per se, it's a green area. It is in essence a courtyard. This (indicating) piece is a green roof that is up on the roof, and it is located between the single-story section and where you have your ----- section. This center portion of the building is where all the common facilities are; dining area, common rooms. There is an actual green roof on top that will be planted as a green roof. There will be trees, vegetation, seating areas, etc. It will meet the DEP's definition of a green roof.

Vice Chairman Sturniolo: Are you looking toward any LEED status as far as construction?

Mark Miller: It was in the FEIS in the findings statement. We are going to shoot for LEED silver.

Doug Hertz: But you will go through the process of documentation, etc.?

Vice Chairman Sturniolo: And the preparation of all the information so the agency can process it and see if you do qualify for the silver status?

Chuck Utschig: I believe doing the paperwork is intended so we can track the LEED points. We are finding out that it is a very expensive process and we are finding that people are committing to following the LEED certification process, demonstrating that the points have been acquired for a certain status but not paying the substantial fee to actually get it certified. I think our commitment was to work towards a building that meets the LEED design criteria, but not necessarily actually getting it certified.

Vice Chairman Sturniolo: This is a little bit different than the first go round with the proposal when it was under the auspices of a different group.

Chuck Utschig: That is correct.

Doug Hertz: One of the positives of going through that process is that you have to prove out your case in the end. If you need to show your energy usage, show your water usage, etc., and you can't design it one way and then have it not quite built that way; I understand there are costs involved. There are advantages from the village's perspective as well.

Chuck Utschig: I'm sure there will be a commissioning for this building, which basically the process is going through to make sure that it does function as designed. Again, that is still a step short from actually taking all of the paperwork and sending it to the LEED organization and getting that piece of paper that comes back.

Vice Chairman Sturniolo: One of the advantages you have in the narrow focus point of view regarding LEED certification is, do you intend to use a lot of the natural stone on site both for the construction of the roadway and for the building itself, which moves you along in the LEED process.

Stanley Bernstein: The noted area of the green roof in the northwest is a courtyard?

Chuck Utschig: Correct.

Stanley Bernstein: Label it "courtyard." On the switchback removal, how does that big curb affect the grade?

Chuck Utschig: There is more cut represented.

Stanley Bernstein: How does it affect the grade in driving up the

driveway?

Chuck Utschig: The original design had segments of slopes that were between 11 and 12 percent. This design is 12 percent going all the way up.

Stanley Bernstein: Because of the curb and not having switchbacks, you are lessening the number of retaining walls. How tall do you anticipate the walls to be?

Chuck Utschig: At the steepest point the cut here is 20 feet of which we anticipate.

Stanley Bernstein: You are aware that the Mount Kisco steep slopes law requires nothing more than 8 feet?

Chuck Utschig: For a retaining wall?

Stanley Bernstein: Yes.

Chuck Utschig: These will be natural rock cuts.

Stanley Bernstein: I didn't ask you about the rock cuts. I asked you about a built wall.

Chuck Utschig: Where we now have walls left, we will need to code what the village requires in length.

Stanley Bernstein: That is also in the code. Maximum length/maximum height. You are aware of it?

Chuck Utschig: Fully.

Stanley Bernstein: On the emergency access road, you can in good conscience call that an emergency access road in the position that it is in, even though it is only one-third of the way up? Shouldn't an emergency access road be on the other side of the property, where it was originally proposed, if it's to be an emergency access? Supposed there is a blockage after the emergency access road?

Chairman Cosentino: Where was it originally proposed?

Stanley Bernstein: Up in the northwest corner.

Chairman Cosentino: That is not going to happen.

Stanley Bernstein: That is not the point. The point is do you call this an emergency access road when in fact it can't really truly be an emergency access road because it does not cover a point in the property where emergency access is required. I have a suggestion. Of course, you don't have to listen to my suggestion, but why don't you make this new emergency access road the main road and eliminate that other abomination? Think about that.

Chuck Utschig: I think we would have a hard time with our adjacent property owners. I believe the connection point is on a piece of property that we do not own or control. I would guess that property owner would not be interested in having the normal routine traffic

going through this site through his property.

Stanley Bernstein: Understood.

Whitney Singleton: Stan raised a legitimate question. I realize as we go through the site plan details there will be review and calling out of issues of non-compliance. Is there anything that you are aware that is going to trigger relief from the code based upon what we have to date?

Chuck Utschig: None that we are aware. Our goal is not to have to deal with that.

Chairman Cosentino: Thank you, Chuck, for the wonderful job you did tonight. I want to thank The Hearth for having a vision of making something nice, a better place for the Village of Mount Kisco. You have done a fantastic job, came back and made improvements that nobody else probably would have done, and I want to congratulate you.

Mark Miller: Thank you.

Whitney Singleton: Just to talk about scheduling coming up. One of the issues we have been dealing with the Village Board is the length of the project. When do you think you'll be able to have your full submission to the Planning Board?

Mark Miller: Our intent is to have the full submission in for the July 9 meeting.

At this point, the secretary noted for The Hearth to be placed on the agenda for the July 9 Planning Board meeting.

Mark Miller: We hope to have the technical memo before that. We know you have two meetings in June, but the whole submission (will be ready for) July 9.

Whitney Singleton: It would be very helpful to get everything not so much to me but our planner and engineer as quickly as possible.

Chairman Cosentino: I would like to thank Trustee Marcus and Trustee Schleimer for attending our meeting. Thank you.

Vice Chairman Sturniolo: That July meeting will satisfy our obligation with the applicant, just like tonight's obligation was satisfied to be on this agenda?

Whitney Singleton: What do you mean, "satisfy our obligation?"

Vice Chairman Sturniolo: I'm under the impression that the applicant had to be on this agenda tonight for certain legal reasons, which is fine. Will the July 9 meeting also satisfy those same legal timetable obligations?

Whitney Singleton: The timetable has to do with the contract with the village. As far as your board's review, your board is going to do your review as we deem appropriate. That is why there has been no acceleration per se of this process. I want to make sure that the

mapping out of their next appearances is done in a fashion where our consultants get the materials in a timely fashion and they have meaningful input to provide.

Vice Chairman Sturniolo: Thank you. I agree.

**Special Discussion:**

**Northern Westchester Hospital Center  
Temporary Certificate of Occupancy for Parking Garage**

**Present: Michael Caruso, Vice President, Facilities, Northern Westchester Hospital Center  
Chris Shopinski, Director, Maintenance and Project Management, Northern Westchester Hospital Center**

*Chairman Cosentino recused himself for this portion of the discussion.*

Michael Caruso: I would like to thank the Board for honoring our request in short notice to appear before you so we can discuss the site plan modification and potential for achieving a Temporary Certificate of Occupancy (TCO) for the parking garage. There are approximately 11 plantings on the west side of the parking garage that could not be planted. The reason for that was the outcropping of rock is too high at that point.

Vice Chairman Sturniolo: Please show us your illustration.

Chris Shopinski: With the short notice, the Board's packet of illustrations did not arrive in time.

Michael Caruso: Speaking specifically on right here (indicating). This is Boltis. This is a slope, and the rock is here (indicating). There are about 12 trees that we could not plant on our part of the property because of the rock outcropping. There was not enough soil. They are unplanted at this point. About two months ago, we had a walk-through out there with Nanette and Anthony. We discussed the potential. In this area we had some trees that were lost to Superstorm Sandy, and we lost a little bit of the visual intent there. We decided to take those plantings, still maintain the coverage from Boltis and move them over onto the residential property that is still owned by Northern Westchester Hospital Center. We planted those bushes; they are all in the ground right now. We believe they do achieve the same effect. The intent was to get the blockage of the garage. It is the same species of plants that were proposed to be planted over here. We shifted them onto that side. Currently John Marwell is working with Whitney on developing easements that affect that three properties. One is on St. Mark's, and two are on Boltis. Those easements will say that we would forever, even if we were to sell off that property, we will always have the ability to be required to maintain it; if it dies, we would have to replace it, and we would have to maintain the watering of them so they would always be healthy.

Vice Chairman Sturniolo: By shifting the trees westward, what does it do to the site line for the residents on Boltis Street?

Michael Caruso: I believe it provides the same intent if they were going to be planted here. It would block that visual of the garage. Remember, the garage is set down at that point anyway. I remember years ago we did photo metrics from that point. We brought that in front of the Board to show them what the effect would be over there and how it would be blocked. We achieved that with it. Basically, it's shifting the same plantings over to the west more onto the residential properties.

Vice Chairman Sturniolo: Are we protected, down the road by having those easements in place, assuming if in the event the hospital decides to sell that property?

Whitney Singleton: Actually the hospital is a lot of different entities. There is North Court (sic), Northern Westchester Hospital Association, Northern Westchester Realty Holding Corporation. They have all sorts of different entities which are technically different. They have drafted you the Declarations of Easements that will ensure that they have a right to go onto the property and maintain, install, replace – do what is ever necessary to be compliant with their obligation to the village. You have that component of it. The easements are sufficiently drafted with the hospital's counsel. I do not have a problem with that. What has to happen is it all needs to be incorporated into an approved site plan of your Board, so that they are representing and depicting on the plan where the trees are and that they have a right to go on. Have you actually submitted a revised site plan showing landscaping to the Planning Board?

Chris Shopinski: Yes. When we finally got word that we were on the agenda, we delivered the packages, but I guess it was too late for distribution at that point.

Whitney Singleton: This is what has to be made clear. They are not per se on for approval of their site plan amendment tonight. There are things that need to change in that plan a little bit. You need to actually show the easement line and the area that is covered by the easement. There are a couple of things that need to be changed in that. They are really here before you tonight for the limited purpose of a temporary Certificate of Occupancy under 110-39 in the code. As you will recall, there was a history of giving out TCOs. The village board changed the code to make sure that any Temporary Certificate of Occupancy that is issued for anything other than one or two family homes and is approved by your Board is reviewed by your Board for the technical issues of the TCO. Really they are here for the limited purpose of showing you what they've done to date, that they've made significant progress with the easements, and they are coming back with a revised landscaping plan and putting adequate protecting in so that your Board can recommend the issuance or non-issuance of a TCO.

Vice Chairman Sturniolo: From your point of view, Mike, where is John Marwell trying to affect what Whitney just outlined? How far along is he from getting this together? Putting aside the site plan that you said is already in the mail.

Michael Caruso: I believe he made significant progress.

Whitney Singleton: We're done. We have three easements, revised

the script and provided language everything is done. It just needs to be executed.

Vice Chairman Sturniolo: Putting the trees aside, what else are you looking toward for the TCO, accomplishment wise?

Michael Caruso: The ability to park the staff on site, effective June 3. The reason for this is because our buses which are currently shuttling us back and forth between Reader's Digest and the hospital ends at the end of May. It was a lot of money - \$60,000 per month. We saw our construction schedule being completed on May 28 essentially, and allowing some time to have all the walk-throughs. With the building inspector, Anthony and Nanette's office, through the various times they visited the site, we knew we had a good level of comfort that we had a safe site and it met all the intentions of exactly what was approved by the Board. One other item - the zoning text amendment from the deed restriction.

Whitney Singleton: There are essentially four items that need to be complete before the building inspector can issue a TCO. I apologize I didn't get this to you earlier. This has been worked out in the past 24 hours. In my estimation, the easements are sufficient as far as description and content. They need to be executed and filed. This was identified to the applicant approximately one month ago. This is the easement for Lots 43 and 73 and 75 Boltis.

Doug Hertz: Before we delve too deeply into this, this is the first time the Planning Board has seen a very significant change to the landscaping plan. You're already going through to finishing all the legal work to memorialize that and determine the metes and bounds of where these easements are going to fit. We've never even seen this. Personally, I think you're putting the cart before the horse here.

Whitney Singleton: If you recall, approximately one month ago Nanette had said she had some discussions with representatives from the hospital. While they represented that their landscaping would be X, Y, and Z, there were components of the landscaping that they could not satisfy because of the extreme conditions by the rock, and whatever plantings they put in would simply die or fall over. They requested of the Board the ability to relocate those plantings to a more suitable location in accordance with the review by Nanette and Susan and in accordance with review by Anthony. Your Board said to Nanette on the spot - the night she presented it to the Board verbally, it was not an agenda item, the Planning Board said they did not want to hold up the hospital, but we needed to make sure that that does relocated sites are appropriate as far as the planting plan, and that there is sufficient legal instruments in place so it could be part of an enforceable site plan. That was conveyed a month ago. A draft was not done until last Thursday. The first time I saw a draft was Friday. On an expedited basis, we reviewed that. To your point, no one is rushing the landscaping plan. The only thing that is being done here is that the easements are being carved out as to where the trees can and cannot go. They still need to come back to you to be sure that the landscaping plan is sufficient, and your engineer has made a recommendation for a performance bond to ensure that there is money being held by the village on behalf of the applicant to ensure this gets complete. You still need to review the modifications of the landscaping plan and approve it. I know that Susan and Anthony have



been to the site. They have some comments in a memo. We are only here for the TCO. We are not here to approve a modification to their site plan. Your Board will have to review that and make that determination as to what is adequate.

Vice Chairman Sturniolo: Where do you stand with the compliance to the photometric lighting plan?

Michael Caruso: That was completed last night. The lighting levels were brought down to what the requirements were. We had the consultant come out and do it. It was witnessed by Insite Engineering. We do have a memo to that effect. All the lighting levels were measured, and they do achieve exactly what we said. We did put dimmers on them, and that's why we were able to achieve it.

Vice Chairman Sturniolo: Both top floor lighting and the surrounding wall fixtures on the exterior walls of the building?

Michael Caruso: Correct.

Vice Chairman Sturniolo: Are the photometric timers in place that will turn the lights on and off predicated on if a car comes in at 3 o'clock in the morning and the lights are off and then it comes back on and then goes off?

Michael Caruso: The photo metrics have the dimming capacity on the photosensitive readout. We had a lot of discussions about the upper deck, about having the lights go off on the upper deck and then having a car on there, but that was not what went through. We had restrictions on that, at least we talked with you about that, because we have a lot of nurses who get off at midnight, and that would pose great difficulty and a safety hazard for them by going up there and having the lights off.

Vice Chairman Sturniolo: Even as they came through the passageway the lights could not be turned on?

Chris Shopinski: The lights dim and pick you up on a motion detector. Then they come up. They are not fully out.

Ralph Vigliotti: What is the percentage of dimming that will take place?

Chris Shopinski: Scientifically, I could not tell you. It appears to be a good third if I had to guess.

Vice Chairman Sturniolo: So that part is in place. The charging stations, are they in place?

Michael Caruso: Yes. We have the capacity of four electric cars to be charged up there with a future expansion of another five or six. That is currently ready and up and running. The charge point is the same vendor who approached the village.

Doug Hertz: Where are those located in the garage?

Michael Caruso: On the bottom level. There is signage that shows, "electric vehicle charging stations."

Vice Chairman Sturniolo: Picking up on Doug's point, what prevents someone with a non-electric car from parking there?

Michael Caruso: Really nothing. There is signage but we are not restricting them. We have set forth that level as staff parking so we can control it that way.

Vice Chairman Sturniolo: So the electric parking stations will not impact the parking space count of the entire garage. We are not pulling those out of the overall number.

Michael Caruso: It is part of the overall available spaces to the hospital.

Chairman Cosentino: We need a bottom line of what has to be completed.

Whitney Singleton: In order to get a TCO, your Board has to be comfortable that these items be complete.

Chairman Cosentino: I am going to have to ask for a \$25,000 bond.

Michael Caruso: Okay.

Whitney Singleton: The four items that would need to be complete are the bond, proof that the easements are executed and filed, proof that an outstanding issue of compliance from the original 2009 site plan is adequately addressed. It has not been addressed. It has been identified to the applicant's attorney. Specifically that is Condition #40 from the February 19, 2009 approval. Because the parking structure is technically on two different properties not meeting setbacks, one of the requirements of the applicant was prior to any permit to being issued in connection with any portion of this project, the applicant shall file with the Westchester County Clerk's Office, Division of Land Records a Deed Restriction running with the land in a form approved by the Village attorney requiring that the continuous lots sharing the supporting parking contain the parking structure to be held in single ----- of the same property owner as long as this specially permitted structure parking building remains on portions of both contiguous lots. This was supposed to be done back in 2009 for a building permit. It was not done. So, the applicant's counsel has agreed that they would prepare something for my review and get that completed as well. That is a third item. The fourth item are issues that are independent of your Board. There are some certifications, as built, sign-offs that the building department would require independent. As you recall, at the meeting with our building inspector and the chairman, those are independent of anything that your Board requires. Basically, Item #40 from the 2009 resolution, the easements, the performance bond and complying with any building department issues. I believe the building inspector, while he is away, has left some parameters for the Building Department to deal with the temporary CO issues, but those would be my recommendations on what you should have done. Obviously, the applicant would have to come back and secure a modified landscaping plan consistent with what your Board requires, but easements are sufficient to accomplish that.

Chairman Cosentino: My understanding is that the assistant building inspector is coming Friday at 1:00 to do his final inspection. I am

going to ask for a \$25,000 bond that the landscaping, etc., get completed. I can't have everyone saying, "You told me I needed a \$50,000 bond, and now the hospital is here and they get nothing." I have to treat everyone the same. Its just procedure.

Michael Caruso: I totally understand.

Whitney Singleton: I've already discussed this with their attorney.

Chairman Cosentino: How long does it take?

Whitney Singleton: A cash deposit with the treasurer takes a day.

Chris Shopinski: We will do a certified check.

Chairman Cosentino: That will cover that. What about the legal issues?

Whitney Singleton: They have already shown me a re-draft of the easement from one of the properties. They need to incorporate those changes from the other two properties and a filing for Condition of Approval. Those will have to be completed before the Temporary Certificate of Occupancy is issued.

Chairman Cosentino: Can you complete them?

Chris Shopinski: For Final Certificate of Occupancy or Temporary Certificate of Occupancy?

Chairman Cosentino: Temporary Certificate of Occupancy.

Michael Caruso: Can it be a condition of the TCO?

Whitney Singleton: No. That is what I discussed with your attorney. Those things need to be done and your attorney said you would work very quickly to get the other things done; Condition #40 is very minor.

Michael Caruso: The deed restriction can happen quickly as well.

Chairman Cosentino: If he can do that, we will issue the TCO.

Chris Shopinski: We are not familiar with what is involved with it, but we will push for what is needed.

Whitney Singleton: After the landscaping plan is approved, you have to appear before the Board again. It may change by virtue of the location. I talked to Nanette about that this afternoon. I thought the tree locations were rather odd, but I'm not a landscape architect. Nanette seemed to be very pleased with the hospital's landscaping plan, and the hospital's landscapers are quite competent. Ultimately, the Board has to be the final approval.

Doug Hertz: Do we want to go there and walk the property just to verify that it is doing what we want it to do, which is to provide good screening to the neighborhood? Should we see the plan first? Is everything complete? The reason I brought that up before is that Whitney was saying he is putting in this language to make sure that we have the right to do all this with the landscaping plan. Let's say we

want a modification to this. How is that going to affect your legal documents?

Vice Chairman Sturniolo: Which is why you need the plan to walk the site first?

Whitney Singleton: This brings the right to go on the property in a defined area to install an landscaping plan as approved by your Board.

Doug Hertz: It does not have to be in this spot on that property?

Whitney Singleton: No. If you want to change it, that's fine. They show you what trees have been planted.

Doug Hertz: What if we don't agree that it's doing what it should be doing?

Chairman Cosentino: I don't think it's fair to hold up the TCO.

Doug Hertz: I want to know that we will have that flexibility.

Whitney Singleton: You will.

Doug Hertz: That is really what I want to understand.

Whitney Singleton: This is something Susan should weigh in; she has been to the site.

Susan Jainchill: What is shown on that plan right now is actually installed. There is only one part of ground cover that is not installed yet, but that will happen in the fall. You can see what they are proposing, and I suppose if you say "no" they would have to move it around.

Michael Caruso: We essentially shifted it 20 feet to the left, exactly where it was shown. It's actually higher because it would have been on the slopes. Of course, a site visit is certainly worth it because I believe the site speaks for itself. It's totally changed the view of how it looks on that end of Kisco. It is wonderfully done.

Doug Hertz: On the landscaping plan that you submitted, was it noted where these things were intended to be and where they did get installed?

Michael Caruso: It should be noted on both. If it is not, we will have it; this way it clearly walks you through exactly where they were and where they were shifted to.

Doug Hertz: It looks like it shows where it is installed but because it's been a many year process, it certainly would be helpful to understand what we had approved and then where you ended up.

Chris Shopinski: We can certainly do a side-by-side.

Chairman Cosentino: At the end of the day, if you can comply with everything counsel is looking for, I have no problem in issuing a TCO. I don't think the Board does either. If you comply, when the building inspector left he made provisions to give you the TCO and then the

Board can release it so you can have your TCO on Monday.

Ralph Vigliotti: I agree with the TCO and let's move on it. Now that the foliage is full in the village, the elevator shaft, and only the elevator shaft, is very visible from East Main Street. At some point, can some shrubbery over in this area (indicating) prevent that view from happening?

Michael Caruso: High shrubbery?

Ralph Vigliotti: Yes. You need to walk across the street between Friendly's and CVS and look up at that little ridgeline, and you will see the elevator shaft. Everything is covered very well and it's the only thing that reminds us that there is something there. I think it will be a nice improvement to the streetscape.

Michael Caruso: We lost a few big pines over there in the hurricane.

Chairman Cosentino: In all fairness, you did a beautiful job (with the project).

Michael Caruso: Thank you. It was what the Board looked for.

Chairman Cosentino: The building is set right and you really did a good job.

Chris Shopinski: Do you like the way the landscaping came out at St. Mark's?

Chairman Cosentino: I'm looking for a sidewalk there.

Chris Shopinski: We came up as far as we could before the large elder trees and the telephone pole were there, so there is a partial.

Michael Caruso: The side by side comparison will be delivered by Friday, and then based on that you can tell us when you want us to set up that walk-through.

Chairman Cosentino: By the time we go, you might have a TCO already.

Chris Shopinski: This is all for the contingency for the site plan approval.

Whitney Singleton: A question came up in Village Board discussion noting that so many people are parking across the street at CVS and were wondering what the charge was going to be for on-site parking.

Michael Caruso: All staff parks for free. That has been a commitment by the CEO. Our parking rates are staying consistent. The people who park in CVS don't want to pay that three or four dollars. Some of the elderly population does that, and it is scary for them to walk up that way. We've even tried to put some plantings in the front where you can't come through there, but it scary that they want to try and do that. If they cannot afford it, they can come in and talk to us. We have different ways to help them. If they are frequent visitors of the hospital, we can give them a discounted rate if their loved ones are in.

Chris Shopinski: We are actually validating about 230 people a month.

Michael Caruso: There are a lot of changes coming along. We have seen our in-patient volume going down based on the new Obama care. Physicians are incentivized not to admit into a hospital so patient census has dropped. There are a lot of changes going on. Fortunately, we maintain a high quality and base and pride ourselves on that. Medical groups get incentives if patients are not admitted to the hospital, so they are keeping them healthy and keeping them out of the hospital. It is where healthcare is going today. We start with our own staff. We've changed how we handle health and wellness with our own staff. We are on the cutting edge of that.

Whitney Singleton: I will outline the items that need to be done in a memorandum and send it over to the Building Department so they have a document to work off of.

Chairman Cosentino: I agree.

Chris Shopinski: To double check, we will execute the easements for landscaping, \$25,000 bond in a certified check to the village, condition 40 of the resolution and the Building Department requirements.

Whitney Singleton: On top of that, you will submit – not as a condition of the TCO – a revised landscaping plan and pursue that to completion before the expiration of your Temporary Certificate of Occupancy.

### **Special Discussion**

#### **16 East Hyatt Avenue ZBA13-2**

Chairman Cosentino: Does everyone have a copy of Whitney's memo?

Vice Chairman Sturniolo: And also a memo that I sent to the entire Planning Board this morning.

Chairman Cosentino: I didn't get that. It's probably in my office.

*The secretary asked if she was supposed to have Vice Chairman Sturniolo's memo, and Vice Chairman Sturniolo said the Board secretary was not copied on it.*

Whitney Singleton: I took the notes from the last meeting and tried to incorporate those in the fashion that we discussed. I took out language that endorsed one resolution over another. As you will see, there are four essential scenarios. There is a blank that needs to be filled in. I basically said that none of these involve variances from development coverage, and they can each easily be implemented to avoid any development coverage issues without endorsing any one of them as a preferred plan of the board. I know at the last meeting, while there was a preference from some Board members, there was not a majority as to any one particular. Consistent with our meeting, I just identified them. I know I received a comment or two from Tony today, which I have not had a chance to address with him or the Board. The first one involves putting the parking in the basement. The second one involved switching to a single-family home. The third one involves taking the house down altogether, and the fourth involves

what we refer to as a hybrid, where only three parking spaces are provided and other mitigating factors are installed where there is no utilization of the basement, the side doors eliminated, the rear parking spaces eliminated, and the turn around in the front yard is eliminated. Anthony has done an analysis of what that would do to the development coverage, and I have a copy of that. He sent it to me later today and it would get it down to a compliant level. There were a couple of conditions that you wanted in there, and they would be the curbing, the referral to the Architectural Review Board for further input on aesthetics, and some landscaping be put in. I drafted it in such a fashion that that would be landscaping acceptable to the village planner unless of course your Board wants to see a whole landscaping plan. There was some concern as to eliminating the number of occupants in the building. Instead, I suggested the number of bedrooms should be limited to "blank" bedrooms per dwelling unit. I checked the floor plans for the site and there is currently three bedrooms per dwelling unit, all on the second floor. I don't know whether you want to restrict that to two bedrooms in light of the limited number of parking spaces and make the third one a den. That is really up to you. I know there are Board members here that don't even want consideration on this fourth option. I am trying to lay it all out, and as the chairman said, let the Zoning Board make the decision.

Ralph Vigliotti: Anthony said that with Number Four that it will comply with building coverage now?

Whitney Singleton: He did the following, and I literally got this before.

Ralph Vigliotti: Knowing that, would you now include that in your statement as number four? Did I miss something? Are you using a word that it now would comply with building coverage?

Whitney Singleton: I said all four of those scenarios comply with building coverage. Tony did not want the inclusion of any reference to cost to the applicant. I think he said that was beyond this Board's consideration.

Vice Chairman Sturniolo: Let me go back a little bit. Whitney wrote a memo at 10:09 this morning. The memo concluded with "please let me know if you want any further modifications." I wrote back at 11:12 this morning to Whitney, copied everybody on the Planning Board, and I wrote the following, "I would like to see the following points added: I just received this and offer some points that need further development, detail and execution. This is just a quick stab at it this morning, and I'm sure other points will be needed and added in the final, future version. I listed four points: one; note the fact that only five Planning Board members voted.

Chairman Cosentino: We didn't vote. We couldn't vote, there wasn't a quorum.

Vice Chairman Sturniolo: Whitney, did we not vote when you asked for the feelings of the majority of the people?

Whitney Singleton: I can't remember if it was a straw pole or an actual vote. You had five people; you did not have the majority of the full Board, which is necessary to endorse it.

Doug Hertz: You had a vote, but you could not endorse something with three votes.

Vice Chairman Sturniolo: So, I wrote, "note the fact that only five members voted and two were opposed to option number four but agreed with the other three options. Two, specific emphasis on the dollar amount that the village taxpayers are spending due to storm water concerns in and around East Hyatt. Three, and I'll explain that one again, eliminate all references to cost pertaining to the options that the applicant has. Four, make mention to the fact that we are obligated to address storm water concerns since we were formally informed so by the village. If these are incorporated, I will not need to add a dissenting document to the final version." I will go back and read again the email that we got from the village that I read downstairs at the last Planning Board meeting. "Flooding is a major concern to the village. We put in place limits on impervious surfaces to facilitate natural drainage and the absorption of rainwater into the earth. In considering the 16 East Hyatt application, I ask that you strongly recommend against any variance from our libel-zoning ordinance that would increase the potential for flooding. It is worthy to note that we the taxpayers will be spending close to \$250,000 to mitigate storm water in the neighborhood of East Hyatt. I believe most civil engineers would support my thesis." Those are my points, and that is what I would like to see incorporated into whatever document is sent to the Zoning Board of Appeals. Or, I will just add my own dissenting document to the final version.

Chairman Cosentino: I think Whitney's comments are sufficient. If you want to send your own dissenting comment, you should do so.

Doug Hertz: Some of what Tony said is in here, the flooding and the drainage. Maybe we need to strengthen some of that. In Paragraph Three, there is a lot of discussion first and foremost the area and the site in general is problematic as far as flooding's, soil saturation, etc. Maybe we want to add the cost of drainage fixtures. Not a cost to the applicant, the cost that the village is already spending.

Vice Chairman Sturniolo: The village has committed to a quarter of a million dollars.

Doug Hertz: Maybe we want to add a line or two in that paragraph to really bring that home.

Whitney Singleton: We can insert in the third paragraph on the first page after the word "Main Street," a fifth line. I can include the following: "The village is presently expending somewhere between 250 and 400 thousand dollars in addressing this drainage problem.

Vice Chairman Sturniolo: And we don't want to exacerbate and contribute to it, and we were told that. That's the point. We were informed of that fact, and I don't want that to be overlooked. Then the Planning Board looks like fools, like we're closing a blind eye to the taxpayers.

Doug Hertz: Maybe we could make it that this is a significant mandate to the Planning Board to help mitigate these issues.

Vice Chairman Sturniolo: Also the fact that that same night the



applicant for 21-27 Ward Avenue brought out the fact that the village is spending this money down at East Hyatt to capture all this extraneous rain water. How can you not ignore that? We know it, we were told of it, and the first three options minimize the amount of variances and the amount of blacktop surfaces.

Doug Hertz: I think somehow, Whitney, you just have to hammer home what is in the next paragraph, which is "however, we collectively agree that granting a variance for maximum development coverage is not an appropriate solution."

Whitney Singleton: I have the item about the cost to the village and then "granting the variance from the development coverage would obviously work at odds with such an environmental condition."

Ralph Vigliotti: I think that covers it.

Chairman Cosentino: I don't have a problem with that.

Doug Hertz: I think it's a good memo. I don't see any solution that's really good other than ripping the ----- house down and starting all over.

Vice Chairman Sturniolo: There are two other solutions to ripping the house down. Put the parking underneath.

Stanley Bernstein: Nothing was mentioned about the porch.

Vice Chairman Sturniolo: That is an aesthetic.

Stanley Bernstein: It's because the house was facing the wrong way.

Chairman Cosentino: They are doing it.

Vice Chairman Sturniolo: It's a reference to the ARB to handle that.

Whitney Singleton: ----- to the ARB for aesthetic consideration.

Vice Chairman Sturniolo: The meat and potatoes is to eliminate the blacktop, put the parking underneath or make it a single family home and you have less parking requirements. But this hybrid version is trying to compensate a multiplicity of mistakes made within the confines of this building, the mistakes made by the professionals the applicant hired that portrayed a misrepresentation on drawings and everything else. Why should the village have to pay for that, suffer for that and add more storm water to an already inflated \$250 to \$400,000 budget? To me, it's absolutely wrong when we have within our power a recommendation to the ZBA to eliminate all that very simply, and at the same token go along with the ZBA's approach to try and minimize the amount of variances necessary. It's real simple. The house is too big. It's out of proportion. It's across the street from a park. Its blight on the neighborhood and it's positioned cockeyed.

Chairman Cosentino: I'll go along with it. I think there are only two people that are going to make money here. The lawyers. But that's okay.

Vice Chairman Sturniolo: As Whitney said to us last time we discussed

it downstairs....

Whitney Singleton: If you're going to start to discuss issues of litigation, I'd rather that not be done in a public forum.

Chairman Cosentino: I said what I had to say.

Ralph Vigliotti: I still agree that the hybrid should be in here to provide the ZBA with a fourth possible solution, and it's in there.

Whitney Singleton: I think Tony is saying he does not think it should be included.

Ralph Vigliotti: I know. As one member of the Board, I am saying it should be included.

Chairman Cosentino: I agree. I think it should be included.

Sol Gibbons: I agree. I think it should be too.

Chairman Cosentino: I think they should have a choice. They are probably not going to pick either one.

Ralph Vigliotti: They are not taking the house down. The only option that has some merit is putting the two cars under the house.

Vice Chairman Sturniolo: Then why don't we collectively endorse that concept?

Ralph Vigliotti: For me personally, I think it would be ugly as sin to put a two-car garage under the house at this point. I think it makes the house from the main road even more unsightly to have the pavement going across, which could be all grass now, into a two-car garage.

Vice Chairman Sturniolo: The two-car garage would be on the side, where the steps are now.

Ralph Vigliotti: That can't work. I don't think you can get a car down in there and then back it up and make the turn.

Vice Chairman Sturniolo: Whitney, isn't that what Anthony advocated and said it could work?

Whitney Singleton: I don't think it would require a large retaining wall on the southern portion of the property.

Chairman Cosentino: He said it would be tough to go into the driveway and pull down into the garage.

Ralph Vigliotti: The front is the only way it works, but that's unsightly.

Chairman Cosentino: You could have her engineer see if it would work on the side, but I don't think you have the room there.

Vice Chairman Sturniolo: We are trapped in a way on this. Here, we get this – Whitney, don't take this offensively from my speaking – but here we get a memo in the morning that is going to be discussed tonight. I respond to it, and I'm left dangling without anyone's input

on what I said in the memo. It would have been nicer to have the memo earlier.

Whitney Singleton: That is my fault.

Vice Chairman Sturniolo: I'm not looking to point fingers. It would have been good to have some feedback.

Ralph Vigliotti: There has been an evolution of the memo. It hasn't changed all that much in the last two drafts. The four proposals are still in place. I still stand on the ground of I like the hybrid (sic). I understand what you are saying and we are including some strength with regard to the drainage issues up in that area of town, and that Whitney is going to include, and I agree with you that we don't have to talk about the cost of any one of those options, we can just outline them.

Vice Chairman Sturniolo: Just eliminate it. Now, when you go to the hybrid thing, and you say, "now you're going to convert a hybrid into a den." Here is the den with a television, two chairs and a sofa. And it's a pullout couch and then you've got another bedroom right there.

Ralph Vigliotti: We have no control.

Chairman Cosentino: No one is going to police it.

Vice Chairman Sturniolo: Why even think along those terms of restricting it? Mount Kisco has a lot of wonderful things going for it. One of the things it doesn't have is enforcement. We are playing into this whole enforcement issue by talking in terms of a den. A den can be a bedroom and then in the next morning it's a den again.

Ralph Vigliotti: Are you saying take that out?

Vice Chairman Sturniolo: I'm not saying take it out, but there is no way to substitute something for a den, because it's going to be used.

Ralph Vigliotti: You might as well take it out, because as you're saying, everybody knows a den could be converted into that bedroom in two seconds. This one section says, "additionally, the total occupancy, toward that end the applicant has already offered a restriction that there will be no bathrooms, dwelling space or occupancy other than storage of mechanicals in the basement. Additionally, the total occupancy would have to be restricted to the amount reflective of the actual parking provided. That would mean that the Certificate of Occupancy should be limited to (decide) bedrooms per unit." There are three now in each unit. As far as I'm concerned, it should remain that way. (Continuing) "This is reflective of the importance that the Planning Board places on open space. It is preferable to eliminate what would otherwise be required parking than to exceed the maximum development coverage." I think there is a lot there.

Vice Chairman Sturniolo: The den was put in as a substitute for the amount of adults that can live in the apartments, I believe.

Whitney Singleton: That is not in the memo. The number of bedrooms that you put in is up to you. I understand it's the enforcement, but we also have situations in Mount Kisco where, and you could probably just

go next door, somebody walks in from the building department and they are putting up 2 x 4 separators in the living room and dining room. They are literally putting up dividers between the living room and dining room for more bedrooms. By doing this, there is an actual articulated maximum bedroom count that bears a true relationship to the parking that is available on site. There is a nexus there between the number of people living there and the available number of parking spaces on the site. While enforcement may be an issue, at least there is something to go after when you walk into the unit and there are six bedrooms in each unit. There won't be anything in the basement, and there shouldn't be any bedrooms anywhere in the building other than the second floor. While it may not necessarily give us annual or monthly entry into it to verify it, it is a condition and it's recommended to be, if the Zoning Board goes with this option, a condition that is reflective not only in the resolution on the Zoning Board variance, but in the Certificate of Occupancy as well. And when somebody goes to buy this house, it will say in the Certificate of Occupancy "No more than X many bedrooms per dwelling unit." So you are not going to get somebody who buys the house and says, "Oh, well when I bought it, the other guy had ten bedrooms per dwelling unit." It's not going to say that, it's going to say it's limited.

Vice Chairman Sturniolo: It's not going to go to the issue of the rollout couch that becomes a bedroom.

Whitney Singleton: I understand and appreciate that and when I drafted it, I didn't think that it would. I was trying to not so much create a limitation on the daily activities of a roll out couch or not. I was trying to address the issue of not wanting to have five bedrooms per dwelling unit on all three floors. This is a question of it's easier to ask for forgiveness than seek permission. They have done something here which violates our code and was done through a misrepresentation; innocently or with malintent, it doesn't really matter. It was done through misrepresentation and they shouldn't benefit by it. That is why I think what you are seeing here is that number four is not endorsed. It is simply an option. The Zoning Board can do with it what it wants. As a matter of fact, the only thing that is even remotely endorsed in here is Option Three, where the letter says take the house down. "Being relegated to a position of trying to make an extremely difficult site work when a situation rose out of misrepresentation by the applicant, complete removal of this house is a very viable solution in the Planning Board's estimate. I understand people will gravitate towards number four, but it is certainly not endorsed by this Board. Is it creating an out? Yes.

Vice Chairman Sturniolo: Yes, it's creating an out. I'm not saying it's endorsed by the Board. The only endorsement, and Doug articulated it well, is when we talk about the concerns of the financial exposure of the applicant putting the garage underneath, making it a single family home.

Whitney Singleton: That should come out; I agree with you.

Vice Chairman Sturniolo: That is all going to disappear.

Chairman Cosentino: Tony, didn't you have something else you wanted to put in? You had four items.

Vice Chairman Sturniolo: I'll read them again: Note the fact that only five members voted and two were opposed to option number four but agreed with the other three options. Two, specific emphasis on the dollar amount that the village taxpayers are spending due to storm water concerns in and around East Hyatt. Three, eliminate all references to cost pertaining to the options that the applicant has. Four, make mention to the fact that we are obligated to address storm water concerns since we were formally informed so by the village.

Whitney Singleton: Tony is saying that we were formally notified by the village. I have to massage that language a little bit when you say "formally informed" and perhaps just say the village has made the Planning Board aware of. I can incorporate that.

Vice Chairman Sturniolo: Quite clearly. Again, my first paragraph to all of us was, "I would like to see the following points added. I just received this and offer some points that need further development, detail and execution. This is just a quick stab at it, and I'm sure other points will be needed and added in the final version." I did not expect tonight that it was going to get solved. I just felt I wanted to let everyone know where my thoughts were at 10:09 this morning.

Chairman Cosentino: And you conveyed them and we agree to them.

Vice Chairman Sturniolo: I'll be happy to look over a draft with you if you want.

Chairman Cosentino: I think we all should look at the draft after he's completed it.

Ralph Vigliotti: This brings us to the next meeting.

Chairman Cosentino: If it has to be, it has to be.

Whitney Singleton: With regard to the notification, we can say, "the village is presently expending significant amounts of money somewhere between \$250 and \$400,000 for addressing drainage problems in and around East Hyatt. Granting a variance from the development coverage would obviously work at odds for such an environmental site concern." I will probably work that language over a little bit. And, "And it will be inconsistent with the directives and concerns voiced by the Board of Trustees and Village officials or consultants to this Board."

Vice Chairman Sturniolo: Could you then add, "an example of this is flooding is a major challenge to the village, we put in place limits on it's impervious surface."

Whitney Singleton: If you want to print that out and put it in the record, but right now it's not in the record. It did not go to the Planning Board.

Vice Chairman Sturniolo: Correct.

Whitney Singleton: So when you say, "we were formally informed of this," you were not formally informed of this. This is something outside of the record. I have to deal with the record. If you want to print it out and submit it as part of what the Planning Board has reviewed,

and it becomes part of the record. If there is litigation, it needs to be something that the Planning Board relied upon to make its recommendation. This is starting to get into the arena of attorney client privilege communication. When there is litigation on a matter in Article 78, I have to produce a certified return. It is everything that was considered by this Board, plans, emails, memos, everything. I have to certify everything that went on as part of this application. If I am referring in a memorandum to a formal notice that this Board received, and there is no formal notice, I am not predicating this Board's recommendation on an actual document.

Vice Chairman Sturniolo: What if you couch it with "certain members of the Planning Board have been informed by village government that quote/unquote?

Whitney Singleton: If you want to print it out and put it in the record I don't have a problem with that.

Ralph Vigliotti: We can't add that.

Stanley Bernstein: It's not good. If you would have gone to the seminar at Pace University, which you were required to do, because I was the only one there, you would have learned all of this because they went through it step by step in Article 78 proceedings. It was a most exciting and informative lesson that we received. Bear that in mind for next time.

Whitney Singleton: I guess I could say, "granting of a variance from development coverage in an area ----- would not only be at odds with the existing site condition in the vicinity, but it would be inconsistent with the concerns and directives voiced by the Board of Trustees and your professional staff." Anthony Oliveri is identified and has been working on the drainage concerns on Brook Street and in the vicinity of East Hyatt. We have long experienced flooding problems on Main Street emanating from behind this property; the bubbling up of water incurs on the Village Social property and Pour. There are clearly drainage problems there that have been identified by variance village officials and consultants. That part is on the record. An email that you received and I received is not on the record.

Vice Chairman Sturniolo: Can you then add, "the village has put in place limits on impervious surfaces to facilitate, etc." and extract that information?

Whitney Singleton: You are basically asking me to explain what the purpose is of maximum development coverage.

Vice Chairman Sturniolo: No, I am basically asking what the dangers are of having maximum development coverage, because the village has put in place limits on impervious surfaces to facilitate drainage and absorption of rainwater in the earth.

Whitney Singleton: That goes to why you have maximum development coverage.

Vice Chairman Sturniolo: But it's being repeated or being hit over the head a second time. I don't think it could hurt.

Whitney Singleton: I do have in that paragraph, "overdevelopment of the parcel with further tax the environmental and physical constraints of the site, the neighborhood and the village in general." I also said, "First and foremost the amount of proposed impervious surface proposed at this site is problematic from multiple perspectives. Prone to flooding, soil saturation, a nearby drainage project costing hundreds of thousands of dollars, not to mention the other drainage flooding conditions that emanate directly behind the subject site and the frequently resulting flooding on Main Street." I guess I could bang it over the head a couple of more times.

Vice Chairman Sturniolo: I don't think it's gilding the lily.

Whitney Singleton: I am honestly asking do you really want another draft to come back to your Board again.

Vice Chairman Sturniolo: Joe just said we all need to see the new draft when I said I will work with you on it.

Whitney Singleton: Is it coming back to your Board for final approval, or is this something that is going to be resolved via email? We are now going into five months of referral.

Vice Chairman Sturniolo: It has to take as long as it takes to get it done right. We are not the guilty party.

Ralph Vigliotti: I'm not saying we need to expedite this, but it is taking us a long time as a Board to get this out.

Vice Chairman Sturniolo: Agreed.

Chairman Cosentino: Will you be adding anything else to it if you meet with Whitney?

Doug Hertz: I'm fine with the memo with the revisions being discussed now. I'm sure you can come up with language that will make that work.

Chairman Cosentino: I don't have a problem with it.

Ralph Vigliotti: I'm okay.

Whitney Singleton: Would someone make a motion that subject to the Chairman and the Vice Chairman reviewing the final language, that this memo be referred to the Zoning Board of Appeals substantively as written with tweaks by the chair and vice-chair?

Vice Chairman Sturniolo: I think all the Planning Board members need to see it.

Ralph Vigliotti: Why can't we get the final draft emailed and have one or two days to read it and responding?

Whitney Singleton: I will send it out to everyone asking to review the final draft after being reviewed by the chair and the vice chair. Unless I hear objections from you within the next 24 to 48 hours, it's a go.

Chairman Cosentino: If you can get that done as soon as possible, we

can expedite it. Stan, do you get emails?

Stanley Bernstein: No. Print it out and I will go into the office and pick it up.

Vice Chairman Sturniolo: Stan should pick it up from Joe, not in village hall.

Sol Gibbons: I will print it out and get it to him.

Whitney Singleton: I can have a draft to you by Monday morning.

*As there was no further business to be discussed by the Planning Board, on motion by Mr. Vigliotti seconded by Mr. Hertz, the meeting was adjourned at 10:20 PM.*

Respectfully submitted,

Stanley Bernstein,  
Recording Secretary

dm