

Meeting of the Planning Board
Village/Town of Mount Kisco
Minutes
Tuesday, October 8, 2013

In the absence of Chairman Cosentino, Vice Chairman Sturniolo presided over the meeting.

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

Members Present: **Vice Chairman Sturniolo**
 Stanley Bernstein
 Doug Hertz
 Ralph Vigliotti
 Enrico Mareschi

Members Absent: **Chairman Joseph Cosentino**
 Sol Gibbons

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

Discussion:

Mount Kisco Country Club
10 Taylor Road
PB2010-17, 80.62-1-1 (SBL)
Site Plan and Wetland Permit

Present: **John Kellard, P.E., Kellard Sessions Consulting, P.E.,**

Mr. Johannessen Recused himself from this discussion

John Kellard: I believe the public hearing was closed at the last meeting, and we were hoping to have a draft resolution tonight.

Vice Chairman Sturniolo: I would like to draw your attention to Number 13 (of the draft resolution). My understanding is that you're going to be doing all of the remediation as far as replanting of trees yourselves on site.

John Kellard: Correct.

Vice Chairman Sturniolo: We will require a qualified arborist or landscape architect to mother that part of the project along and develop a dialogue with the Building Department, most importantly with Anthony Oliveri, our village engineer.

John Kellard: That's fine.

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Anthony Oliveri: A condition has been made in the resolution to specify the species and caliber of the replacement trees and submit a plan prior to construction for review.

Vice Chairman Sturniolo: Where do we stand with that subject?

John Kellard: I sent an email to Anthony when the issue was first raised. I believe one third of the trees would be red maple, one-third would be sugar maple and one-third would be oaks. I do not recall if we specified the type of oak.

Anthony Oliveri: We will review that. We can probably leave the condition the way it is after the resolution.

John Kellard: We will put it on the plan. They were all four-inch caliber, as per the village tree ordinance.

Ralph Vigliotti: It is my understanding that the tree planting might not take place for at least one year until the ground settles. I would like to add a year from the actual planting that an arborist go out and make sure that the trees that were planted are healthy, and those that are not are replanted. If we can include that, I think it's fair and reasonable.

John Kellard: Certainly.

Whitney Singleton: To that issue, Mr. Vigliotti, you want guarantee of a survival rate of these trees?

Ralph Vigliotti: That's correct.

Doug Hertz: In light of at comment, there is going to be a lot of grading to be done within that area. Is what you're asking that the trees be planted a year after construction also survive a year, or are we also going to look a grading active trees that might have been affected by grading that we've lost.

Ralph Vigliotti: I have not included that. I think we should.

Doug Hertz: If they are going to wait a year to plant until the area is settled, we can certainly get to see if there was any damage done by the construction. The intent is to keep them healthy.

Vice Chairman Sturniolo: It makes sense to use that time constructively.

Doug Hertz: About the resolution in general, we are in one document dealing with both site plan amendment, permit to disturb natural areas and wetlands, and steep slopes. So, we are essentially covering everything in this one document?

Whitney Singleton: Correct. You have conducted the necessary public hearings associated with this application. If you want to get really technical, although the application said that it contained a tree removal permit, I did not see it in there, but tree removal, landscaping and tree restoration all will

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basically come under the blanket of site plan. It is an element of the site plan. In that regard, I am not that concerned. The applicant and your Board adequately addressed all aspects of it.

John Kellard: We thought the actual permit comes from the Building Department.

Whitney Singleton: Yes.

John Kellard: That is why the application may not have been in the package.

Anthony Oliveri: I believe there was a pre-permit application early on that was submitted package. It becomes part of the site plan.

Vice Chairman Sturniolo: What is the system we have in place to check that these fees have indeed been paid and everything is current?

Robert Melillo: One of the secretaries handles that. We read through the resolution and apply whatever is in the resolution on the Certificate of Occupancy. We take an application fee and any and all fees are associated on the front side. We collect anything on the back side when you're closing out a building permit.

John Kellard: Condition Six states that no Certificate of Occupancy will be issued until all fees have been paid.

Robert Melillo: Most fees have been collected except for the flood development fee yet.

Whitney Singleton: The village engineer at this eleventh hour has identified additional requirements. Under Condition 10 there is prior notification that is required by the applicant to the building department and village engineer of at least 72 hours in advance of any site disturbance. We would like to change that slightly to reflect another condition that we usually include, which is to reflect a pre-construction meeting with the applicant. We have a staging and construction plan, but not an actual meeting.

Vice Chairman Sturniolo: I don't think we have a problem with adding that in.

Motion to Approve Resolution for the Mount Kisco Country Club, 10 Taylor Road, Irrigation Pond Maintenance Dredging, Consisting of a Resolution of Approval for Site Plan Amendment, the Permit to Disturb Sensitive Natural Areas and Wetlands, Steep Slopes and a Tree Removal Plan

Motion: Doug Hertz
Second: Ralph Vigliotti
Aye: Enrico Mareschi
Aye: Stanley Bernstein
Aye: Ralph Vigliotti
Aye: Doug Hertz
Aye: Vice Chairman Sturniolo

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Discussion:

**New Cingular Wireless, PCS, LLC (A T & T)
304 Lexington Avenue
80.39-1-1 (SBL)
Amended Special Use Permit and Amended Site Plan**

**Present: Neil J. Alexander, Esq., LEED AP
Cuddy & Feder, Attorneys at Law**

Vice Chairman Sturniolo: On page two of the letter, the last paragraph refers to: "the monopole at 140 feet and therefore does not affect the overall height currently approved. It does, however, add to the tower loading." Are you in agreement with that statement?

Neil Alexander: Yes. That is why we gave you a new structural analysis, described in the next paragraph (of the letter).

Doug Hertz: Upon review of the report from PierCon, they recommend that the Board act favorably, but there are a couple of questions that were brought up that either they didn't feel they had the data for or that they thought should be addressed. The first was the separation between the two antennas, which is listed under site plan (second paragraph), reading: "There is no vertical separation. A T & T should therefore have the design approval of the other carrier for entering into their space and verifying they will not causing any interference." While I have no problem moving forward with this, how do we get that resolved?

Neil Alexander: She (Frances Boschulte, Senior RF Engineer, PierCon Solutions, LLC; author of the October 1, 2013 letter/report to Chairman Cosentino re New Cingular Wireless Application Review) brought up an interesting point. I think her mechanism is not exactly the right mechanism. Ultimately, thinking of this as vertical real estate, the tower is owned by a tower company. They take reservations for different lease areas. What was missing, and we've not subsequently identified and brought to her attention, as per the condition of the approval, is that Nextel is decommission its IDEN technology at that site, and they will probably be taking down those antennas very shortly.

Doug Hertz: So the conflicting antennas identified here are not conflicting?

Neil Alexander: She wouldn't have known that.

Vice Chairman Sturniolo: In the future it's not an issue.

Neil Alexander: There are two aspects. There is the physical. This only comes up in her mind to look at the eight foot antennas as opposed to the five foot antennas. The longer antennas are actually off-set where Nextel's equipment is. On top of that, because of the merger with Sprint/Nextel, the 800 band Nextel technology frequency is not being used anyway. Nextel is decommissioning that technology as part of its company. We are on top of

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it and communicating with her, and we will work through to her satisfaction on that issue.

Doug Hertz: You are comfortable that can be resolved?

Neil Alexander: Yes. To be more on top of that, there is a whole FCC protocol on radio frequency interference as to how to work through that issue, if there were any; and whose responsibility it would be to put up the appropriate technology screens so everyone could work within that proximity to each other. The protocol is fair enough for her to bring it up. We are on it and we are working on it, and we have looped her in with some side emails as well.

Doug Hertz: With regard to emissions, even though she was comfortable that you're within the limits, the report says this report did not include the data used and the calculation from the other existing carriers installation, and it is important to verify what data was used for the other carriers in the their report. Can you get that?

Neil Alexander: We have actually already been sharing that information. We are trying to figure out where her assumption differs from ours. I think the ultimate thing is that it's less than five percent, regardless and 100 percent to the standard. I think that's why she wrote the conclusion that she did write, which is that it complies. We are trying to figure out where in her models she is differing from our model, since the model is supposed to be the same. There is some input somewhere that is leading to difference in opinion that is mathematical, but not appreciable.

Doug Hertz: Any resolution will require this will be reconciled.

Neil Alexander: We are going to keep working on it and work through it. Ultimately, there needs to be agreement that the model was run correctly, but ultimately the real ----- is that it doesn't comply with the federal standard. Both ways its run A or B, it already complies. We are going to keep coordinating with that. I cannot guarantee that she is ultimately going to completely agree with the number we get to, but we are sort of hedging on it. It's sort of immaterial that we get to complete agreement and she gets complete buy-in.

Doug Hertz: That is what she is indicating here. We are not concerned with that. As long as they are both within safety factors.

Neil Alexander: Exactly. That's why I'm hedging.

Vice Chairman Sturniolo: The last page of her letter – I understand why there is a GPS antenna. Is the second GPS antenna necessary because of the fact that it's going to be A T & T and Nextel?

Neil Alexander: You are probably going to go past my knowledge base pretty quickly, but essentially we need two GPSs. We are operating several different frequencies. It's the timing of both voice, data and broadband requires the extra GPS.

Vice Chairman Sturniolo: For both A T & T and Nextel?

Neil Alexander: I don't know what Nextel needs or doesn't need. Those both are for A T & T.

Vice Chairman Sturniolo: Yes, for timing of the signal as it reaches before they start to interpolate and be able to transmit data versus the voice solely. There is nothing else. The next page follows an amended special use permit and amended site plan approval for New Cingular Wireless, Oakwood Cemetery, 304 Lexington Avenue.

Doug Hertz: I don't see language in here that talks about resolving the things that we just brought up, reconciling these various issues.

Jan Johannessen: It's on page three or four, condition two. It's a condition that needs to be satisfied prior to the signing of the site plan.

Vice Chairman Sturniolo: Are you comfortable with that, Neil?

Neil Alexander: I am. The conversation that I had with Mr. Hertz elucidates how we are trying to. We will definitely be able to address them.

Doug Hertz: Satisfactorily address them. You can address them all you want. (laughter)

Neil Alexander: Leaving this in is fine. We had a great discussion, I think, of where we are headed.

Doug Hertz: Who makes the determination of these conditions that they have been satisfactorily addressed?

Whitney Singleton: Whatever official you designate.

Anthony Oliveri: It's prior to the signing of the site plan. The site plan is signed by the village engineer, building inspector, chairman and village manager. Any one of those people can verify with the RF engineer that it has been satisfied.

Doug Hertz: On both conditions one and two, if we could add the word "satisfactorily" address. I have no doubts that Neil will make that happen. I would like to make a statement. It is probably seventeen years ago, and I might be off by a year or so, when we had an unprecedented public hearing on cell towers at the water tower. We have come an extraordinarily long way towards creating a workable and viable solution for the village. I, for one, would like to thank all the people who have come before me and have done much more work to make something like this function in the village.

**Motion to Approve for an Amended Special Use Permit and Amended Site Plan Approval
New Cingular Wireless, PCS, LLC (A T & T)
304 Lexington Avenue
PB2013-10, 80.39-1-1 (SBL)**

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Motion: Doug Hertz
Second: Ralph Vigliotti
Aye: Enrico Mareschi
Aye: Stanley Bernstein
Aye: Ralph Vigliotti
Aye: Doug Hertz
Aye: Vice Chairman Sturniolo

Doug Hertz: Thank you and have a good evening.

Formal Application:

Arroway Chevrolet/Cadillac
175 North Bedford Road
PB2011-05-69.66-2-3 (SBL)
Amended Special Use Permit
Amended Site Plan
Wetland Permit

Present: Scott W. Blakely, R.I.A., Sr. Vice President/Principal
Landscape Architect, Insite Engineering

Vincent Franze, A.I.A., Principal, Franz & Franze
Architecture, PLLC

Charles Martabano, Attorney at Law, representing
the applicant

Mr. Hertz was Recused from this session.

Vice Chairman Sturniolo: We have a lot of documents, but the first things I would like to do is go over the memos from our assistant building inspector, the village engineer and the memo from our planner and see if all the points that they raised have been incorporated in the latest submission package.

Robert Melillo: One of the things I was looking for was a written narrative of how the project is going. I know there was a Planning Board approval prior to, but it's a little confusing for everybody, there are obviously new people.

Vice Chairman Sturniolo: We should have a written narrative of what is going on for the record. I did not see a plan for existing site conditions submitted with the current survey.

The zoning table is incorrect and should reflect two front yards and no rear yard, because it's a corner lot. It should be noted that a good portion of the proposed plantings are shown in the Village right of way.

Charles Martabano: You pointed out that there is a lot of new people here. Previously, when we made application, this Board requested the landscaping and we agreed to provide it. If some of it is in the right-of-way, we will seek permission from the Village Board. That was part of our original approval.

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Robert Melillo: I didn't know that. I needed something written out, because there is a lot of changeover since the original. Again this housekeeping was the zoning table.

We find on a normal basis that the cars are being loaded out on the street in front. I will drive by in the middle of the day and there will be cars unloading off the trailers out in the street and not in the site. We need to keep the trailers inside the site and not at the traffic light. We cannot have that out in the street.

Scott Blakely: We had a very lengthy discussion with the Board. There were some issues up the road during the time of our original approval. We went through a lengthy process of showing them how we can park on site and have the vehicles being able to be on site. Some of these changes will help free up the site and keep those areas clear.

Robert Melillo: Right, and again, I wanted it noted that we have to make sure we maintain doing this on site.

Vice Chairman Sturniolo: You have a place for tractor-trailers?

Charles Martabano: Yes, we do.

Ralph Vigliotti: Unfortunately, we could put all this planning in place for on-site drop off of these vehicles, and Arroway has been known to overuse their lot for storage of cars. My concern is that these trucks are going to end up out on the street. Arroway, your client, does not use their parking lot correctly. It is mostly for storage of vehicle. When you came with Phase II and you were going to enclose a parking area up top, we were pretty excited about that. Now, that is not part of Phase I.

Charles Martabano: That is correct.

Ralph Vigliotti: Even as of this weekend I was looking at car. I could not find a place to park. People were parking in the fire zone, all over. There is no designated guest parking. I see what Rob is indicating, that they will be parking in the street to unload cars, because when you walk away and all this is done, Arroway, will do what they are doing now, and that is whatever they feel like doing. Those trucks will not be able to get in to the designated area. I want to make sure, as Rob and the entire Board and staff does, that is not going to occur. So Phase II kind of ensured that there would be plenty of parking. Phase II with that parking above, is not happening anymore.

Charles Martabano: Not happening right now.

Ralph Vigliotti: Well, it may not happen for ten years.

Charles Martabano: That is correct. It may not happen, depending on what General Motors does.

Vincent Franze: May I just clarify? I may be just misunderstanding you, but the parking on the roof exists now, so the enclosure of the rooftop is not going to add, I believe, any parking.

Scott Blakely: It's not going to increase the amount of storage or parking up there, which is correct.

Ralph Vigliotti: We were told that it would. That would encourage the roof added on to that parking to store new cars.

Vincent Franze: It was exclusively storage.

Ralph Vigliotti: Absolutely. Right now you're storing some cars up top, but all over the parking lot. I do not believe the onsite drop off of new vehicles is going to happen on a regular basis. I don't know if we can do this when we go through the resolution, but we have to put a fine in place where we don't have to say anything. On a certain date we saw your truck, here is the picture -- \$500 fine. There has to be something in place where any agent of the village who sees a truck, whether it's outside of Arroway or any other car dealership, is able to take a photograph using their cell phone, send it to the village manager and that initiates a \$500 or \$1,000 fine. It's the only way it's going to stop. You guys are trying to do the right thing, but when you leave, you're gone. You are not there to enforce it. I know you are trying to do the right thing, but your client is notorious for overloading a parking lot where people drive through and they don't even know if they are going to get through safely to get out. It's that bad.

Charles Martabano: It's strange. I was there twice today. I parked right in the parking spaces and walked in. You must go there on the busiest day.

Ralph Vigliotti: Saturday. They don't even show customer parking.

Charles Martabano: I think we are making those changes in Phase I, and you were the driving impetus in making those changes for Phase I.

Ralph Vigliotti: Absolutely. You are trying to make it better, but we have to do something. It may be your applicant where we are able to enforce this in some degree.

Charles Martabano: We will, obviously, talk to our clients as well. I understand what you are talking about, and I will defer to Whitney. He can provide you the advice with respect to that. We are trying to do the right thing here. What we are proposing will make it better. Phase II will make it all the more better. Hopefully we will get there, but there is not guarantee at this juncture.

Robert Melillo: Continuing on, the biggest problem that I find on sites on a daily basis is that required parking cannot be used for display of vehicle. Currently that is how it's being used. They are displaying vehicle, and that is why we are having an overload of vehicle. The required spots are for the public or employees. Those need to be open. When we're looking at the plan, there are a lot of spots in the back of the property that are part of the parking calculation. You may want to revamp some of the back parking,

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possibly move them to the front, as required parking spots. You are not going to have somebody come off the street to visit your showroom to park in the back of the building. That is not going to happen.

Charles Martabano: They also use them for parking of service vehicles. Those are necessary parking spots.

Robert Melillo: I understand that, but I also see on a normal basis there, that a lot of the required parking is for displayed vehicles on site.

Charles Martabano: We can obviously correct that with what we are doing here.

Robert Melillo: You may want to tweak the way the parking layout is. I ran into an issue with a little bit of the parking calculation. I think we can sit down and go over that.

Charles Martabano: We've gone through this with the building department, we would be happy to go over them with you.

Robert Melillo: The building elevations are unclear as to which phase will include the installation of a new roof over the rooftop parking.

Charles Martabano: That will be Phase II.

Robert Melillo: All signage must be reviewed and approved by the Architectural Review Board. All drawings need to be stamped and signed by the design professionals. The drawings that I had were not stamped and sealed. The fire lane in front of the building should be a least 20' in width.

Vice Chairman Sturniolo: Regarding the photometric lighting plan, if you look at the village code, it talks about lighting for display and then lighting for security once the display area is closed down, which really means when the business closes at night. We are not going to want to see the same intensity of lighting that you may have had on prior to. There is language in the village code that differentiates between display and security during the closed business hours.

Charles Martabano: We will check that out.

Anthony Oliveri: Jan and I had a conference call with Scott Blakely after the last meeting to clarify what elements were in Phase I and Phase II. Some of that is reflected here in my comments. Again, the existing conditions survey or plan should be included. Parking requirements and counts for the proposed phase construction must be reviewed by the village planner and building inspector. The lighting changes should be more clearly noted as to what is happening in Phase I or Phase II, in terms of which lights are getting upgraded and the changes to the lights that were originally approved in the original site plan, if that is all occurring in Phase I and the details of that. I pointed out that they moved some of the storm water improvements into the Phase I plan and that would ultimately need approval of the Department of Environmental Protection (DEP). Also noted, it seemed that most of the work was moved out of the Department of Environmental Conservation

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(DEC) buffer except for some of the plantings and a snow storage area. There may be an amendment to the DEC permit, which you already have. I just noted that. We also point out that the existing dumpster location should be shown on Phase I. If Phase II never happens we have a Phase I location on the dumpster.

Vice Chairman Sturniolo: About the Phases - why aren't you doing this as two separate applications?

Charles Martabano: More than anything it's because we want to proceed forward with our current phase, but we want to know that the second phase, if GM allows us to go forward, has already been approved. Therefore, if there is any change in the future, we are not going to have to worry about it. We may have to renew it over time, I understand that.

Jan Johannessen: We had some comments on the Environmental Assessment Form that was submitted. I went over them with Scott on the phone. We also asked for the existing conditions plan. The outside agency involvement with this application included the DEP, DEC, Department of Transportation (DOT) and ARB. The applicant needs to identify the status of those permits, and if any of those permits require amendment renewal as a result of the phasing. The application does need to be referred to the Westchester County Planning Board and provide an extra plan set. I will ensure that gets forwarded down to the County. You have a 30-day window in which to respond. The application will require public hearings for the Special Use Permit and the Wetland Permit. I had similar comments on the lighting plan, if you could just clearly identify which fixtures are proposed to be altered and how they are going to be altered. If you could also include comments addressed by the Vice Chairman about use of lighting after hours. I felt that the architectural elevations could be clarified, specifically in terms of the rooftop enclosure. I have the same comment about refuse and recyclable storage in Phase I. I noted the landscaping proposed within the Village and State right-of-way and agreements/approvals will be required from each jurisdiction. You should identify the anticipated start date and duration of each phase. That would be useful in preparing any future resolution in terms of when you think you will be starting Phase II potentially.

Charles Martabano: Do you want each Phase based from the date of approval?

Jan Johannessen: Yes, it's a duration issue.

Charles Martabano: We are happy to address all these issues.

Vice Chairman Sturniolo: Whitney, do they need any additional special permit use, according to our village code?

Whitney Singleton: They are modifying their existing special use permit.

Jan Johannessen: The amended special use permit and amended site plan.

Vice Chairman Sturniolo: You obviously realize there is a public hearing for the wetlands permit and public hearing on the special use permit?

Charles Martabano: Yes. We were hopeful we could schedule that for the next meeting of the Board, if possible, and we could respond to all these items easily.

Jan Johannessen: Did you previously obtain ARB approval for the building?

Vincent Franze: We had a preliminary review. I do not think we had final approval because there were aspects of the design that were still in flux.

Vice Chairman Sturniolo: What is the height of the building with the enclosure over the roof?

Vincent Franze: I do remember that the max height in this zone was a focus of ours at the time. I don't have the exact dimension. I will have it for you next time. I'm sorry. It was a focus on the first go round, when it was in fact approved by the Planning Board.

Vice Chairman Sturniolo: In the left hand corner where the parking is on the roof, where that group of windows are, is that going to be a display area?

Charles Martabano: I'm quite sure that is what we showed on the original plan. It is a little area that displays one or two cars with storage behind it.

Vice Chairman Sturniolo: So it's a display without walls surrounding?

Vincent Franze: The concept of the entire roof enclosure is that it was going to essentially a warehouse for vehicles. It was not a showroom, it was not a place for employees, and customers would not ever be going there. The idea was to seize the opportunity of the vehicles being stored up there to display one in the plan. This has not changed.

Whitney Singleton: Don't you show parking within that second floor structure?

Charles Martabano: Yes. It's a combination.

Whitney Singleton: How can you say you are not going to have anybody going up there?

Vincent Franze: It's for employees.

Scott Blakely: This is car storage. We can fit 80 cars in here.

Jan Johannessen: One is required parking, one is car storage.

Charles Martabano: That is correct.

Scott Blakely: That vehicle display area is shown right in this corner (indicating) in Phase II. There are 14 parking spaces here, the access is here, and then we have this for car storage.

Jan Johannessen: The second floor is employees only?

Charles Martabano: Correct. No customers.

Whitney Singleton: Your entire customer parking is back behind the fence. How are customers going to park? There are six parking spaces. They are essentially seeking two separate approvals. They will not be mandated to build the second phase.

Charles Martabano: That is correct.

Whitney Singleton: So they are really asking for an appetizer and an entrée, which is what you're receiving here. This is not simply phased construction. It is going to be entirely within their purview to abandon all or a portion of the project, which is what they have done in the last two applications.

Charles Martabano: Not the first phase.

Whitney Singleton: You abandoned the first phase last time, and you've abandoned the application before that. The last two applications that were approved by this Board were not filled.

Charles Martabano: I'm not even aware of the prior one.

Whitney Singleton: Hummer.

Charles Martabano: That was not even this owner. I hear what you are saying.

Whitney Singleton: I just don't want this board to ask, "When is the rooftop? When is the removal of impervious surface going on? When is Cadillac coming?" It may not come. They are not seeking two phase per se, just the construction.

Charles Martabano: I thought the Board understood that part.

Ralph Vigliotti: That is why I'm pushing hard for Phase I to be put into place as a single phase. Who knows when Phase II is going to happen?

Robert Melillo: That is part of why I was asking for a written narrative, a description of the work in Phase I and the potential of work in Phase II.

Charles Martabano: I understand that.

Scott Blakely: Just so you know, the Phase I construction documents are out to bid. They are ready to start and construct Phase I as soon as we get your Board's approval and then update any of the existing approvals for the outside agencies.

Charles Martabano: This is why we are looking to have the public hearing. We are ready to construct. We were going to move forward until General Motors (GM) in all fairness, changed its mind about what it wanted to do for future planning purposes, which we understand, and I think you understand. We are ready to start Phase I immediately.

Jan Johannessen: What façade improvements are coming with Phase I?

Vincent Franze: The existing whole front of the building is being re-clad. The back of the building where there is service and vehicle storage up top is being repainted, so the entire façade is getting a panel cladding system consistent with the GM new image program. There is the new monument or entry feature that we have become familiar with; the GM/ Chevy, and the storefront, meaning all of the glass enclosure of that existing showroom which just simply being replaced.

Vice Chairman Sturniolo: Is the landscaping included in what you just said?

Charles Martabano: Yes, in Phase I. We wrote to you early on saying this would be part of Phase I, because that was another concern of your Board.

Vice Chairman Sturniolo: And the plantings along village property as well?

Scott Blakely: We have a DOT permit that has just been expanded, so we have another year for this. All of the proposed plantings that we worked through with your Board, including what's around the Chevy dealership and on this corner of the service area and that future second floor will all be done, and Preston Way as well.

1 Charles Martabano: All the landscaping that you liked and you asked
2 us to put in the Village and State right-of-way are all part of Phase I.
3 That was all in my first letter to you when we brought the Phase plan
4 down. You are getting 100 percent of the landscaping, I believe right
5 to here (indicating) because this is where it might change in the
6 future.

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8 Anthony Oliveri: The landscaping on Preston is actually on your
9 property.

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11 Scott Blakely: It does straddle the line because we had to push it
12 because we got the curb line.

13 Charles Martabano: We were erring on the side of caution.

14
15 Vice Chairman Sturniolo: Do you believe you will be ready for a public
16 hearing and you will also have the information predicated on the three
17 memos that we just went over?

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19 Charles Martabano: Absolutely.

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21 Anthony Oliveri: Perhaps we can have a technical meeting to firm up
22 the parking layout, and perhaps staff should all be present to go over
23 that prior to the next mission.

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25 Charles Martabano: We will make ourselves available anytime you
26 want.

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28 Vice Chairman Sturniolo: Based on what you said, Anthony would you
29 feel comfortable if they were back with us in two weeks?

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31 Anthony Oliveri: It's impossible with the submission deadline.

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33 Whitney Singleton: There is a 15-day public hearing requirement
34 anyway.

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36 Charles Martabano: So we will ask to go on for the first week of
37 November.

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39 Whitney Singleton: You will provide the overlay to show what the
40 existing conditions are in Phase I / Phase II.

41
42 **Continuing Review:**

43
44 **The Hearth at Mount Kisco**
45 **270 Kisco Avenue**
46 **PB2012-15, 69.49-4-1 (SBL)**

47
48 **Present: Mark P. Miller, Attorney at Law, Veneziano &**
49 **Associates, representing the applicant**
50 **W. Charles Utschig, Jr., P.E./Associate, Langan**
51 **Engineering**

52
53 Vice Chairman Sturniolo: We have a copy of a letter to the Zoning
54 Board of Appeals from Attorney Miller with attachments, etc.

1 Mark Miller: As we indicated at the last meeting of your Board, which
2 was a continuation of the public hearing, we intended and we have
3 since applied to the Zoning Board of Appeals for the two variances that
4 we require. I promised at that meeting that we would get copies of
5 our complete application to the ZBA. We are scheduled to be on the
6 ZBA agenda one week from tonight for the public hearing. We are
7 here tonight for the limited purpose of seeking a recommendation from
8 your Board to the ZBA prior to their meeting next week with respect to
9 the two variances. Those two variances are associated with the grade
10 of the driveway, which Chuck will address, and the issue of the tandem
11 parking, which I will address.

12
13 Chuck Utschig: We are seeking a variance to allow us to deviate from
14 the town's ten percent maximum road slope to a slope of 12 percent.
15 That 12 percent starts just as you get past the entry curve. This
16 section (indicating) of the road is flattened out, so that access into this
17 intersection is at a little softer plain. 12 percent extends all the way
18 up until we get to where the land bank parking is. From there up, it
19 flattens out. The advantage of going to 12 percent is that we can get
20 about 16 feet higher up on the site than if we were to stick to the 10
21 percent. That has a substantial impact on the level at which we can
22 set the building envelope and the resulting cuts and fills on this site.
23 It is really something that has been part of our plan even since the
24 original writing of the Draft Environmental Impact Statement (DEIS).
25 The length of the 12 percent to get longer when we modified the
26 switchback in this area, but we've always had that as part of our
27 design concept. I know that the fire department has looked at this,
28 and my understanding is that they are comfortable with the 12
29 percent. I think what sold them is that the driveway up to Curtis is
30 about 12 to 14 percent as one of the existing driveways, so they had a
31 good example of real-world slope and they were comfortable with that.
32 Actually the driveway up to BMW is somewhere between 10 and 12
33 percent, so access into this side of the hilltop is better accomplished
34 with a little steeper slope. We don't feel there are any safety issues
35 that come along with it, especially with your fire department being
36 comfortable with that.

37 Vice Chairman Sturniolo: When you say the fire department is
38 comfortable, is anything put in writing to memorialize that comfort
39 level?

40
41 Robert Melillo: It has been discussed with them, they are comfortable
42 with it. There has been nothing in writing yet because the project is
43 evolving. They are not ready to put anything in writing yet because
44 we did not know what was going on with the retaining walls. When
45 last they were here, the retaining walls are now changing. We want to
46 incorporate everything in one memo. I still have to go back over it
47 with them again, because it is not 100 percent because the site is
48 changing at this point.

49
50 Mark Miller: Does the issue with the retaining walls and the grading
51 affect the slope of the road?

52
53 Chuck Utschig: No, even though we are looking at adjustments in the
54 grading that will affect the retaining walls, it does not change the

1 length or configuration of the road or the slope.

2

3 Mark Miller: So the Board is clear, even with the old switchback plan,
4 those slopes exceeded ten percent also, did they not?

5

6 Chuck Utschig: Yes. There were sections of that road design that
7 exceeded the ten percent.

8

9 Vice Chairman Sturniolo: Currently, what is the length of the retaining
10 walls?

11

12 Chuck Utschig: We have some that are almost the full length of the
13 building, so those are probably 600 to 800 feet in length. However,
14 those we are working on. Our goal is to come back with a plan that
15 has been adjusted, which is what we were trying to get at last time we
16 were before this Board. Tonight is really just about your
17 recommendation for the two variances we are seeking. We want to
18 organize this application fully and give your staff a chance to look at it
19 before we go back into those kinds of issues. The reality of it is that
20 this road slope has been part of our plan since its conception 10 years
21 ago.

22

23 Whitney Singleton: So the variance that you're looking for from the
24 Zoning Board will not be tied to a specific road design?

25

26 Chuck Utschig: It will be tied to a specific road design, yes.

27

28 Whitney Singleton: This may change.

29

30 Chuck Utschig: No, not the road design. I want to make myself clear.
31 The road design is not changing. The road design is staying the same.
32 There is really nothing you can do to this road design to any great
33 extent. We are trying to reduce the amount of retaining walls by a
34 combination of grading and some other measures. We will not be
35 changing the road profile.

36

37 Ralph Vigliotti: Why do you want to reduce the retaining walls?

38

39 Chuck Utschig: We were thinking we got a message from the Board
40 about the length and size of the retaining walls as it relates to your
41 steep slopes ordinance. We have tried to articulate the pros and cons
42 to reducing the length of the walls, increasing the amount of slope;
43 there are disturbance issues that come along with that. There are
44 visual impacts that come along with that. We've gone back and looked
45 at those, and hopefully can bring before this Board something that is a
46 middle-of-the-road solution which does not result in giving back all of
47 the disturbed area that we were able to save. It does not drastically
48 affect the visuals that we presented and allows us to kind of
49 accomplish absorbing some of the excess fill material that we have.
50 We are working on that marriage of all those things and hopefully can
51 strike a balance that this Board is comfortable with.

1 Ralph Vigliotti: How much disturbance will take place by lowering the
2 walls as opposed to keeping the walls at the height that they were
3 proposed at?
4

5 Chuck Utschig: You go from one extreme to the other. It could be.
6 It's about a half an acre of additional disturbance, if you go from the
7 one extreme to the other. There are about 80 trees in that area.
8

9 Mark Miller: As I recall from the last meeting, the total length of the
10 retaining walls at the extreme would go from roughly a total of about
11 4,000 linear feet of wall to about half that.
12

13 Chuck Utschig: We can cut the amount of retaining walls lengthwise by
14 50 percent.
15

16 Ralph Vigliotti: Now, it's almost a mile of retaining wall on a site that is
17 pretty tight.
18

19 Mark Miller: Tight and steep.
20

21 Chuck Utschig: There is a lot going on. We have demonstrated the
22 two extremes. One is holding the retaining walls up very close to the
23 building. They are higher and they are longer. The other is to reduce
24 that and allow the grade to expand further out away from the building
25 and then break down. In one its 4,000 plus or minus, in the other it's
26 2,000 plus or minus. We think there is someplace in between that
27 probably best addresses all of those issues in a combined way.
28

29 Stanley Bernstein: From 4,000 to 2,000 seems like a lot of gain.
30 2,000 are in violation of the steep slopes law anyway. Whatever
31 retaining walls you put down there are in violation of the steep slopes
32 law.
33

34 Chuck Utschig: The way your steep slopes ordinance is written and the
35 way you have set the parameters in that ordinance, this Board has the
36 ability to work around those. They are not limiting factors, so the
37 definitive statement that we are in violation of your ordinance is really
38 not correct. I think this Board found it in their wisdom when they
39 wrote that ordinance to build in some flexibility on your part to
40 interpret that code; otherwise we'd be going to the Zoning Board for
41 variances.
42

43 Stanley Bernstein: I agree with that. I was one of the people who
44 helped write that law. Of course, I was against the flexibility. I will do
45 everything in my power to maintain whatever it says within the law.
46 Let's talk about a nice little scenario that comes to mind. According to
47 what I read about your proposal to the ZBA. You are going to have
48 tandem parking with little old men and ladies standing outside the
49 door. An attendant will bring their car to them and they will drive
50 down this 12 percent grade. At that bottom they will encounter a
51 sharp "S" curve. The fire department, being well-trained drivers in
52 their 30s has no problem at all with this situation. I have a problem
53 with it, and I can guarantee you within the first week you open if these
54 conditions prevail, you will have an accident. I can see an 85-year-old

1 person wangling down that steep grade and trying to make the final
2 "S" turn. I recommend to this Board that no only do we not
3 recommend ZBA approval, but we make it our business to recommend
4 disapproval. This Board should go on record that we are against
5 tandem parking, and we are against the slope. Period. And that
6 should go on record. That is my recommendation.

7
8 Mark Miller: If I may address the tandem parking issue. As you saw
9 on the plans, we are proposing 19 spaces of the 91 spaces underneath
10 the building be provided as tandem parking. We are seeking the
11 variance because those spaces do not comply with the parking design
12 standards in your code. There are a couple of different ways we can
13 look at it. Historically, when we first came to you and the village board
14 years ago, we sought a parking requirement of 1.4 parking spaces per
15 unit. At the time the project was an assisted living facility with no
16 memory care, and 1.4 was an appropriate number. With the
17 incorporate of the memory care, effectively that takes 40 units of the
18 129 units out of the picture, because the memory care people do not
19 drive. We have not sought a change in the parking requirement based
20 on that. We are still proposing to comply with that parking
21 requirement, albeit with 50 spaces land banked, which, at your Board's
22 discretion can be built should the need arise. So, we are really talking
23 about 89 units. There are a couple of different ways we can look at
24 this. I asked my client today what they anticipated their maximum
25 shift for the number of employees because the employees take up a
26 number of those spaces. They said their maximum, roughly 7 AM to 3
27 PM I believe would be 20 to 25 employees. Let's take 25 and let's
28 assume they all drive their own cars. Their experience has been some
29 number of the employees will use public transportation, particularly
30 with the proximity of the train station here in town. But let's take 25,
31 so we have 89 units to deal with. Again, their experience – and they
32 operate a number of facilities – is that at most, 50 percent of those
33 units have cars. If we take half of the 89 units, that's 45 cars together
34 with the 25 employees, that would be 70 parking spaces. If we were to
35 not even count the tandem spaces – so we have 91 spaces below, 19
36 of which are tandem, that would leave 72 spaces. So, my client's
37 practical experience will never even touch those. Let's look at it
38 another way. Let's assume that we still have 25 employees, all of
39 whom drive their own cars, and let's assume that every single one of
40 the 89 units has a car. That is 114 cars, 25 employees and 89 cars.
41 Not counting the land banking, we are actually providing 91 spaces
42 under the building and 40 spaces at grade. That is 131 spaces. Let's
43 eliminate the tandem from that also. So that's 131 minus the 19 that
44 is 112. If you eliminate the tandem altogether, we are 112 spaces for
45 an absolute maximum demand of 114. We don't think we're ever
46 going to get there. There are several ways to address the rare
47 circumstance where they might be some need for that. Of course, one
48 way is to have a valet or assisted type parking. My client is so
49 comfortable with the amount of parking that they are actually
50 providing that they are fine with limiting those tandem spaces to
51 employees. The employees tend to arrive and depart at the same
52 time, assuming there was ever a need. Also, as part of a reduction in
53 the overall size of the building from the original project, the footprint
54 shrunk. It limited our space underneath the building. We are trying to

1 be sensitive to balance all the factors and not have to provide an
2 additional 19 spaces at grade. Its just more disturbance. It's just
3 more impervious surface. We are comfortable that under either
4 scenario, whether you look at it that half of the units have cars or all
5 of the units have cars, it will never be an issue for us because we can
6 control it with the employee parking. I know there was some concern
7 over the precedential value of this if the ZBA were to grant the
8 variances. Again, I think the ZBA is obligated to look at each
9 circumstance and each case individually, and here we have a particular
10 site. More importantly, a particular use which we believe has a
11 minimal impact on parking. We think the tandem parking not only
12 provides more than sufficient parking for our needs but also helps
13 minimize some of the other environmental impacts. We are asking
14 your Board for a positive recommendation on the road grade and the
15 tandem parking so we can make our presentation to the ZBA a week
16 from today.

17
18 Vice Chairman Sturniolo: Before we get into the recommendation
19 aspect, does staff have any further questions of the applicant?

20
21 Whitney Singleton: I want to make one thing clear. The land banking
22 has not been authorized; you're proposing that, right?

23
24 Mark Miller: Correct. This Board has the specific authority to grant the
25 land bank. That is part of the approval we are looking for.

26
27 Anthony Oliveri: What is the required number of parking spaces under
28 code?

29
30 Mark Miller: 181 spaces and we are proposing 131 with 50 land bank.
31 Of the 131, 40 at grade and 91 below the building.

32
33 Ralph Vigliotti: Will you show us where you are proposing the 50
34 spaces land bank?

35
36 Mark Miller: Just so we are clear, all of the calculations that Chuck is
37 doing with regard to drainage and everything else assume that the
38 land bank parking is provided.

39
40 Chuck Utschig: It is here (indicating) and at your staff's
41 recommendation, we have a sidewalk that comes up and connects to
42 this sidewalk here.

43
44 Doug Hertz: When you say the calculations, do you assume that as
45 pervious?

46
47 Chuck Utschig: We treat it as development pervious so we don't have
48 to go back and fool around with the storm water if it were to be a
49 requirement.

50
51 Jan Johannessen: You're parking calculation that you just ran through,
52 did that include visitor parking?

53
54 Mark Miller: The parking with 1.4 per unit incorporates staff, residents

1 and visitors. We took the full 89 and full number of staff and came up
2 almost within two spaces. Again, we are confident that there is more
3 than sufficient parking. That did not include visitors, such that if the
4 tandem spaces were necessary – and we don't frankly think they will
5 be – we could demand Employees Park there because they arrive and
6 leave in bunches, and there would be adequate visitor parking in the
7 adequate lot.

8
9 Enrico Mareschi: There won't be valet?

10
11 Mark Miller: There will always be staff. Staff is available 24/7. If there
12 were a circumstance where somebody needed help getting a car, we
13 would provide that. Again, we could also limit it to employees, so that
14 would not even be an issue.

15
16 Ralph Vigliotti: Currently your parking is based on memory care and
17 assisted living. If you would describe what assisted living is and what if
18 the philosophy of the building use changes from memory care to fully
19 assisted living, or to some other type of housing? My concern is we
20 may potentially look at land banking, which becomes a fixed issue
21 unless we put something in writing to say otherwise.

22
23 Mark Miller: The parking requirement of 181 is based on full assisted
24 living, and your code has definitions. The memory care is essentially
25 dementia care, people who basically cannot take care of themselves.
26 If it were to go to fully assisted living, we have the required parking.
27 We do not believe that even under those circumstances that the land
28 bank would ever become necessary, but there are clear, articulated
29 standards in your code to provide for this Board to require the
30 improvement of those phases. That said the design of the building;
31 the memory care section is designed separately. The rooms are set up
32 differently, the sizes are different. I don't know that it would be
33 feasible or practical to change those at some point in the future. Even
34 if it did, we would still have the requisite 181 spaces.

35
36 Ralph Vigliotti: Please explain to me what your vision of assisted living
37 is.

38
39 Mark Miller: It's interesting, because when we first started, when
40 assisted living facilities first sort of became popular, everyone seemed
41 to think that they would be populated starting (at age) 60-65. The
42 experience in the industry, and you can check this anywhere, is that
43 the typical average resident entering an assisted living facility is about
44 83 right now. There are technical definitions, but it has to do with
45 providing activities of daily living; help with toileting and dressing, etc.
46 There is no medical care. It is not a nursing facility. That is a
47 completely separate type of thing.

48
49 Ralph Vigliotti: Thank you.

50
51 Doug Hertz: I looked at the grading plan that you have from its
52 inception to now. Also living on a road that far exceeds that grade; I
53 don't really have a problem with what you're proposing. I think the
54 road is wide enough. Given the fact that the project wants to move

1 forward, I think it's a given that what you have is probably the best
2 solution. I think the change from the multiple "S's" to the current
3 configuration is an improvement from where we started. I am
4 concerned with the tandem parking underneath. I am concerned with
5 the precedent, how it will function, whether it's more proper to be
6 used for residents who use their car occasionally as opposed to being
7 used for employees who will use it frequently. I think it opens up a
8 series of use and accident issues and problems that I don't even want
9 to imagine going into at this point. We have to have a very, very
10 carefully structured valet or service element to that. I am concerned
11 of that function. I am also concerned that if it didn't function properly.
12 Our job is planning. While we want to work with you to make the
13 building function as you imagine it to function, we also have seen over
14 the years how building functions change as needs change. As much as
15 we can anticipate what those are going to be, often those things are
16 just unanticipated. Often they have to do with changes in the
17 economy, changes in technology, changes in medicine; who knows
18 what those changes will be? To create a building that had to start with
19 land bank spaces outside, where we have not fully identified what
20 those issues could be with their use, to then further limit the use of
21 the building with limited function parking spaces, as what they are
22 proposing as tandem, concerns me both in precedent and specific for
23 what would happen if this building function is designed but also began
24 to morph in ways maybe even very subtly. Given all that, I'm
25 reluctant to make any recommendation in the affirmative on the
26 tandem parking, but I do think that the roadway is appropriate for the
27 site given a choice.
28

29 Mark Miller: With regard to the precedent, as I indicated, I think the
30 ZBA and your Board are required to look at each case individually and
31 examine the circumstances. From a precedential value, given the
32 particular use, I don't think that should be a concern, but I hear you.
33 The suggestion of employee parking is something that my client is
34 comfortable with either way. They thought that perhaps limiting it to
35 employee parking might make it easier since they can patrol their own
36 employees, but they are perfectly comfortable with an assistant valet
37 type set up where that is available to the residents at all times.
38 Perhaps if you saw your way clear, a recommendation to the ZBA with
39 respect to the tandem parking asking them to take a very careful look
40 at the tandem parking issue in particular and whether it should be
41 employee parking or valet parking would be appropriate. We are
42 comfortable with that either way. As far as the morphing of the use,
43 the ZBA would be granting a variance with respect to a particular us.
44 You're Board, when it comes to making its determination on the
45 special permit and the site plan will be making a determination based
46 on a specific, defined use in your code. If that were to change, we
47 would have to come back for any necessary revisions, and at that
48 point – and there is always the opportunity for an additional 50
49 parking spaces.
50

51 Doug Hertz: I hear you and I understand that. My concern with your
52 argument is that there is a hardship clause within the ZBA, and I and
53 this Board have seen that the developer is going to be submitting
54 umpteenth millions of dollars to put this together. Should there be a

1 requirement that this project change in some way, or simply change,
2 and it stops functioning well without those parking spaces, I could see
3 a press for relief due to hardship being brought up before the Zoning
4 Board of Appeals. Quite frankly, they are going to be hard-pressed to
5 them to come and say, "Well, look, this building was built. Here's how
6 it was functioning. It no longer functions this way." I have a very
7 direct concern.

8
9 Mark Miller: With all due respect, the hardship requirement for area
10 variances is no longer in effect. Your code has not been changed to
11 reflect those changes. Although, there is a sheet that you get from
12 the Zoning Board of Appeals when you apply. The hardship test is out.
13 What it is now, as I indicated in my letter, is a balancing test. The
14 ZBA has five factors to consider; the overall standard being balancing
15 the benefit to the applicant if the variance is granted as opposed to the
16 detriment to the community if the variance is granted. It used to be a
17 judicial standard for hardship, but that is gone. As I analyzed in here, I
18 think the benefits to the applicant are obvious. The detriment to the
19 area or the neighborhood, we believe, as I indicated in my letter, is
20 essentially non-existent. It is entirely self-contained in the site. Were
21 there to be an issue with the need for more parking because they are
22 spilling out onto the street, there are 50 more spaces available to do
23 that. Was it a hardship argument, sure, if that were the standard?
24 And, if I were called upon to make it, I would do what I had to do. But
25 that's not it anymore. Again, unfortunately, the code has not changed
26 but the ZBA gives you a little slip of paper saying that it's changed,
27 and the factors that they are to take in consideration are those that I
28 have outlined in my letter.

29
30 Vice Chairman Sturniolo: At this point, we are at the point of the
31 request for a recommendation to the ZBA. I would like to speak first
32 and then allow my fellow Planning Board members to say what they
33 wish to say. When you were describing the scenario with the tandem
34 parking spaces and the 49 spaces, etc., and what would happen in the
35 future, I followed your numerical logic, and it was fairly simple for me
36 to understand what you outlined. I would not like to pass my
37 judgment on to the ZBA. I believe the ZBA can come to their own
38 decision without a recommendation from this Planning Board, and as
39 one member, my position is that we do not make a recommendation
40 either way.

41
42 Mark Miller: With respect to the tandem parking or both variances?

43
44 Vice Chairman Sturniolo: Both variances. I used the parking as a
45 simple example to understand. My suggestion would not be to make
46 any recommendation one way or the other to the Zoning Board of
47 Appeals. They will have enough facts to come to their own conclusions
48 and their own judgments, and I surely would not want subtly impose
49 my will in their bailiwick.

50
51 Enrico Mareschi: I have no comment.

52
53 Ralph Vigliotti: I've said what I needed to say. I'm in agreement with
54 Vice Chairman Sturniolo about not making a recommendation to the

1 ZBA.

2

3 Stanley Bernstein: I said it before, and I strongly recommend that we
4 tell the ZBA that we are firmly against this variance. If the Board is
5 not, I will be at that meeting to voice my opinion before the ZBA.

6

7 Doug Hertz: I will reiterate that I suggest we give a gentle
8 recommendation for the road, but I would give no recommendation or
9 recommendation against the tandem parking. I don't see where we
10 have a consensus to even do anything.

11

12 Ralph Vigliotti: We have not put anything in the form of any kind of
13 motion or anything.

14

15 Vice Chairman Sturniolo: It can be done. I don't think we can split
16 this.

17

18 Doug Hertz: Even if we do want to split an opinion, it would be so
19 obvious to the Zoning Board that we are saying yes on one thing and
20 being silent on the next. That would almost appear to be a "no" vote.

21

22 Ralph Vigliotti: I guess the question is if we send no recommendation,
23 is that a positive or a negative leaving us as opposed to sending off a
24 recommendation saying exactly what we feel.

25

26 Doug Hertz: The ZBA can always ask us for our input, but it hasn't
27 gone to them yet.

28

29 Vice Chairman Sturniolo: And they may not wish to.

30

31 Doug Hertz: Typically on a complex issue with planning limitations,
32 they will ask for input.

33

34 Ralph Vigliotti: We have a bifurcated situation. We have the steep
35 slopes with the 12 percent road going up, and then of course we have
36 the tandem parking. I am less in favor of the tandem parking than I
37 am with the reconfiguration of the road because you've moved in a
38 completely different direction than the original road. I have to give
39 you some kudos for that. The tandem parking is precedent that we've
40 never set, and I'm not sure if I'm prepared to say nothing in regard to
41 the ZBA.

42

43 Doug Hertz: We can draft a motion yay nay or otherwise. We can
44 send them a letter suggesting how split these five members are or we
45 could also do nothing and wait for them, assuming they ask. Quite
46 frankly, it's their variance to give or not give.

47

48 Vice Chairman Sturniolo: In that case, let me put it in the form of a
49 motion to make no recommendation to the Zoning Board of Appeals on
50 both issues at this time.

51

52

53 Ralph Vigliotti: On that motion, my question would be sending off no
54 motion, maybe not clear enough for where we stand, because they did

1 not ask us for our opinion. I have a problem with that.

2

3 Stanley Bernstein: I think the best way out of the dilemma is to say
4 nothing. If one or more members wish to be at that meeting of the
5 ZBA and give testimony, leave it at that, and we just remain silent,
6 because it belongs to the ZBA and not to us. If they feel that they
7 want an opinion, they will ask for it. If they don't feel they want an
8 opinion, they won't. It is a public hearing and I think whoever wishes
9 to give their opinion will do so. We should remain silent. It's the
10 smartest thing to do and leave it in the hands of the ZBA.

11

12 Ralph Vigliotti: We will take one at a time and vote on it.

13

14 Doug Hertz: This is something that has been in force in various
15 communications for quite a number of years, and we've spent literally
16 thousands of collective hours getting to where we are today. Part of
17 me would say it's foolhardy not to have whatever small influence we
18 need to have on the things we wish to implement. The one thing I
19 think, as one member, is a positive step is the direction the road has
20 taken in this project. I would like to make a motion that we endorse
21 the configuration of the road and by default the slope it would have to
22 take as being the best solution for a very difficult situation. I don't
23 know that the ZBA will have that background, having gone through
24 these myriad of iterations about road design. I would like to make a
25 motion that we give a positive recommendation for that one variance
26 only.

27

28 Ralph Vigliotti: Just on that individual item, so it's bifurcated, fully
29 separate from the tandem parking.

30

31 Vice Chairman Sturniolo: We are making multiple motions, but at this
32 point I need to modify my motion and ask that we temporarily table
33 this discussion further until counsel comes back into the room, and
34 then I think we should pick it up again.

35

36 *At this point, Mr. Singleton returned to the meeting.*

37

38 Vice Chairman Sturniolo: Whitney, to bring you up to speed and to
39 seek your guidance, I made a motion to not endorse a
40 recommendation at all to the ZBA. Some of my fellow Planning Board
41 members were thinking in terms of endorsing part of the two requests.
42 We seem to be deadlocked on the subject.

43

44 Whitney Singleton: Are there four members of this Board that endorse
45 a particular position?

46

47 Vice Chairman Sturniolo: Not my position, no. My position was that
48 we do not make any recommendations to the ZBA.

49

50 Whitney Singleton: This would be the default position anyway if your
51 Board didn't pass any resolution.

52

53 Anthony Oliveri: There was no second to that.

1 Vice Chairman Sturniolo: And then, other Board members expressed a
2 desire toward the ten percent grade to send a recommendation to the
3 ZBA, but not a recommendation for tandem parking.
4
5 Whitney Singleton: Not a recommendation or a recommendation
6 against?
7
8 Doug Hertz: To be simply silent on that matter.
9
10 Ralph Vigliotti: Why don't we put just one on the table and then put
11 the second one on the table separately?
12
13 Whitney Singleton: Or, alternatively, you can do like you did with
14 other applications.
15
16 Doug Hertz: We discussed that – that we are hopelessly deadlocked
17 and have no recommendation. We only did that on the direct request
18 of the ZBA for input. We did not proactively give a divided opinion.
19
20 Whitney Singleton: Is there a pending motion?
21
22 Doug Hertz: Yes.
23
24 Ralph Vigliotti: On the question on that motion, I would have preferred
25 it to be two separate motions as opposed to the 12 percent grade
26 versus a positive, and no recommendation on the tandem parking. I
27 would like to have seen that separately so we can vote on them
28 separately.
29
30 Doug Hertz: That's what my motion is. I have made a motion to
31 simply recommend the 12 percent grade as proposed.
32
33 Whitney Singleton: To endorse that component to the ZBA?
34
35 Doug Hertz: Yes.
36 Vice Chairman Sturniolo: The question then becomes, can we split
37 these?
38
39 Whitney Singleton: If there is a motion to, yes.
40
41 Ralph Vigliotti: Are we still on the question, because I would second it.
42
43 Vice Chairman Sturniolo: We are still on the question. So, Whitney,
44 you're saying we can address the two subjects separately?
45
46 Whitney Singleton: I don't see why you can't. The question is whether
47 you have enough votes to carry one of those endorsements positively
48 or negatively.
49
50 Ralph Vigliotti: That is what we are going to find out.
51
52 Vice Chairman Sturniolo: Then, I'll withdraw my motion.
53
54 Stanley Bernstein: If that is the case, I do want to ask Whitney's

1 considered opinion. If we were to endorse the slope and not endorse
2 the tandem parking, it seems to send a message of, not exactly “do
3 what you think is best, but we really don’t want to get involved in it,
4 but we think it’s a good idea.” I think we should remain silent on the
5 entire issue, period, and allow the Zoning Board to make their own
6 opinion. If they feel they want advice, they have done that in the past
7 – they have asked us for advice. Let them decide.

8
9 Whitney Singleton: You are answering your own question. If I
10 understand this correctly- and I’m just doing basic math – then you’re
11 opposed to endorsing either, and Tony, similarly is opposed to
12 endorsing either, then you’re not going to have a quorum on any
13 motion.

14
15 Ralph Vigliotti: We certainly don’t know until we vote.

16
17 Whitney Singleton: Right. Doug has made a motion, Ralph is going to
18 second it.

19
20 Ralph Vigliotti: Yes, I will second Doug’s motion.

21
22 Whitney Singleton: And the motion is whether to endorse a 12
23 percent grade for this project for the road profiles as submitted in their
24 application.

25
26 Ralph Vigliotti: Yes, that’s it.

27
28 Whitney Singleton: And nothing more than that.

29
30 Doug Hertz: And nothing more than that.

31
32 Vice Chairman Sturniolo: Does everyone understand?

33
34 Stanley Bernstein: Please re-read the motion.

35
36 Secretary: The motion is to endorse the 12 percent grade for project
37 for the road profiles as submitted in their application, and nothing
38 additional.

39
40 Motion: Doug Hertz

41 Second: Ralph Vigliotti

42 No: Stanley Bernstein

43 Aye: Enrico Mareschi

44 No: Vice Chairman Sturniolo

45
46 Whitney Singleton: Motion does not carry.

47
48 Ralph Vigliotti: With regard to the tandem parking, just so we could
49 move this forward and finish the evening out, I would like to make a
50 motion that our recommendation to the ZBA is that the tandem
51 parking not be put into place. It’s as simple as that.

52
53 Whitney Singleton: He (Mr. Vigliotti) made a motion. If somebody
54 wants to second it, they can.

1 Vice Chairman Sturniolo: Please repeat it.

2

3 Ralph Vigliotti: I am proposing that we send off to the ZBA our
4 recommendation that we are not in favor of the tandem parking as is
5 proposed.

6 Doug Hertz: That would require a second.

7

8 Ralph Vigliotti: Whatever it is, it is. Gentlemen, we've had every
9 opportunity in the past, or maybe no opportunities in the past to make
10 recommendations to the ZBA, and we have found that maybe perhaps
11 we should have. This is our opportunity one way or the other. If
12 there is a second, whether it goes down or it doesn't, at least we've
13 made a decision, and it's a recommendation that we send. We've had
14 in the past where they haven't searched us out for what we really felt.
15 This is our opportunity to say what we feel as planners should take
16 place.

17

18 Vice Chairman Sturniolo: But that opportunity is driven by the
19 applicant, not the ZBA. It's not like the ZBA has come to us and said,
20 "Here are two issues, let us know what you think."

21

22 Ralph Vigliotti: But you're going to the ZBA to be granted approval for
23 the tandem parking.

24

25 Mark Miller: Correct.

26

27 Ralph Vigliotti: If we say nothing, then they will do what they feel is
28 correct outside of us as planners. We are the planners. If you want to
29 leave that in their hands, that's fine. But that is the way I'm leaving
30 it. Whatever it is, it is.

31

32 Doug Hertz: After thinking about this a little bit more, I agree with
33 you. This is a plan. As much as they are going to the ZBA for relief,
34 this is a planning issue. I think its right that we should at least vote to
35 either recommend or not. So, I will second your motion.

36

37 Motion: Ralph Vigliotti

38 Second: Doug Hertz

39 Aye: Enrico Mareschi

40 Aye: Stanley Bernstein

41 No: Vice Chairman Sturniolo

42

43 Whitney Singleton: So the recommendation that will be received by
44 the Zoning Board of Appeals at it's meeting next week is that your
45 Board did not take an official position with regard to road grade but did
46 take an official position with regard to tandem parking. I can do one
47 of several things. I can simply have Donna prepare resolutions
48 reflecting that vote and simply pass it along to the ZBA with no
49 commentary, or if you'd like, I can simply relate to the Zoning Board in
50 what I deem to be an unbiased fashion, the position of your Board,

1 Which I'm interpreting to mean that you have some concerns both as
2 to this project and as to the precedent with regard to the tandem
3 parking and it not being ever permitted in this community in the past.
4 With regard to the road grade, there were varying perspectives given
5 the site constraints and given the major of the proposal, the Board
6 could not resolve on a yay or nay on that particular issue. I'm asking
7 you. I could simply relay to them because there is a limited time
8 window here between now and next week, and it has to be in the
9 agenda package in the next 24 hours.

10
11 Vice Chairman Sturniolo: I think it's a good idea to convey it to the
12 ZBA the way you just articulated that, so they have a definite sense of
13 what took place tonight.

14
15 Whitney Singleton: Obviously the applicant will be receiving a copy of
16 that.

17
18 Mark Miller: Thank you.

19
20 Correspondence:

- 21
- 22 • Minutes of the Beautification Committee meeting of September
 - 23 4, 2013
 - 24
 - 25 • Letter from Nancy Ford concerning Morgan Subdivision, 21-27
 - 26 Ward Avenue

27
28 Doug Hertz: I don't have the message, just the reference to the
29 message. I see it's handwritten.

30
31 Ralph Vigliotti: We've heard those concerns from other residents in the
32 past.

33
34 *As there was no further business to be discussed by the Planning*
35 *Board, on motion by Mr. Hertz, seconded by Mr. Mareschi, the meeting*
36 *was adjourned at 10:00 PM.*

37
38 Respectfully Submitted,

39
40 Stanley Bernstein,
41 Recording Secretary

42
43 dm
44
45