

Mt Kisco Planning Board
Minutes
Tuesday
Tuesday September 10, 2013
7:30 pm

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
 Enrico Mareschi
 Sol Gibbons

Members Absent: **Doug Hertz**
 Ralph Vigliotti

Staff Present: **Whitney Singleton**
 Anthony Oliveri
 Rob Melillo
 Jan K. Johannessen, AICP

Public Hearing

The Hearth at Mount Kisco
270 Kisco Avenue
PB2012-15, 69.49-4-1 (SBL)

Present: **Mark P. Miller, Attorney at Law, Veneziano &**
 Associates, representing the applicant
 W. Charles Utschig, Jr., P.E./Associate, Langan
 Engineering
 Christian Sexton, Vice President, Development, The
 Fortus Group
 Carl Guy, Partner, The Fortus Group

There was no one from the public wishing to speak for/against this project.

Mark Miller: We are here tonight for a continuation of the public hearing on this project with respect to the special permit and the sensitive area steep slopes application. We are also seeking site plan approval for the Board. The hearing was opened at the last meeting, and we went through a brief presentation of the project including some of the changes that we've made along the way primarily affected by the flip of the building and the change in the access driveway utilizing the secondary emergency access from the Curtis property. At that meeting the Board raised some issues with respect to the steep slopes permit in particular and some of the retaining walls, and we have been exploring opportunities since the last meeting to address them. We

have not finalized on anything yet, but we are working hard on that. We have the memo from Mr. Melillo, the assistant building inspector, and we will be applying to the Zoning Board of Appeals (ZBA) with respect to the necessary variance for the slope of the roadway. I would note for this Board that the slope has always been 12 percent. That has not changed, but it was just brought to our attention that we do need the variance.

Chairman Cosentino: Has staff seen your changes?

Chuck Utschig: No. They are a work in progress. From an engineering perspective, other than dealing with the comments from your building inspector, ours is more about an update of what we're working on, to be submitted.

Chairman Cosentino: So you're not going to talk about your changes tonight? We are not in a position to hear them tonight. We have not heard anything from staff.

Mark Miller: That is correct, this is very generic. Chuck is working on new plans, which we will submit as soon as they are done. To keep the project moving forward, we talked last time about keeping the hearing open.

Anthony Oliveri: As we previously discussed, we had a technical meeting. I went over a lengthy list of technical issues. That is what they are addressing, and they will resubmit the drawings. Once they do that staff will have a comprehensive comment memo based on the new set of drawings.

Mark Miller: Mr. Oliveri is correct. We wanted to explain to you in very broad strokes what we are working on with respect to the retaining walls and the steep slopes. Of course, we would ask if the public hearing be adjourned to the September 24 meeting when we should have much more substantive materials to be discussed.

Chairman Cosentino: Is the pilot agreement in place with the village?

Whitney Singleton: I want to clarify something from the last meeting. While we were not previously aware of the application, we have subsequently met with the applicant. I have discussed the proposal with the Executive Director of the Westchester County IDA, (*Industrial Development Agency*) I've discussed it with your counsel, I've discussed it with the IDA counsel of the applicant, and we are exploring it. I can assure this Board that all discussions have been in such a fashion that the tax revenues of the village would otherwise recede if this were simply taxed with a regular assessment, would not be compromised as a result of any IDA application. The bulk of their application, as Mr. Miller previously represented, is for relief primarily from the sales tax and to a lesser extent, a relief on the mortgage recording taxes.

Chairman Cosentino: So it hasn't been done yet?

Whitney Singleton: It has not been finalized. We will continue to work on that, and I hope to have more to report to your Board by the next meeting.

Chairman Cosentino: Thank you. On saying that, I think this Board leaves it up to you, and I think this Board should not get involved in the tax part of it. I think that should be the village Board that carries on with this from now on. I am asking the Board not to get involved in the tax situation at this time until we hear from our counsel.

Mark Miller: I would like to turn it over to Chuck again to give you the broad strokes as to the kinds of things we're exploring with respect to the steep slopes and the retaining walls, which I know is an issue that was discussed at the last Planning Board meeting.

Chuck Utschig: This is more of an update effort to give the Board a sense of what we've been looking at in response to comments that we received from the last meeting where there were questions about the steep slopes ordinance, the height and length of the walls and if there was an opportunity to potentially adjust some of the wall designs and grading in our plans. To bring us closer to what the ordinance suggests might be an appropriate kind of grammar. We are working on that. We have what we call the back of the building, the Mount Kisco Avenue side. We have a series of walls there that were designed originally. We are trying to soften the height of those walls, transition that grade a little bit and use some alternate kind of stabilization measures. We are hoping that through this section (indicating), which is where most of the walls are, (they are in the fill section) we are going to be able to reduce their height and length. We think that is going to go a long way in getting us closer to the parameters set forth in your zoning ordinance. It may result in a modification to the edge of where the connector road is, so each of these kind of balance with each other. There are offsets to adjusting it. I think we will come back to the Board with some fairly detailed drawings and sections of those areas so you can see what happens when we reduce wall height and push the slope out. The Board will have that information in detail to make your decision. We are hoping to be back to you at your next meeting with that information. We did have a very productive meeting with your staff. They gave us a list of things that they thought needed to be added to the plans, so that when you go through them you would be able to look at the issues and have all the information you need. We're in the process of trying to incorporate those comments and suggestions in a resubmission. This is a process. We are trying to come back to the Board with our studies that relate to the walls and make sure we have a consensus that the Board thinks we are approaching it in the right direction, and then we will tackle those on a more technical basis. We are not doing the complete design, but we would like to come in and talk about walls and steep slopes. If the Board thinks we are going in the right direction, then we will work at the detailed designs of those. This is more about an update. We want to make sure the Board understands that we are working hard, we are listening to comments, and we are trying to continue to adjust the plans that we think have been moving further in the right direction.

Vice Chairman Sturniolo: Chuck, the construction of the walls; is it your intent to use some of the natural material on site after excavation has been completed? To use it in the building of the walls?

Chuck Utschig: That was actually a subject of conversation I had with the developer. It is their intent to take advantage of that stone to a certain degree in the building of the walls. It will depend a little bit on the height and the transitions that we can accomplish, but they would like to use some of it. We want to use some of the stone to armor the embankments as a stabilization measure and incorporate that into some landscaping. It is advantageous from their perspective to be able to reuse it on site versus taking it off. Typically, those walls are a little more expensive to build if you have to get the rock and bring it to the site. When you have it on the site and you're using it, compared to more conventional methods, the cost starts to balance out. Part of the details that we will come back to the Board with will be representations of the finishes on these walls.

Vice Chairman Sturniolo: So, if you are able to utilize a lot of the existing stonework, would tie into the overall architectural look of the site in other areas other than the wall that we are talking about?

Chuck Utschig: We are going to have rock cut faces, both as you come up the road and even behind the building. This is another point I should make: we are going to also give the Board a sense of, which of these that we show as walls we anticipate being a cut rock face. So, we are going to kind of create the categories of the walls that we have on this site to help better show what that is going to look like. You will have, for example, in the back of this building (indicating) we anticipate that is going to be primarily rock cut face.

Vice Chairman Sturniolo: Again, the visual look of the rock cut face may be somewhat different than the visual look of the constructed stone wall based on earth and stone?

Chuck Utschig: Yes. They will both have a natural sense to them, but they will have a different appearance to them. They will be a lot closer in appearance between those two components than a rock cut face in, say, a pre-engineered block architectural wall. We are trying to balance all those things. It allows us to use up the material on site, if we can re-use the rock. So, there are benefits all the way down the construction path relative to that. I cannot tell you that every wall will be built that way, but the intent is to look at re-using the stone for that purpose.

Vice Chairman Sturniolo: Whitney, it is not germane to this exact subject, but should the Planning Board see or have we seen collectively, a copy of the agreement for the emergency access road with the property owner next door?

Whitney Singleton: That was one of the documents that the applicant was going to provide to us.

Mark Miller: Essentially the agreement has been fully negotiated. We

are working on the exhibits to actually delineate where what things are, and we will provide copy.

Whitney Singleton: There were some other documents in there as well; the conservation review. As is traditional, I want to depart from the law and go to my aesthetic thing, which I have no expertise in, but I wanted to point out regarding the rock face, ironically, if you want to get an idea of what the rock face is going to look like, you can look at that very same rock on the Saw Mill River Parkway. They have that rock as a cut through from the very same side.

Vice Chairman Sturniolo: On the northbound lane just before the exit?

Whitney Singleton: Northbound and southbound. They literally cut right through that very same rock.

Chairman Cosentino: I believe at our last meeting, Mr. Guy said they were going to crush the rock with a machine. What is the noise factor on that?

Chuck Utschig: Actually, the county has now gotten involved in this process. There is a permit now that you have to get from the county. They have limits on the types of equipment that can be used. They all have noise control built into them. We can provide that information to you. The equipment has gotten very good as far as dust control and noise control.

Chairman Cosentino: Is any dynamite going to be used?

Chuck Utschig: There will be blasting on this site.

Chairman Cosentino: Of course, we will have the same safety features as the hospital.

Robert Melillo: We will work with Anthony on that.

Chairman Cosentino: I heard drilling all summer with the hospital. What is the procedure on that? Is it going to be as noisy?

Carl Guy: We have done a substantial amount of crushing operations and blasting over the years. Certainly we will only operate during normal business hours for any of the operations generating noise of that nature. Anthony can speak for the blasting, but we will generally take the trees down, leave the over-burden, drill and set the charges and blast with the over-burden such that you will barely even hear anything from down here. It is almost unrecognizable unless you know we're blasting. The sound is completely muffled. I have been around several blasting operations, and it's simply visible – you barely know what is happening. As far as crushing operations, we are going to have to comply with the county permit with the noise and dust, and we hope to set that up on the building pad part of the site, such that when we excavate the material out, we will get it off to our only level spot on the site, process the material so that it can be used as sub-base in the roads, and/or depending on the quality of the material,

boulders and rocks for constructing retaining type walls. Our goal is to try and keep as much material on site and re-utilize everything on site as much as humanly possible.

Chairman Cosentino: I was interested in the noise because there are a lot of residential homes back there.

Carl Guy: It's an operation that is almost inevitable, but we will try to comply as best we can.

Jan Johannessen: Are you going to be able to provide any sort of estimate of anticipated duration of blasting?

Carl Guy: We are trying to put together what we think the phasing schedule and durations may be for the operations such as further crushing and blasting; those type of things you may have an interest in as far as duration and noise. We are working with Chuck trying to come up with a reasonable estimate as to what that might be.

Chairman Cosentino: I appreciate that.

Jan Johannessen: You mentioned you are making application to the Zoning Board of Appeals. At what point in time do you think you're making application to the Architectural Review Board (ARB)? I believe their approval is a pre-requisite to the Planning Board approval.

Mark Miller: We are working on finalizing the elevations.

Carl Guy: I would hope by next week we would finalize the material for the elevations and the ratio of the different materials, such that before the end of the month we will certainly be in the position to make submission here.

Whitney Singleton: Since when does the County regulate blasting?

Chuck Utschig: Rock crushing.

Carl Guy: The blasting will be a non-issue with the neighbors.

Whitney Singleton: My experience has been known that the town regulates that.

Chuck Utschig: It's brand new. They've interpreted one of the long-standing permits that the County had on air pollution and applied it to rock crushing.

Chairman Cosentino: Please send a copy of that to Whitney.

Chuck Utschig: To be honest with you, we've done a lot of projects in the past where we've used very new machinery and met the local municipal requirements for noise and dust. Relative to the fact, your building inspector pointed out to us that the County now has gotten involved in this, and they have very specific requirements, which I will be glad to share with your staff. I will circulate them.

Chairman Cosentino: I will leave the public hearing open.

Mark Miller: Adjourn to the 24th?

Chairman Cosentino: I don't know when I'm going to adjourn it.

Mark Miller: It's the same discussion we had last week about adjourning it to a date certain.

Chairman Cosentino: I don't know about that.

Whitney Singleton: So long as they feel they are going to have reports back to staff in a timely fashion, I have no objection.

Jan Johannessen: We will not have the materials at hand to provide any comments for the 24th.

Whitney Singleton: When will you have your materials back to staff?

Mark Miller: Our intent for the next submission as Chuck indicated, before we go into some of the detailed re-engineering, was to come back to staff and the Board with details with respect to the proposals relating to the steep slopes and the retaining walls. And then, assuming the Board feels we are going in the right direction, and then do one final set of plans to address the technical issues and check off as many items as we can.

Chairman Cosentino: I don't want to close the public hearing until we go through all the issues.

Mark Miller: We are not looking to close it.

Whitney Singleton: He is asking to when he is being adjourned. The next meeting or the meeting after that?

Carl Guy: We are going to have some studies done of how we are going to reduce the amount of wall on the site and what its results and impacts are going to be in other areas, and we'd like to present that to staff and have a discussion with the Board to understand if we're going down the right path. We are trying to streamline the process to get to the end result as soon as possible.

Chairman Cosentino: Will you be able to enlighten us on that on the 24th?

Carl Guy: We would like to present on the 24th.

Chairman Cosentino: That's fine. I will not close the public hearing until I have all the comments back.

Whitney Singleton: Jan and Anthony are saying they may not have anything substantive to provide to your Board at that time, but the applicant nevertheless wants to come and present.

Chairman Cosentino: Fine.

Mark Miller: If we have anything sooner, we will certainly share it with staff. We are not expecting comments from you until we give you the full submission. On the 24th we want to share with you the details of what we are proposing with respect to the steep slopes and the retaining walls.

Chairman Cosentino: See you on the 24th.

The public hearing is kept open.

Formal Application:

**Maya Restaurant
37 East Main Street
PB2012-16, 69.81-2-4 (SBL)
Site Plan and Change of Use**

**Present: Charles DiNapoli, Architect for the Project
Alex Gregrio, Owner of Restaurant**

Charles DiNapoli: I was not here for the last meeting, but I see a lot got done. I was called in at the beginning of the summer to sort of coordinate all the comments and get everything correct and accurate. We were working with staff and the Building Department and we did two things. We did site plan development of the plan and a building permit that tied everything together, and then at the same time showed both businesses – the buffet section and the restaurant section so that we had a clear picture of our use for that property. In the meantime, we've made the change from one larger restaurant to two separate uses with permission from New York State Code Officials who said if we had a door between the kitchen – and I think we've written that all up – the door between the kitchen to the buffet section where the food is being prepped to where the food is being served allowed us to keep both occupancies the way they are planned.

Chairman Cosentino: Explain how that is done.

Charles DiNapoli: This is the new business, the site and the area (indicating). This is the existing restaurant, with its seating and the bar. We've left this wall as a one-hour demising partition and fire-rated wall with a pass-through right here from one kitchen to the back of the buffet area. With a one-hour rated door, we preserved the integrity of that wall for any fire and separation uses. With that door closed, it is two separate uses, two separate fire areas and one is protected from the other.

Enrico Mareschi: So if someone is in the old restaurant, they cannot go into the new restaurant?

Charles DiNapoli: No. The only way is to go outside and go back in again. According to the resolution restrictions, if they (*patrons*) feel

like having a beer or a wine after dinner, they have to go into the bar. Nothing occurring here, no sale, no consumption. It is a Change of Use, but the use is a little different. It's not a restaurant in that there is no waiter here delivering food. It is self-service at the buffet, and then you go in and sit down. But, it is done with plates and dinnerware that has to be bused to be washed. The Board of Health has approved the kitchen and the whole operation, but it is not exactly a carry-out or fast food, and it's not exactly a restaurant. It's somewhat in-between. You serve yourself, and somebody will help clear your table. The important thing was the New York State code official and the Building Department wanted to maintain this one hour separation between the uses. Then, at the request of the consultants, we included both areas of seating. We reduced the number of seats here (indicating) to what was the allowable occupancy load, and we did the same thing here, except I made a mistake here (indicating). This allows 30 seats, and on your comments it says it showed 34. These three seats are waiting. They are not tables. But I still made a mistake in that I showed one seat over here as 31 in this area. I will correct that and deliver a fresh drawing with that seat out. The best I can do is say that we've taken this property, we've shown the rock wall, we've shown the full site, not half a site, and we tried to get it accurate as possible.

Vice Chairman Sturniolo: If someone wants a beverage in the buffet area, how do they get it?

Charles DiNapoli: The beverage is right here in a cooler at "A." That is a refrigerator.

Enrico Mareschi: Are they all soft drinks?

Charles DiNapoli: Yes. They go over there and take it out. At the end of the buffet there will be a smoothie machine, and they can either get their smoothie there or their beverage here or pay for it. "A" is a refrigerator for beverages.

Vice Chairman Sturniolo: Where will they pay for it?

Charles DiNapoli: Right here next to "B" at the end of the counter. They start here (indicating). There is a salad bar, a steam table and pick up the food here. They come over here, make their final selections, pay there and they would get beverages at that point, load it on their tray and go sit. All service is done from behind though that door. Because of its occupancy, we have two bathrooms, both handicap accessible.

Vice Chairman Sturniolo: When the door is open...

Charles DiNapoli: It's not open.

Vice Chairman Sturniolo: Then why is it a door?

Charles DiNapoli: It's like your garage door between your houses. It has to be a self-closing, fire-rated door. It can't be open. We don't

want any chance of fire rushing through from one side to the other.

Chairman Cosentino: For the record, I would like to have Rob explain when you're done.

Vice Chairman Sturniolo: If it's a door, it swings open and closed. During the course of business, what goes through that door?

Charles DiNapoli: Only food to load the steam tables and the salad bar.

Vice Chairman Sturniolo: At the point of the door being opened and food going into the salad bar, the integrity of the one-hour rated fire wall is compromised by that door being opened for a period of time?

Charles DiNapoli: Yes, but it is self-closing just like the garage door between your garage and your house.

Robert Melillo: I don't know each section of it, but the state code is an exemption of how he is designing this, because it's not a kitchen. And, he is making a separate occupancy. And separate occupancies allow for fire separation without having to meet sprinkler regs (sic) because we are not including both occupancies as one.

Chairman Cosentino: The vice-chairman brought up a question: If it's supposed to be fire rated why is it opening and closing?

Robert Melillo: You are able to open and close the doors. They are self closing. You just can't maintain it being open all the time.

Chairman Cosentino: That is what we wanted to verify.

Robert Melillo: It's no different than your door in the garage. You have to maintain a fire separation all the time, but you're going in and out of it all the time. You have to maintain the one-hour fire separation.

Charles DiNapoli: In school buildings and office buildings there is an exit corridor with fire rated doors on it that protect it. When the doors are closed, you have a safe passage in the corridor.

Robert Melillo: It's no different than a hospital with the corridors with electronic magnetic locked doors. When the alarm system goes off, the doors close to maintain the set fire separation between wings in a hospital.

Chairman Cosentino: We understand that, and it's approved by the State code, verified by the building inspector.

Jan Johannessen: There is the one revision on the seating and six copies of the revised plan need to be provided for signature. Also, there is one modification to the resolution, and that is that all consultant fees be paid prior to the signing of the plan. That is currently a condition.

Chairman Cosentino: I see another condition has been added whereas no deliveries, pick-up, storage, etc.

Jan Johannessen: That is in the resolution that has been circulated.

Charles DiNapoli: I do believe we are paid up.

Vice Chairman Sturniolo: On Page Two, under Conditions to be Satisfied, Number One – I am not clear –“this discrepancy shall be discussed and resolved with the building inspector.” To me, that sounds like a conversation taking place in the future, but we are being asked to approve it.

Chairman Cosentino: It’s 30 seats minimum, and the discrepancy was the 34 against the 30. On the site, he has 34. Three of those seats are for just people sitting without tables.

Charles DiNapoli: The actual occupancy of the dining area is 30. That is all I’m allowed.

Vice Chairman Sturniolo: I understand that. I’m questioning the language.

Jan Johannessen: Now that we know, we can revise the language of Condition Number One to read that the site plan be revised to illustrate a maximum of 30 seats. Because there is a discrepancy on the plan now. Instead of the building department resolving it, we just resolved it now.

Vice Chairman Sturniolo: That makes sense.

Charles DiNapoli: I will include three seats for waiting. I will label that.

Sol Gibbons: On Page One, is it necessary to have the plus and minus?

Jan Johannessen: No. That can be revised as well now. The plus and minus was there because there was that discrepancy, but now I know the actual seating count. The 61 person would be 58, not including bar seating, and the 30 persons is correct, so the plus and minus can come out.

Motion to Approve the Resolution with Conditions:

**Maya Restaurant
3141 East Main Street**

**Motion: Chairman Cosentino
Second: Enrico Mareschi
Aye: Sol Gibbons
Aye: Vice Chairman Sturniolo
Aye: Stanley Bernstein
Aye: Enrico Mareschi
Aye: Chairman Cosentino**

Village of Mount Kisco
Planning Board Meeting
September 10, 2013

Charles DiNapoli: Thank you very much.

Approval of Minutes:

Whitney Singleton: You have the proper mix to approve all minutes tonight.

Chairman Cosentino: Thank you. Why are these on here?

Stanley Bernstein: There was a lack of communication or misunderstanding. I had a problem and I was sick. I asked the secretary to send these electronically months ago and have you voted by phone. At that time we had a discussion at this table, and it was okay with everyone. She never sent them, she included it in the last submission, and they all came up at once.

Vice Chairman Sturniolo: I have a question on the May 14 meeting. In the lower right hand corner traditionally it says "Planning Board Meeting" with the date of the meeting. It is not on each page.

Stanley Bernstein: We can instruct the secretary to insert them.

Vice Chairman Sturniolo: In that case, it would apply to May 29 and June 11.

Approval of Minutes:

May 14, 2013

May 29, 2013

June 11, 2013

June 25, 2013

July 9, 2013

Vice Chairman Sturniolo: On the first page of June 25, 2013, Page One, on the Final Action, Grand Prix. It said "Present, Jim Diamond, and Property Owner." Notwithstanding the spelling error of the word counsel for the village, but David Stolman is the acting planner for this application for the village.

Stanley Bernstein: You are right, I completely missed that.

Vice Chairman Sturniolo: Again, he is not counsel; he is a planner, as he is always listed on this application.

Stanley Bernstein: I'm sorry I missed that, I apologize.

On a motion by Mr. Bernstein, seconded by Mr. Mareschi, the minutes for all meetings were approved.

Vice Chairman Sturniolo: On the question, will we have a chance to make the changes on all the sets.

Stanley Bernstein: I will make the changes before they are filed.

Correspondence:

- New York Metropolitan Transportation Council Agenda for September 4, 2013 meeting.
- New York Metropolitan Transportation Council, 2014-2040 Regional Transportation Plan, Comment Period August 12 – 21, 2013.

As there was no further business to be discussed by the Planning Board, on motion by Vice Chairman Sturniolo seconded by Mr. Gibbons, the meeting was adjourned at 8:50 PM.

Respectfully Submitted,

Stanley Bernstein,
Recording Secretary
dm