

Minutes
Meeting of the Planning Board Village/Town of
Mount Kisco
Tuesday, November 26, 2013

Chairman Cosentino called the meeting to order at 7:45 P.M. in Village Hall.

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

Members Absent: Enrico Mareschi
Doug Hertz

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

There were no minutes to be approved at this time.

Public Hearing

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

Whitney Singleton: The applicant has asked to be adjourned to December 17, 2013.

Motion to Adjourn the public hearing for The Hearth until December 17, 2013:

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

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

Village of Mount Kisco
Planning Board Meeting
October 8, 2013

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

Charles Martabano, Attorney at Law, representing the applicant

Chairman Cosentino: The village board did not act on this.

Charles Martabano: That is correct. In fact, I went over that with Whitney today. One of the issues they brought up was the possibility there might be a village water main in this area. To simplify the matter, without changing the landscaping, we are going to propose to move the landscaping slightly back, and therefore there is no issue with the water mains or having to get the village's consent. We are not going to change it, just move it back slightly.

Scott Blakely: It is about a shift of about a foot and a half.

Charles Martabano: Rather than get into a concern about whether a ball of a tree might get into anything, let's just move it back. It's not going to change anything. The same landscaping will be there, it will just be moved back about a foot and a half.

Jan Johannessen: Just on Preston Way?

Charles Martabano: Yes, just on Preston Way. Thank you for the clarification. That will obviate the need. That can be a condition of approval that we've modified the plans to reflect that change. At this juncture, there is not much more we have to say. We had the public hearing at the last meeting; I understand there is a draft resolution. We've had a chance to take a look at it, and we are fine with it other than the modifications that we just referred to a moment ago.

Chairman Cosentino: I think there are some other things.

Charles Martabano: Okay, let's hear them.

Chairman Cosentino: Tell me something. What are all the buses doing in the back of that place? They keep accumulating bus after bus after bus.

Charles Martabano: The short answer is I don't know. They may be there for servicing, and that would probably be the logical answer because we are able to work on those types of vehicles there. I will find out and get back to you. I do not have an answer. I think it's a very limited number, if I'm not mistaken. It is not a school bus dealership or anything like that, but I can find out the answer. I know there is a limited number there occasionally, but I don't have a good answer for you. I would imagine they are there for servicing.

Jan Johannessen: We had some prior memos. I prepared a draft resolution and a negative declaration for reports and consideration of our comment memos along with Rob's comment memo and some

other arguments that were brought up at the last Planning Board meeting.

Chairman Cosentino: Did you address them?

Charles Martabano: I believe they have all been addressed.

Jan Johannessen: They are conditions of the resolution.

Scott Blakely: I prepared a letter, and we did revise the drawings in accordance with the three comment memos. They have not been submitted. We were here two weeks ago. We do have responses to those comments, if you would like to go through them. One of the biggest comments we dealt with was the inclusion of a dumpster enclosure. We show the dumpster enclosure, and there is a detail on the detailed sheet.

Anthony Oliveri: We sent the standard detail to Scott. I have not seen the detail on the sheet.

Scott Blakely: It does conform.

Charles Martabano: You suggested we get them from the village engineer. We did, and we incorporated those in the drawing, as per your request.

Jan Johannessen: Also the condition in the resolution that deals with the dumpster enclosure identifies that they provide a detail on the plan to the satisfaction of the village engineer. There is not a need for Anthony to review that. It is part of the conditions in the resolution.

Whitney Singleton: I have a change in the language to the resolution. I would imagine that change should come in Condition Two. On Condition One, the first bullet should be deleted. On Condition two, it is suggested to revise to read as follows: "The plans shall be revised to A, (includes ----- , etc.) and then create a new B at the end of that paragraph that says, "to remove all plantings along Preston Way south so that they are not on a village street."

Charles Martabano: I have no problem with that language.

Whitney Singleton: Do you want to have it off a village street, or do you want to specify a particular location?

Anthony Oliveri: I would like it to say, "To the satisfaction of the village engineer."

Charles Martabano: Again, I have no problem with that either.

Jan Johannessen: I have one correction on the resolution. After I had a conversation with Scott. Condition #25 speaks to the lighting, and that it is to be turned off during non-operating hours except for the security lighting. Scott brought to my attention that the security lighting is kept on but reduced to 30 percent of its normal output. I'd

like to make that provision to the resolution that the security lighting that is left on during non-operating hours is reduced to 30 percent.

Vice Chairman Sturniolo: Are the security lighting fixtures separate and above the other fixtures that illuminate the cars that are for sale?

Scott Blakely: No, they are the same fixtures. They operate during normal business hours, and we've added notes to the drawing what those business hours are. They go from 100 percent down to 30. They are also operated by photocells.

Vice Chairman Sturniolo: How is that lighting working now?

Scott Blakely: It's the same way. But, it currently operates that way, and if you go by later tonight – I drove by after our meeting two weeks ago and the lighting was very low level.

Jan Johannessen: They are also providing roadside shields on the lights along Preston Way.

Vice Chairman Sturniolo: Should we do the neg dec first and then the resolution?

Jan Johannessen: The way that the resolution reads, the neg decs approved before the issuance of the various different approvals. By adopting this resolution, you are adopting the neg dec before the approvals.

Chairman Cosentino: So it's one vote then?

Jan Johannessen: Yes.

Motion to Approve Resolution, Arroway Chevrolet/Cadillac, 173 North Bedford Road Including the Negative Declaration

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

Chairman Cosentino: Let the record show that Doug Hertz recused himself from this application, even though he is not here tonight.

Whitney Singleton: I believe the next item on the agenda was requested to be pulled by the applicant. (*Site Plan - Field House & Improved Access – 333 North Bedford Road PB2013-2, 69.50-2-1 (SBL)*)

Discussion:

**Change of Use
Flywheel
145 Kisco Avenue
69-65-2-1 (SBL)**

Present:

**David S. Steinmetz, Attorney at Law, Zarin & Steinmetz,
representing the applicant & Property**

John Collins, John Collins Engineers, P.C., Consultant

John R. Martabano, representing Flywheel

David Steinmetz: Very briefly, we are back tonight in connection with Flywheel specifically to address the number of participants. After we received the approvals from your Board last month, we reviewed the matter both with the landlord and the tenant, determined that the number of participants that had been previously approved at 32 was insufficient for the tenant. The tenant would like to have a 60 participant limitation in the approval resolution based upon the formula that is required by the village's code of one parking space for two participants. That would bump our numbers up to 34 parking spaces rather than the 20 parking spaces that were approved in the last go-round. As a result, we brought in Dr. Collins and Maser (sic) Consulting to perform a traffic and parking analysis. I know the board did not have a chance to review the written parking report and study that Dr. Collins prepared, I would like to go through, very briefly, two critical elements. One being, what are the peak hours of utilization for Flywheel.

Chairman Cosentino: We do not have a copy of the report.

David Steinmetz: Correct.

Chairman Cosentino: I don't want to hear it. As long as you brought in a consultant for the traffic, we are going to bring in our consultant, and of course, we are not going to pay for it.

David Steinmetz: We have already provided the escrow that was requested.

Chairman Cosentino: So let's talk about the traffic when we get our report back, please. None of the board members have seen it. I think it's only fair that we get ours and compare.

David Steinmetz: We were just going to give you a preview. So you know, Mr. Chairman, we did file the traffic report.

Chairman Cosentino: I can appreciate it.

David Steinmetz: Somehow there was a mix-up and it did not get to you. We did file the traffic report.

Jan Johannessen: It was filed late. It was filed Wednesday or Thursday of last week. We have a 21-day submission deadline, as you know. The packets were put together on Wednesday, so it was simply submitted after the Planning Board packets were put together.

David Steinmetz: We have copies tonight, and I'm happy to make it as easy as possible for all the board members.

Chairman Cosentino: Just drop them off downstairs and they will be circulated among the members of the board along with our consultant on traffic. All the board and all our dealings with this were predicated on 32, not 60. We need to study this more.

David Steinmetz: You certainly do, which is why we went right to our own consultant, and you will be pleased when you read the report to see that Dr. Collins concludes that even with the increase of 14, the numbers can work. I know you have not read the report.

Chairman Cosentino: His traffic report is going to say that, right?

David Steinmetz: His traffic report is going to say that.

Chairman Cosentino: That is only if you double count.

David Steinmetz: What do you mean by double count?

Charles Martabano: Are you referring to shared parking?

Chairman Cosentino: Yes.

Charles Martabano: Again, it's best we let Dr. Collins respond to that. Timing-wise, what do you envision as being the timing (on getting a traffic consultant)?

Chairman Cosentino: I could not tell you.

David Steinmetz: Do you know who you are going to retain?

Chairman Cosentino: We only have one meeting. I really don't know.

David Steinmetz: I understand that, and without being overly presumptuous, is there any reason you cannot have that discussion tonight and decide who you are going to engage?

Chairman Cosentino: I don't know. We don't have one. We have to get one.

David Steinmetz: With all due respect to Dr. Collins, this was not a very difficult analysis that was required here. This was done quickly, and it's not complicated.

Chairman Cosentino: Well, then it should be done quickly. I don't know who we are going to get. I leave it up to our planner.

Jan Johannessen: We will be looking to get the parking consultant over the next week. I can tell you that I think in order to engage and get someone on board and then review, I don't know if that is something that is going to be for the next meeting. Perhaps the January meeting.

Chairman Cosentino: We are only having one meeting in December. Our next meeting will be in January.

Charles Martabano: Obviously, you know the urgency with respect to this client. He submitted his plans back in August and got his building permit in September.

Chairman Cosentino: He submitted his plans on the amount of 32. This is a whole new ball game here.

Charles Martabano: I don't want to debate that.

Chairman Cosentino: Well, I'm going to debate that.

Charles Martabano: I am not going to engage in a debate, but the plans showed a very different figure. The plans that were approved, the building permit was issued, he wants to get this location and move forward.

Chairman Cosentino: It's changed, and this board sees that change. We need to study on that. We need a traffic report on it. We have our homework to do.

Charles Martabano: From our perspective, we can have our expert communicate with your expert and give you the comfort level. From our point of view, that is actually good. We would just like to expedite it as soon as possible.

Chairman Cosentino: As soon as we find out what we have to do, we will expedite it.

David Steinmetz: If there is anything you need from us or Dr. Collins, I know my client is ready to supply your consultant with whatever information you need.

Charles Martabano: It would be helpful to have the consultants meet as soon as possible. As soon as you know who you're going to engage, it would be great to have that information.

Jan Johannessen: Not a problem.

David Steinmetz: Are you all confident that there is no way to do this for the December meeting?

Chairman Cosentino: It won't be done for the December meeting. I have a lot on there that was put off, and if we don't put it back on we are going to have a problem. The board needs these reports, and as soon as we get them we can act on them.

David Steinmetz: I know you will do your best to try to get it out there.

Ralph Vigliotti: We don't have your traffic because it didn't make it to our agenda in time. I am looking forward to reading it, because I have no idea what it was predicated on. Kidsville being open for two weeks, anticipation of the traffic volume, you are going to bring in (to applicant). I think you moved quite quickly during this holiday season on the traffic study – that is not at full capacity in that building, we understand that. But Kidsville is not at full capacity. So, whatever the study shows and I am going to read, I don't think it's going to be accurate.

David Steinmetz: You will have to take that up with Dr. Collins.

Ralph Vigliotti: Our studies should not be moved forward too quickly, only because it's not going to be accurate. Kidsville has only been open two or three weeks. It may be a completely different business operation in six months or three months when it's at full capacity. I hope that when I look at the traffic study it is anticipation of cars that they will be using at their max, not now at their early stages. That is what I am looking for, and that is one of the reasons why we can't move too far tonight, because we really need to analyze that.

Charles Martabano: Dr. Collins could address the methodology with you. He could probably, in a summary fashion, do it in a couple of minutes just to give you an idea that those have been anticipated.

Vice Chairman Sturniolo: I would like to underscore an important point that Ralph just made, and John, let's kind of go back to 333 when we did traffic studies on North Bedford Road. One of the things that both sides of this table were very careful about was picking the appropriate time to do traffic counts. There were a number of issues. Kidsville needs a time to operate in its normal, traditional manner as opposed to trying to get a traffic study done just to get it done. We need to have this traffic study done in a sensible fashion with a sensible time frame. Although every one of us on the Planning Board has a very open mind, and we will keep an open mind as we review the information you generate, we need to satisfy a comfort level that we have, and we also need to think carefully think in terms of the word "discretion," and how does the word "discretion" apply to this application. One of the components of the word "discretion," in my opinion, is based on intelligent facts and figures in front of you before you can make a yay or a nay decision on something like that. A traffic study, I feel, is important. It should not be rushed, and it should represent a logical time period. As Charlie mentioned, it could be done in a couple of minutes with a brief cursory overview, but I agree with my fellow Planning Board members that we would like to see this once it's written down in document form and see what analysis the traffic consultant from the village comes up with.

Charles Martabano: I understand. I was talking about responding to Ralph's question regarding methodology. I'm sure you are going to

convey your concerns to your experts as well. The two experts can discuss it, and they will come up with a logical answer for you.

John Collins: I think the issue is the fact that we looked at different uses of the building, different time periods, etc. We just didn't do a spot count at one time. We surveyed the parking lot for an extended period of time, Wednesdays, Fridays, Saturdays, and we have the numbers of back it up. We can meet with your consultant and see what questions they have so we can resolve them and bring it back to you.

Jan Johannessen: I want to clarify that the consultant that the village engages is going to review their report, not necessarily prepare their own independent report. Is that accurate?

Chairman Cosentino: I just want a report. However you want to do that is up to you.

Whitney Singleton: I want to point a clarification. The submission that is before the board tonight for November 6 is being superseded by your November 20 submission?

David Steinmetz: Correct.

Whitney Singleton: So that you will no longer be seeking off-site parking?

David Steinmetz: That is correct. To clarify that, we believe, based upon Dr. Collins' study will show you, there is no need to rely upon any additional off-site parking. I will let Dr. Collins explain that when we come back in front of you in January. Whitney is correct. We did supplement it. We eliminated any need to have any kind of off-site parking. If necessary, maybe you will have your consultant here that night as well.

Charles Martabano: Thank you very much.

Formal Application

**KH Realty II, LLC
130-132 Main Street
80.25-2-4 (SBL)
Amended Site Plan**

Present:

**Robert Sherwood, Robert Sherwood Landscape Architect LLC,
Architect for the Project
Ira Grandberg, Grandberg & Associates, P.C., Architects
George Gaspar, Grandberg & Associates, P.C., Architects**

Ira Grandberg: We came to you two and a half years ago with a scheme that had been approved by you and was about to be implemented. This is the scheme that was approved. (indicating) The

Village of Mount Kisco
Planning Board Meeting
November 26, 2013

original proposal was a different business model. The building was being used as a gourmet restaurant take-out operation, and we had requested that we have a van area of only ten feet wide for their take-out operation. It was changed so that over the last two years it has, as you had approved in the plans, it's a full-service restaurant, which is limited to "X" number of seats. Part of those seats would be allocated to a rooftop dining area. It was made very clear at that meeting that there would be no seating at all in the lower level, ground floor of this space. We took the liberty of realizing that since the operation was no longer what it was, that it would be an enhancement to take what has been a restaurant use for over 30 years, which never required alternate "loading" areas, because it was never brought up that we needed a loading area, to enhance the landscaping so that the whole back of the restaurant, which is really the front of the restaurant became a beautiful addition to the town. Mr. Albanese, who owns the building next door, approached us and asked us would we not put in the fence that was proposed to replace the original fence. He would like to see the whole thing as a grassed area and increase the length of the green belt which is along the sidewalk that runs the whole length. Since this is a unique situation that is basically a space that has two front doors, and since we never anticipated needed what has been brought up in the last week, a loading area, we eliminated any kind of curb cut and created what we thought was a very attractive addition for the village. When it was brought up that the possibility that a loading area might be required, other than that being a surprise to us, we did some very careful calculations on the size of the building. In the zoning regulations, it says that a building over 5,000 square feet needs a loading area. After two and a half years never hearing that, that came as a surprise to us. So we did our calculations, and we found out that there is a major interpretative discrepancy that an architect has to face between the New York State building code and this town. The New York State building code, and I want to submit it for the record, states that the gross area of a building, which is what the 5,000 is about – is taken from the inside of the exterior walls. It goes through a series of adds and deducts that you are allowed. If we took the New York State code requirement of gross square footage we come in at 4,700 some odd square feet. If we take the town's interpretation of gross square footage, we have to go to the outside of the walls, one, and we have to include the walls in the basement. Now, let's use some logic here. Not only have we increased the walls in the basement to over two feet thick to mitigate the water problem that was in the building, which was a major cost to our client, but it is unusable space. This is exactly what the interior of the restaurant is going to look like. Additionally, we eliminated the entire front of the second floor. By the town's calculation, hypothetically, what resulted in the interpretation of 5,300 square feet, it included that empty area. Let's go to the next level. Let's assume we didn't have any floors in the building. You can't invent floors. You can invent square footages. So, our number of 4,700 plus square feet took out the front of the building, took the outside walls just like the local code requires, and took out the two-foot thick walls in the basement, which we think is not appropriate for this kind of direction. I would like Mr. Sherwood to explain how he took our charge to design the back of the building.

Village of Mount Kisco
Planning Board Meeting
November 26, 2013

Robert Sherwood: In picking up on the dual front door theme, John Slaker and myself were asked to create a better flow and a better entrance into the back of the building. We were going to try to spin this and make it more of a front entrance. We took out the curb cut, which was needed for the van space on this side. We had the existing walkway. We are center lining on the doors that are proposed to be built, flagstone or paver walkway. We have a little bit of a design element, the circular structure here, and then adding into the building. John and I are trying to create maybe a little bit of an outdoor foyer, let's say. We had some very small ornamental trees, which are hornbeams that can be pruned very nicely. This should create an outside, courtyard foyer. A row of boxwoods, day lilies and grasses will be in that theme of mass planting to give it some color throughout the year, and then strategically placing some ornamental pots so that we have seasonal color. Again, trying to get this wave of color in effect going throughout the year and making it more of a pedestrian friendly scale, bringing down in the scale of this outdoor space.

Ira Grandberg: As an adjunct to that, as I said, there was a van, which was part of their business operation. There is no more van. I have a letter to submit tonight with copies for everyone. This letter is from the owner of the building. You have to understand the nature of Blakeby. The deliveries to this restaurant will be completed mostly by 10 in the morning, at worst, 11 in the morning. The garbage is picked up late at night or at dawn. So, during the daylight and during the evening dining hours, there will be no deliveries to this building whatsoever, and there is going to be no garbage pick-up whatsoever. To create a redundant area that is not even wide enough for deliveries that they require is an absurdity in that regard. I want the board to understand that this can be entered into the agreement or a resolution. The owner is very comfortable with that situation. We were hoping this would be an enhancement to the town and village.

Robert Sherwood: We think a bigger green space is definitely an advancement.

Ira Grandberg: Imagine this if it went on and on, (indicating) and you had curb cuts everywhere for vans. It would be a blight on this community. In this case, it's been in operation as a restaurant, which we have not changed, and it never was required.

Vice Chairman Sturniolo: When the adjacent property owner talked to you about continuing green space along there, are you doing anything to enhance or help his property?

Ira Grandberg: No. He didn't request it.

Robert Sherwood: Our property line does end at the building.

Ira Grandberg: In the original approved plan, we had planting in that area as well.

George Gaspar: The other enhancement, if you will, is an area that he currently uses for refuse in that corner, which we took over during

the course of construction. Actually, he was in the office today wondering when that is going to take place in terms of replacing everything. We are talking about continuing the row of landscaping in front of what he had before instead of just replacing what we destroyed from construction.

Stanley Bernstein: In the original proposal there was supposed to be a refrigerated room for garbage, and the garbage was going to be brought up by elevator to the loading dock.

Ira Grandberg: When the garbage truck came.

Stanley Bernstein: Can you tell me the path of the garbage elimination? It's going right through your brand-new patio. That's okay?

Ira Grandberg: Right. It's happening when there are no customers.

Stanley Bernstein: I do have another comment about times of garbage pick-up. We have a very lovely little restaurant row on Main Street and Moger to the Indian. Every one of those applicants swore that they will pick up garbage early and all deliveries will be made late. You know that is not happening. There is garbage pick up all times of the day. What is happening? We cannot control the garbage people. Deliveries are made all the time. Main Street sometimes is a mess in the morning. Can you guarantee that this won't happen here? How do we know that your garbage truck is going to come when you tell it?

Ira Grandberg: I can only tell you that I requested this of our client, who is not a restaurateur, and he guaranteed that this would be the case. You can monitor it; you can do whatever you want.

Stanley Bernstein: You don't want to know what I think it guarantees from restaurateurs.

Ira Grandberg: I'm not the one giving you a guarantee, but you have to start somewhere.

Stanley Bernstein: I wanted to make that comment.

Ira Grandberg: Might I also say, parenthetically assuming there is a restaurateur here, this is the back at Blakeby. This is not Main Street.

Stanley Bernstein: I am aware of that. Deliveries will be made through the patio then?

Ira Grandberg: Yes, they always were. Even in the original plan.

Chairman Cosentino: I am not questioning the loading dock. That is up to the building department and the new figures that you brought here. I will say this, on behalf of Mr. Grandberg and Mr. Atwood. The building is beautiful.

Stanley Bernstein: There is no question about it.

Chairman Cosentino: It really does something for the village. For garbage, I don't think he would say something and not contract out to a garbage company. 7:00 is when they can pick up garbage. I don't think he would jeopardize what he did.

Ira Grandberg: Not his reputation for what he's done so far. Also, no one has mentioned that he took on this where he didn't have to. He could have gone with that (indicating). He is paying a lot more money for this (indicating) in respect to the village.

Chairman Cosentino: As far as the landscaping goes versus a dock, I will question the building inspector on this. For me, riding by something with landscaping such as this and not seeing the dock is something that I personally would like to see.

Ira Grandberg: I would like to add that John Slaker could not be here tonight, but he indicated when he was involved many years ago with the development of Blakeby, he was very clear that it was always intended to be a beautiful edge condition because it is the rear of the buildings, but it's also the front of the buildings. He said to continue curb cuts everywhere in the spirit of what was intended is not the way to go.

Chairman Cosentino: Rob, being that they gave their calculations, can you tell us something about that?

Robert Melillo: As per my memo, the applicant proposes to remove the required loading area and replace it with the assorted plantings. A review of the town code Section 110-29C – Off Street Loading, minimum loading requirements states that the first loading area for restaurants is required at 4,000 square feet of first gross floor area. You cannot use New York State building code. There are a lot of differences between definitions and New York State building code and zoning code. They are two totally separate code.

Ira Grandberg: They are, but the intent of the code has to be looked at.

Robert Melillo: You cannot take a definition from a code that does not even apply and try to apply it in your situation. You have to go with the town code, because that is what is definition floor area gross. I have no opinion for or against this, Mr. Grandberg. I am just stating the code. That is what I'm here to do. As we go on, speaking with the applicant, the building has a gross floor area of roughly 5,300 square feet, which in our opinion, would require a loading area as per Section 110-29-D. But, a modification of the loading requirement states as part of site plan review, the Planning Board may modify any of the above loading requirements if it determines that adequate provision for loading are provided. So, it's not up to the Building Department, it's up to the Planning Board to make that decision. I just state the facts. They don't have to go for a variance. You guys can make that decision at that point in time, depending on what the applicant represents to you. If you feel they don't need a loading spot, that's your business. It's not my business.

Chairman Cosentino: In saying that, how does he get his deliveries?

Ira Grandberg: By a small box truck.

Robert Melillo: Just to let you know of another thing I'm not sure you're aware of. We already have issues with J.H. Crane when an 18-wheeler pulls up and is parked in the municipal lot for over an hour unloading. Knowing how restaurants operate and being a building inspector for eight years, there is not going to be an 18-wheeler pulling up in the back and dropping off. They would be unloading in the parking lot and not utilizing the space.

Chairman Cosentino: Even if this 18-wheeler came in, he is not going to use the loading platform. Even a box truck is not going to use the loading platform.

Robert Melillo: I don't disagree with that. Nobody is going to use the loading platform. A truck will pull up and parallel park to the curb. It is not going to want to park in the area and off load in the parking area.

Chairman Cosentino: I'm looking at it where I can see more green space, more plantings and more beautification. I am not looking so much at a loading platform. Yes, I am concerned about when a truck comes in to unload. The road is not that wide. Is there any possible way the owner of this building and Cranes can get together and maybe have one loading area? Could it be a joint venture?

George Gaspar: It's still the same issue. Under your village code, Section B, you are allowed to use an access aisle of a parking lot so long as that access aisle is 25-foot wide. In front of this building, it is. In front of Crane's building it is 24. If that curb-to-curb was 25 feet in front of Cranes, there isn't an issue.

Ira Grandberg: In all defense to Rob, he is absolutely right. His way of calculating this was correct. But we are taking the interpretation that we've eliminated part of the second floor, and we should not be penalized by calling it part of the second floor. So the 5,300 square feet included the entire second floor.

Robert Melillo: I agree with you. It was originally for a pick up van, and you are not going to get a box truck into that space.

George Gaspar: Yes. It was a business model where their van could deliver food to their customers and a place to park that van overnight was at that location. It was a totally different use.

Robert Melillo: Exactly.

Ira Grandberg: We ask your pleasure a little bit in considering the fact that the walls in the basement are so thick to mitigate a problem the owner had to do, and to include that in the square footage in the building, I think would be onerous.

Robert Melillo: A standard wall is eight inches. You have two-and-a-half feet. There is a lot of wall space.

Chairman Cosentino: When Border's Books was in business, they unloaded in the back. When someone comes in for the ice cream store, they unload in the back.

Ralph Vigliotti: The good and bad to that is, they are not unloading on Main Street. That is where we have the problems in town, when deliveries are being made on Main Street.

Chairman Cosentino: If Ira is correct, and I'm sure he is, if you have 25-feet, you can unload there. Is that the local code?

George Gaspar: Yes. "Unobstructed access from the street shall be provided for the loading area. The loading area may be located in a parking lot access driveway providing that said access has a minimum width of 25 feet." That is Section 110-29 – Off-street parking, paragraph b.

Robert Melillo: I am just wondering if that pertains to not a municipal parking lot, a parking lot that is on your property.

Whitney Singleton: Some substance can be put to Rob's interpretation of what is private property, but I think it is somewhat of a non-issue here. This is one of those topics where: Are we going to accept form over substance or substance over form? Ultimately, if you read what was pointed out previously between both Ira and Rob, the Planning Board has within its discretion the ability to modify any of the parking requirements. So, the question becomes whether your Board thinks - regardless of what the square footage is, regardless of the width of the walls or anything else. Does your Board think that based upon the representation of the applicant, that suitable ingress and egress for delivery can be achieved here without the necessity of loading docks? I believe what Ira is representing is that he is not doing this in this exchange for further outdoor dining areas or anything else. This is purely landscaping and removal of impervious surface. There will be no utilization of this area outside for anything else.

Ira Grandberg: Absolutely.

Chairman Cosentino: This is really a no brainer. You cannot use a loading dock for unloading. What would you trade this off for? Beautification? Trees? Shrubs, or for a loading dock? If it is this board's discretion, talking on behalf of myself, I'd rather see greenery, shrubs and beautification.

Whitney Singleton: I don't want to go under that analysis, because theoretically, under that analysis you could say that that area that was previously impervious surface was a parking area, and they are now exacerbating the parking. That is not the issue. It's not approved for a parking spot. It's approved for a loading area. If your Board thinks it's completely unnecessary, you make that determination. You don't need to debate what the intent is of a private parking lot, public

parking lot, if people can load or not load. The question is whether or not you think it's an enhancement to the plan and can still function.

Chairman Cosentino: Think of what was just said. It's used as an unloading area. How do you pull a truck in there to unload?

Whitney Singleton: The same way that The Brass Horn used to.

Chairman Cosentino: But they had more area.

Whitney Singleton: Theoretically, they don't have more area because they stayed within the footprint of the building. It's a useless exercise.

Chairman Cosentino: I agree.

Ira Grandberg: If you accept the criteria that we've calculated the first and second floor to the outside walls as per the local code, local zoning, and we've taken out the empty space on the first floor to the second floor, and we don't have to count the basement, then we're under 5,000 feet. If we're under 5,000 feet, it doesn't roll over into a requirement.

Chairman Cosentino: I've said what I have to say. I like this idea. Let the rest of the board decide what they want.

Stanley Bernstein: I like this, and I don't like the loading dock.

Vice Chairman Sturniolo: I agree about the penalization issue with the thickness of the walls. I think that is absolute stupidity having to deal with that and sacrifice greenery and trees. It makes no sense to me. A little while ago I was talking about the word "discretion" with another applicant. The word "discretion" here surely applies, but this is an easy discretion, in my opinion. I would definitely want to see foregoing that loading area if we can make it more visually enhancing, make it look like it's a gateway into the village as it is for the front part of this building, which is really the back part as we know it as the Blakeby lot. You are following a good, artistic, carefully well thought out plan both from your client's point of view and also from the village's point of view.

Ralph Vigliotti: I believe the criteria being below the 5,000 square feet has been met. I like the enhancement. It's an enhancement that isn't one, "let's make this look nice for our outdoor dining customers. No, let's let this look nice as another entrance to the building, and as a rear entrance to the Blakeby lot." You're not going to get a truck, even a small box truck to pull in there and make any deliveries anyway. This is quite a plan. I'm happy with it. I think it is very positive for the village in the long term.

Sol Gibbons: The loading dock is useless. You'd have to wheel everything in from the curb with a hand-truck, which doesn't make it a loading dock, it just makes it a delivery door. Of course the enhancement of the area is beautiful.

Chairman Cosentino: I will summarize this. We need the square footage. You are just modifying the landscaping.

Ira Grandberg: May I complicate matters? In your memorandum you indicated that our permit is expiring January 31st. We had an extension. The restaurant is anticipating opening no later than March 1, probably February. Since it was put into your memorandum, we have to address that. Through proper channels, we'd like an extension so that we can finish the restaurant.

Chairman Cosentino: How much of an extension do you want?

Ira Grandberg: They've started interviewing the managers. They are targeting March 1 the latest. We would like a three-month, 90-day extension.

Whitney Singleton: The agreement that you have with the village, is that going to be modified now?

Ira Grandberg: I assume so.

Whitney Singleton: So, that is going to be modified, and your site plan – as far as the calculations go, need to be modified as well. If we roll this approval, presuming that your Board wants to approve it this way, we can simply take the old resolution, make the necessary modifications to reference the new plans and everything else and see what extent the old plans are still applicable or no longer applicable, and once that approval is granted, it will be good for another six months to a year.

Robert Sherwood: As long as we can get that done at the next meeting, before the 31st.

Jan Johannessen: You had submitted just a landscaping plan with this application. There was a series of drawings that were approved with the original application.

Robert Sherwood: Correct.

Jan Johannessen: (Is it) your intent is to resubmit those plans so that we can have a complete package?

Robert Sherwood: Yes. Lighting, drainage, everything that is required. It will be updated. Everything that is really changed on that site plan is that we are removing that one fence along the property.

Whitney Singleton: When you resubmit, you will have a call-out (sic) either on your plans or in a cover letter that identifies the things that are being modified, correct?

Robert Sherwood: Sure.

Jan Johannessen: You are going to resubmit plans to get to another agenda for a draft resolution. You are also going to include a short EAF that we discussed.

Chairman Cosentino: I don't think it's going to be until the second meeting in January.

Robert Sherwood: We've lost the target of the weather to put in the footings. That was why we tried to push it so we can get the hardscape ready for their opening. During the winter they won't be able to put the footings in.

George Gaspar: Also, if we have a new approval, then it also extends the timeframe for planting, because there are certain plants that can only be put in certain times of the year.

Ira Grandberg: So we can target January as a resolution.

Whitney Singleton: I know the chairman raised this issue with me over the weekend. You have that building next door to Crane's. Is there going to be any landscaping on top of the lot to screen that?

Ira Grandberg: No, it's a lot line wall. There is screening in front of it.

Robert Sherwood: A proposed fence is going on top of that wall, a privacy fence. Then, in front of that I am doing some hollies to screen it as best we can.

Vice Chairman Sturniolo: Would you point out to me, where does the elevator fit in?

Ira Grandberg: The elevator is in the back of the building towards Blakeby. That is where most of the people will park.

Vice Chairman Sturniolo: How many people for the capacity of the elevator?

Ira Grandberg: It's a handicap elevator. Probably 10, I'm not exactly sure. It's a commercial handicap elevator.

Whitney Singleton: Rob, did you issue a Temporary Certificate of Occupancy? I see that they're operational.

Robert Melillo: Yes.

Ira Grandberg: I welcome the board to come look at the space. It's kind of interesting and in good shape now.

Chairman Cosentino: Thank you.

Conceptual Application

**Enterprise Rent-a-Car
283 North Bedford Road**

Village of Mount Kisco
Planning Board Meeting
November 26, 2013

**PB2013-13, 69.50-2-6 (SBL)
Site Plan and Change of Use**

**Present: Ed Gemmola, Gemmola & Associates, Architect for
the Project
Frank Vigna, Regional Operational Manager,
Enterprise Holdings**

Mr. Gemmola: This is the old site plan. We had a site visit a while ago, and this is 283 right here. This is the application now. This is the auto detail and body shop, which was always associated with the car dealership. That was a car dealership also, so the breakout here is that we are going to have a drop-off here (indicating). This is a little larger scale. We shrunk this area down in front so there would not be display parking as it is now. I believe that by putting a curb here (indicating) and increasing this, it accesses an outside lift to get handicap in. The stair would remain. This would be handicap access.

Chairman Cosentino: Where are the cars? Weren't there cars right there where that wall is?

Mr. Gemmola: I have one handicap, which I have to increase. We drew this with the wrong size. This (indicating) is what we are looking at.

Chairman Cosentino: Right to the left – wasn't there parking there? It doesn't show it there.

Mr. Gemmola: I'm missing something. The parking is here.

Chairman Cosentino: Down below, on the other side of the wall.

Mr. Gemmola: That is an island.

Chairman Cosentino: Wasn't there parking on the other side of the wall? I don't want you to lose any parking spaces.

Mr. Gemmola: No, that's what that was. There are steps to go here (indicating). We ended up increasing the landscaping along here, planting, landscaping in here (indicating). Also, we did a photometric for the lighting, landscaping along here where there is grass and the back here (indicating) and along here. There is existing landscaping now along the building here.

Vice Chairman Sturniolo: Could you orient me to where the current neighbors are?

Mr. Gemmola: (indicating) Nissan is here, which used to be Marty Motors. This is an auto body detail underneath. It's below. This access is off the driveway. Adjacent to this (indicating) there is an easement. We tried to close this up in here and make this more easily accessed. This is a wide area, which there will not be parking here. That would allow the handicapped to walk along here and again narrow that front up so there could not be any display here, just a pick up for

Enterprise. There is a ramp here, which was existing. That allows them to get into here (indicating) to wash the vehicle and detail it, clean it and its out. We put another ramp to the back here to obviate having to go up around and get to the back. Their whole operation can be here, go to the back, and we will have storage here, auto storage and parking here. They have a total of 30 cars with the count, and that will accommodate all their storage needs on the 283 site plus what the landlord is going to give them in storage at the rear. In terms of the total parking, we have been over that back and forth a lot of times. I got comments from Rob.

Chairman Cosentino: Why can't they pick up cars on the other side and eliminate that – just leave plantings?

Frank Vigna: It was an area that was already there, and we will use it from time to time.

Chairman Cosentino: I think it's going to look better if you see the building from the road and have the shrubs there.

Frank Vigna: I already have gone to the Architectural Review Board and received conditional approval, obviously getting approved through everything else. We increased the green area up front behind this area that we talked about by adding that sidewalk. The area by this area here as well (indicating) we added green. We also added some greenery along this back section.

Chairman Cosentino: What is this?

Frank Vigna: That was before we talked about putting in sidewalks. It was cross-hatched at the time. Now, it's brought to that.

Mr. Gemmola: A customer will come in here (indicating), walk across, go in and then the car will be ready right in front.

Chairman Cosentino: I thought pick up would be better off over here, instead of over here (indicating). You don't lose any spaces; it's just a matter of moving it. They propose to park here (indicating) in front for pick up. I thought they could utilize back here for pick-up and keep the whole front of the building the way it is. It's not costing them anything.

Frank Vigna: We positioned it closer to the front door for customer's sake.

Mr. Gemmola: It's also an easier maneuver to just come out here and turn.

Jan Johannessen: Those are parking spots one and two now?

Chairman Cosentino: Yes, but I am just trying to keep the front of the building clear.

Jan Johannessen: So, we might have to reorient the parking.

Chairman Cosentino: It's just to go from one spot to another spot.

Ralph Vigliotti: Also, how are you bringing a car from the lot that has been prepped to the front of the building?

Frank Vigna: Coming down, backing down and then backing into the area.

Ralph Vigliotti: It's a lot of movement.

Frank Vigna: If we did away with this spot, (indicating) this area becomes more congested with cars parking here. This is the free flow coming in here. I would not want cars to have to stop as they are coming down Bedford Road. I would want them to come in, that is why we are figuring on putting this ramp here, to kind of keep the flow going down to the back lot as well. That way it is safer for my employees.

Chairman Cosentino: Do you anticipate cars parking here all the time?

Frank Vigna: Just for pick up.

Chairman Cosentino: Every time I go by there, I will see a car there.

Frank Vigna: One or two. Not like it currently is.

Vice Chairman Sturniolo: I think the less bumper and the less car you see on 117 in general, the better we are.

Chairman Cosentino: That's why I would like you to utilize this place over here somewhere, if you can do it.

Frank Vigna: To be honest with you, I don't see it. I think there will be a lot of congestion in that one lot. I would appreciate it if the board could find that we would be able to use that.

Mr. Gemmola: When you were out (at the site) the cars were stacked just like that. You couldn't have that now. It's been "necked" down by adding the sidewalk.

Chairman Cosentino: So you will eliminate all those?

Frank Vigna: Correct. I was trying to find a middle ground for you.

Ralph Vigliotti: You are backing one or two cars in?

Frank Vigna: Correct – so they could pull out.

Ralph Vigliotti: So the maximum would be two?

Frank Vigna: Correct. I don't think they could fit anymore.

Ralph Vigliotti: Does the driveway accommodate more than two?

Frank Vigna: No, not after the sidewalk that we are proposing.

Ralph Vigliotti: So you are moving eight or nine diagonally parked cars that you have now?

Frank Vigna: Yes.

Jan Johannessen: When you bring a car up from the rear parking area up the ramp into the parking lot, and you're going to bring it in front of the building, is there enough room to maneuver that car to back it in without doing the three-point turn in the right-of-way? Is there enough room in the parking area to do that?

Mr. Gemmola: This is all aisle space. It's just striped.

Jan Johannessen: How wide is that?

Mr. Gemmola: Probably a good 12 feet.

Jan Johannessen: I want to confirm that if there are cars parked in parking spaces eight, seven or six, if you bring a car up, back it into the space in front of the building that there is enough room there.

Frank Vigna: I think so, and I think there is also the opportunity that you could actually use the current ramp that is going up to the building as a turn-around if necessary, coming up.

Mr. Gemmola: There is about 14 feet in there.

Jan Johannessen: That will continue to be a ramp there?

Frank Vigna: Yes, it's existing. We are not going to do anything with that.

Chairman Cosentino: It's an improvement.

Mr. Gemmola: It's less cars. The fact that they did this, which is pretty much an expense to keep everybody within the site. Granted it's their own people moving and jockeying the cars, but at least it keeps everything off the street.

Frank Vigna: One of the other things we did after a recommendation is that monument sign that seemed to block visibility out front, it used to be the Nissan emblem. We are going to be going to the Zoning Board of Appeals to see about getting rid of that and instead put the signage on the building. This one would be a variance, but our thought process is clearing up that front section as was recommended.

Jan Johannessen: You are going to Zoning to get a variance on signage?

Frank Vigna: Correct. The consensus was that monument sign was a line of sight issue. Our concept here is to put one sign on the front of the building and then one sign on the side. Obviously that does not

meet current zoning, so we are going for that. ARB approved it conditionally, obviously.

Jan Johannessen: ARB approved all the signage and improvements on color?

Frank Vigna: Correct. The garage door went from the doors to an overhead door. They decided on the colors for that, the colors for the railings, etc.

Jan Johannessen: ARB approved it subject to ZBA approval?

Frank Vigna: Correct. Conditionally.

Anthony Oliveri: There are some areas for the auto dealership next door on the existing site plan, like the auto carrier loading area, the auto displayer in which you should carry over into your new plan. It is not shown on your new site plan. This site plan will take precedent. There are some parking in the movement area.

Mr. Gemmola: That was on the original. There are ten spaces here, and we did not include that in our count. We were told at an early meeting in July not to include this.

Anthony Oliveri: But it is on the site plan.

Whitney Singleton: It will be reflective but not counted as required parking.

Anthony Oliveri: You want to carry over those existing site plan elements that you are carrying to your site plan. There is the carrier unloading area in the front and a north display area, unless they are getting rid of it or it's not going to function in that way.

Mr. Gemmola: I'm not sure where they load.

John R. Martabano: Usually they pull across the front of the current Nissan showroom. Lately, because they have been bringing smaller trucks, they have actually been driving down between the building and that little wall and backing in there and taking cars up and dropping them off there. Either will keep the carrier off the street.

Anthony Oliveri: You either show us what's on the existing site plan or if you want to change it, that has to be reflected.

Mr. Gemmola: Do they do that off hours or later in the day?

John R. Martabano: That can happen at any hour of the day. It is very difficult to figure that out.

Jan Johannessen: Have you also thought about modifying some of the lighting.

Mr. Gemmola: We submitted a photometric, made new here. There are three lights that are now new, a pole and a new lamp.

Robert Melillo: One of the things that I left out on my memo, which is a big player in this right now, is that the applicant is applying for a Use Variance. One of the things is, he doesn't want to be linked to the Nissan dealership, and the code only allows agencies to be subordinate to the primary use of the car dealership. That is what the code reflects. The applicant wants nothing to do with Nissan, and he is going to apply to the Zoning Board for a Use Variance. While everyone's points will be well taken today, it is hard to move forward too much further until we understand that the village is going to grant a Use Variance in this case. I will go through my comments, but at this point, I don't want to waste everyone's time if this does not pan out. I will go through everything if you'd like.

Chairman Cosentino: You say it's more difficult, is there anything else here that is going to be more difficult?

Robert Melillo: The Use Variance is probably the one major player in the game right now.

Chairman Cosentino: Any other major things?

Robert Melillo: I believe everything else can be worked out. It's a matter of cleaning up the plans a bit more.

Chairman Cosentino: (to Mr. Gemmola) do you have a copy of his memo?

Mr. Gemmola: They are all reasonable, we can work that out.

Chairman Cosentino: Add that one on to it. (To Mr. Melillo) Please re-write the memo, so there is no mistake that they didn't get it.

Jan Johannessen: Anthony and I will review the applications at a conceptual level; we will submit comments at the formal application. The formal application should be submitted after you go through the ZBA process.

Whitney Singleton: Also, your memo speaks to some of the site issues. Does it mention the fact that they will require an amendment to their Special Use Permit requirements? This use is a Special Use Permit.

Robert Melillo: I did not put the use variance stuff into it. When I wrote this, we were not sure how we were going.

Whitney Singleton: I thought we were obviating the need for use variance by virtue of treating the site as it is, one entire site, and there would be one car rental agency on the site.

Robert Melillo: That is what we originally had set, but the applicant does not want to be tied in to Nissan.

Whitney Singleton: And you are going to be the applicant for a Use Variance?

Frank Vigna: Correct.

Whitney Singleton: I want you to understand what that means according to the law.

Frank Vigna: We have a contractual agreement with the ownership of the property for it to be the only rental car company on the site. After speaking, we do have that, but my corporate office would like to go for a Use Variance.

Whitney Singleton: Not pre-judging your application, they will be statutorily barred. The Zoning Board of Appeals will not be able to grant you that variance.

Frank Vigna: They will not?

Whitney Singleton: No. It's a self-created hardship that is fatal to the Use Variance application. I am not pre-judging your application. You're telling me that you are the applicant. You're going for a use variance, and it's a self-created hardship. This is not a change of zoning, since you've come to the site. It is an existing building condition, therefore it's a pre-existing, self-created hardship, and self-created hardship Use Variances are unlike an area variance. An area variance has one of five factors to be considered. On the use variance a self-created hardship is a fatal flaw to your application. I don't want you to be operating under the delusion as to what is reasonable.

Robert Melillo: You consulted an attorney on this, correct?

Frank Vigna: We will be at this point. We did not. Given this information...

Whitney Singleton: Again, it's not the Planning Board's job to decide.

Frank Vigna: I understand what you're saying now, so I have to bring that back. I'm not the decision maker in this. I will go back to my corporate office and explain to them this new information, and then we can go from there.

Whitney Singleton: To kind of wrap up what was previously addressed: Assuming that the applicant is able to address all of their issues, they are here on a conceptual basis as to whether your Board generally likes the use and the layout, and what feedback you want to candidly give them before they come into final application. It would be appropriate to give them your feedback as to the whether the use is appropriate for the site, what aspects you like or do not like in regard to what they are proposing.

Mr. Gemmola: If we went with the amendment, is that something that you could recommend? If you were in favor of the project the way it is, will that help us get the amendment?

Whitney Singleton: It's like saying I can't go to China without a visa. If you have a self-created hardship, you cannot get a variance.

Mr. Gemmola: You said there was a way to do it as a special use amendment? If we did it that way, is that a possibility?

Whitney Singleton: It's not an alternative path. This use is a special use under the zoning. You are required to get from the planning board an addition to the amendment to your site plan. You are required to get an amendment to your special use permit.

Anthony Oliveri: That is another approval we need from the Planning Board.

Whitney Singleton: You are at a dead-end with the Zoning Board issue.

Mr. Gemmola: I wasn't sure if it was Zoning or Planning.

Whitney Singleton: There was a path that we discussed as to how this could happen on this site without the need for a Use Variance, and complying with Zoning, but it is apparently not a path with the applicant's statement.

Frank Vigna: Currently.

Whitney Singleton: Yes.

Vice Chairman Sturniolo: A while ago you were talking about where the cars were going to be washed. Where do the cars get maintained?

Frank Vigna: All of our vehicles go to dealerships.

Vice Chairman Sturniolo: Even simple oil changes?

Frank Vigna: Yes. Nothing. All goes to the dealership. All of our cars are under warranty, so any of that goes to the dealership. Thank you very much.

As there was no further business to be discussed by the Planning Board, on motion by Mr. Vigliotti, seconded by Mr. Gibbons, the meeting was adjourned at 10:30 PM.

Respectfully submitted,

Stanley Bernstein,
Recording Secretary

dm