

Minutes of Meeting of the Planning Board  
Village/Town of Mount Kisco  
Tuesday, October 14, 2014

Chairman Cosentino called the meeting to order at 7:56 pm in the Municipal Building.

**Members Present:** Chairman Joseph Cosentino  
Vice Chairman Anthony Sturniolo  
Sol Gibbons  
Doug Hertz  
Enrico Mareschi  
Peter Grunthal

**Members Absent:** Stanley Bernstein  
Ralph Vigliotti

**Staff Present:** Jan K. Johannessen, Village Planner  
John H. Landi, Building Inspector  
Anthony Oliveri, Village Engineer  
Whitney Singleton, Village

Chairman Cosentino led the Pledge of Allegiance.

Chairman Cosentino stated this is Tuesday, October 14<sup>th</sup> and this is the Planning Board and the first thing on our agenda is the minutes of June 10<sup>th</sup>.

**A. Minutes**

Chairman Cosentino stated Sol, are you still doing the minutes.

Mr. Gibbons stated yes. I move that the minutes be accepted as presented.

Chairman Cosentino stated we have a motion by Mr. Gibbons. Do we have a second.

Mr. Mareschi stated I'll second on June 10<sup>th</sup> minutes.

Motion introduced by Mr. Gibbons  
Seconded by Mr. Mareschi

Upon roll call vote:

Mr. Gibbons	-	aye
Mr. Mareschi	-	aye
Mr. Grunthal	-	abstain
Mr. Hertz	-	aye
Mr. Sturniolo	-	aye
Mr. Cosentino	-	aye

The motion carried by a vote of 5 to 0.

**B. Sandy Kids Realty LLC & Sandford Finkelstein Unified Trust – 156 N. Bedford Road  
(Sherwin Williams)  
PB2009-15, 69.66-3-2 (SBL)  
Amended Site Plan Approval**

Chairman Cosentino stated the first thing on the agenda is going to Sandy Kids Realty, LLC. This is formal application and a draft resolution dated October 14, 2014. We have it before us, Mr. Oliveri will you go through this.

Anthony Oliveri stated through the resolution.

Chairman Cosentino stated you know just the...

Anthony Oliveri stated well they had come before use with amended site plan application with changes to driveway entrance due to the New York State DOT comments they had received so it resulted in loss of parking space which was banked for future use and they are going to plan that area and also some changes to landscaping and side walk area in front of property. I think that is about the gist of it.

Chairman Cosentino stated okay are there any questions on this resolution.

Mr. Grunthal stated minutes approved...

Chairman Cosentino stated I had one on the landscaping, we do have a landscaping plan for that.

Jan Johannessen stated we do. We had some questions on landscaping that was incorporated in our last memo and that comment has been made a condition of the approval so they'll have to address it.

Chairman Cosentino stated because right now, there's nothing there, it doesn't look good. It is a main corridor into the Village and out of the Village, so we want to make sure something looks nice in front of the building as far as landscaping. Is there anything else.

Mr. Sturniolo stated Jan, I have a questions, in the resolution where you reference the additional parking space, just kind of walk me through, sometimes you used the word banked space, am I correct.

Jan Johannessen stated this resolution approves one land banked space.

Mr. Sturniolo stated and just guide me quickly through, what page is that on.

Jan Johannessen stated that is one page two of five.

Mr. Sturniolo stated and where.

Jan Johannessen stated it's on the second whereas clause.

Mr. Sturniolo stated one banked space, okay.

Jan Johannessen stated so right now there's 31 parking spaces on the property, landscaping is going to result in the loss of one spot, so they're going to be deficient one parking space.

Mr. Sturniolo stated now the second, the whereas below that, it refers to the installation of the waived parking space, are you tying the two together, waived and banked.

Jan Johannessen stated yeah, they're being used interchangeable, they mean the same thing. If you're more comfortable, I can revise the work waived to land banked.

Mr. Sturniolo stated I think just for consistency's sake.

Jan Johannessen stated sure.

Mr. Sturniolo stated thank you, that's it Mr. Chairman.

Mr. Vigliotti stated I had a question.

Chairman Cosentino stated Mr. Vigliotti.

Mr. Vigliotti stated Jan, with regard to the driveway, there are two driveways now. This will eliminate one, is that correct.

Jan Johannessen stated yes but it moves it further north toward Dunkin Donuts.

Mr. Vigliotti stated right but there will be one and the landscaping will take over the other.

Jan Johannessen stated yes.

Mr. Vigliotti stated good, okay, thank you.

Chairman Cosentino stated and I believe that's where we need the landscaping.

Jan Johannessen stated right.

Chairman Cosentino stated from that point over.

Jan Johannessen stated the prior plan had the sidewalk abutting street with landscaping on the other side sidewalk, this the DOT approved it opposite way so there will be landscaped snow storage area between sidewalk and street.

Chairman Cosentino stated good. Okay, do we have a motion on this.

Mr. Grunthal stated Mr. Chairman, question number, if I may...

Chairman Cosentino stated yes, absolutely.

Mr. Grunthal stated question number 14, following up on your comment, it says all required landscaping installation shall be completed and inspected by Village Planner. Are these listed somewhere, are they written down in some place that can be memorialized.

Chairman Cosentino stated on the site plan.

Jan Johannessen stated there is a landscaping plan that has a schedule.

Mr. Grunthal stated it's on the site plan.

Chairman Cosentino stated the landscaping plan. Anything else, motion

Mr. Hertz stated Mr. Chairman, I'll make the motion that we approve the amended site plan for Sandy Kids Realty 156 North Bedford Road PB2009-15.

Motion introduced by Mr. Hertz

Seconded by Mr. Mareschi

Upon Roll Call:

Mr. Hertz	-	aye
Mr. Mareschi	-	aye
Mr. Grunthal	-	abstain
Mr. Sturniolo	-	aye
Mr. Vigliotti	-	aye
Mr. Gibbons	-	aye
Chairman Cosentino	-	aye

Motion carried by a vote of 6 to 0.

**C. Northern Westchester Hospital Center Linear Accelerator – 400 Main Street  
PB2014-0282, 80.49-3-14 (SBL)  
Amended Site Plan Approval**

Dr. Al Tinger, Mr. Mike Caruso, and Mr. Chris Shopinski of NWHC and Mr. Michael Gallin were present.

Chairman Cosentino stated the next thing on the agenda is the Northern Westchester Hospital Center, 400 East main Street. Would you come up and identify yourself for the record please.

Mr. Caruso stated good evening Mr. Chairman, Mike Caruso, Vice President NWHC.

Chairman Cosentino stated are they staying there now, or, you'll stay there.

Mr. Caruso stated I'd be happy to come up.

Chairman Cosentino stated I know but they don't want you up here, we do all business from down there now.

Mr. Caruso stated so Mr. Chairman, what we have brought our Dr. Al Tinger, he is our physician in charge of our cancer center so he can speak to your Board about why we need to endeavor onto this project to expand our vault and build another vault as opposed to replacing our existing one in kind. So I'd like to bring up Dr. Al Tinger.

Dr. Tinger stated good evening gentlemen, how are you.

Chairman Cosentino stated fine.

Mr. Grunthal stated well.

Dr. Tinger stated I'm Al Tinger, I'm a radiation oncologist, I'm chair of the department of radiation, that's where this vault is going. I'm also vice chair of cancer committee. I can tell you that when we first built this cancer center, 8 years we've been providing excellent care to the patients and the people of Mount Kisco and the surrounding communities. We thank you for allowing us to do that, this prevents people from going to Manhattan and elsewhere and get top quality care. Radiation you know, is delivered once a day, 5 days a week anywhere from 2 to 9 weeks of treatment. This is a lot of travelling for patients, especially older patients and so having something very close by is very important for them and we like to do that for people. We need this vault because if we have to replace the existing machine would take 4 months to replace it, that would 4 months without the capability to provide care to these people, and that would be, I think at this point quite an ordeal for them so unfortunately it would take 4 months and if we had the extra vault, then we can build the vault, still treat patients and once the new vault is ready, be able to transfer those patients over without interruption at all in their treatments or in the care

we can provide to the community. So that is what is most important to and Mike and Chris and everyone from the hospital and why the hospital is going through this. I don't know if you have any questions for me, I can elaborate more if you'd like.

Chairman Cosentino stated I don't have any questions right now, you know we've always worked with the hospital; we feel the hospital is an asset to the Village here, not only in employment but it's near us. They've done an awful lot of work there and I think we went down the right road Mike, as you know, as far as we're concerned it's coming to the end with the rooms for surgery, I guess there's 7 of them...

Mr. Caruso stated 6 new operating rooms.

Chairman Cosentino stated 6 rooms for surgery, and the cancer unit was originally passed, how many years ago, the...

Mr. Caruso stated I think this Board passed in 2004, I want to say...

Mr. Shopinski stated 2003, 2004.

Chairman Cosentino stated 2004 and I think the Village as a whole is proud of hospital and what they're doing to serve Northern Westchester we understand why you need this vault before you disconnect the other. We wouldn't want to put you out of business, that's not what we're here for, so let's continue the marriage that we have and we no have problems in doing so.

Dr. Tinger stated thank you very much.

Mr. Hertz stated I'm sorry, can I ask a few questions, sorry. What's the lifespan of the machinery. Well let ask, let me go back to this, the first linear accelerator that's in there.

Dr. Tinger stated its 10 years so we're right at the lifespan now.

Mr. Hertz stated and the new proposed machine is similar.

Dr. Tinger stated again 10 years and so by having the two vaults, in 10 years from now we wouldn't have to disrupt the Planning Board again to get more approval, we could use that other vault.

Mr. Hertz stated so that's what I was going to get to, so the use of you know what's now, your current building is going to go to a storage with expectation that in 10 years you'll be able to leap frog, should 10 years become lifespan of the machine.

Dr. Tinger stated we hope so, I mean...

Mr. Hertz stated you're not going to repurpose it for something else and then come back in 10 years.

Dr. Tinger stated I'm not the best person to ask that but who knows where the technology will be in 10 years from now but with current technology, in the past you would be able exchange the machine in about a month but with current technology and all the intricacies to make everything so precise, we need the 4 months to do the update.

Mr. Hertz stated okay but at least the plan and I guess maybe Mike you can talk to this is to use this room for storage so you do have the possibility of down the line making a...

Mr. Caruso stated that's correct and even if we considered on going for two vaults in the future, we would have to seek CON approval, that's for the Department of Health, you have to get a certificate of need to justify the second vault and what they do is they look in the area to see how many accelerators there are, so we couldn't just go and do it ourselves we would have to seek the approval from not only the Department of Health but coming back to this Board to seek approval for that increase, so it's only going to be storage, that's what we're going to do and we would use it for the flexibility of swapping it out like Dr. Tinger said.

Mr. Hertz stated in terms of similar facilities, considering what you're putting in, how far away is the next comparable facility.

Dr. Tinger stated probably Westchester Medical Center, has two vaults that are operational, that's the closest but there are other Phelps Memorial has one, Hudson Valley Hospital has one, Danbury has one, Greenwich has one and Memorial/Sloan Kettering put one in Harrison but I think the closest one is going to be Valhalla.

Mr. Hertz stated okay.

Chairman Cosentino stated just one other question and it may not mean anything, I assume there's radiation in these vaults and I assume that the walls are thick as you said before. How often is the radiation checked.

Dr. Tinger stated oh, it's checked daily. We have a physicist on site who checks the output of the machine daily, and there are also monthly checks, semi-annual checks and annual checks. If you're asking how often the exposure outside the building is checked...

Chairman Cosentino stated yes.

Dr. Tinger stated that's annually but you wouldn't expect it to change I mean because the structure is all the same. The output on the machine is what's checked on a daily basis. So, the output of the machine can vary to put out so much radiation that it would exceed the limits.

Mr. Caruso stated so initially when we do this here we hire physicists to take a look at what the machine produces and then walls are sized accordingly and then you have outside agencies that Department of Health also comes in and reviews it anytime you have some type of radiation source that is coming alive. They look at the calculations, then it's actually tested when it goes into place and turned on and correct me if I'm wrong, as that 10 year progresses the radiation source gets lower.

Dr. Tinger stated that's for a cobalt unit, right.

Chairman Cosentino stated so I guess I'm to believe that there is no reason for anybody to come to me and say, you know is there going to be a leakage of radiation or anything like that. This is contained into the walls and it's safe and it's monitored frequently.

Dr. Tinger stated it's not like Indian Point, yes it's a very good question.

Chairman Cosentino stated I didn't want to bring that up, you did.

Dr. Tinger stated anyway but Indian Point is a nuclear reactor where you actually have stuff that is being used and decayed, a linear accelerator is an electrical based machine.

Chairman Cosentino stated well you know we have a lot of good people that live on the next street. Anyway, you've answered my question, I think, anybody else, staff or anybody, Mr. Sturniolo.

Mr. Sturniolo stated Doctor, the radiation signal that's being utilized and amplified how does that equate on the Angstrom scale. Is it the far high end.

Dr. Tinger stated so the Angstrom is the measure of wavelength...

Mr. Sturniolo stated right.

Dr. Tinger stated x-rays that we use are in the nanometers, so it would be in the 10 angstroms, we are using energy in the 10 Angstrom range.

Mr. Sturniolo stated that same, okay, thank you.

Chairman Cosentino stated one more question to Mike and then Mike I'm not going to ask you anything more tonight, okay. A while back we brought up 400, the plaza that they were going to look into and do something with it to make it look a little better.

Mr. Caruso stated the retail building.

Chairman Cosentino stated the retail building on Main Street, I think it was brought up, I looked in the minutes and it did say that they were going to address it and I know you guys have a lot on your plate right now, it should be addressed that the building is old, it's worn. It's not what I think the Hospital really wants...

Mr. Caruso stated we haven't forgotten about it. We want to make sure that the wall gets constructed, that's what our task is now. We are working through this planning effort but I will bring that back up to Mr. Seligman and discuss it again.

Chairman Cosentino stated yeah, as long as you're working it and you know. Thank you, thank you doctor. You have something else.

Mr. Hertz stated I have a question for Mike, not for the Doctor. In terms of overall site planning on this, we're going to lose, you know assuming this is approved, you're proposing to remove 4 parking spaces where the linear accelerator is...

Chairman Cosentino stated but gain one more.

Mr. Hertz stated tell me about the other part of this plan.

Mr. Caruso stated about how we're going to make up the 4.

Mr. Hertz stated well in other words, what I'm seeing is gaining two back but we're gain by removing this planting island, can you just go through it.

Mr. Caruso stated yes, of course we can.

Mr. Gallin stated hi my name is Michael Gallin, I'm the architect working with them.

Mr. Sturniolo stated Mike, Michael could you bring that a little closer so we can see it.

Mr. Gallin stated yeah I didn't know if I was supposed to be on camera with the new protocol, you guys want me up here with this or work with the camera.

Mr. Vigliotti stated that's fine.

Mr. Hertz stated we have no idea quite frankly.

Mr. Sturniolo stated other than we'd like to be able to see it.

Mr. Hertz stated you know, show it to us and then you can put it up so the camera can get a shot.

Mr. Gallin stated so this is the proposed site plan the addition to the building is occurring here and I can show you the floor plans and explain exactly why it needs to go here. The existing vault is here, so it's going immediately adjacent to existing vault and the sharing walls. These are 4 parking spaces that are being eliminated. There was a previously approved site plan to create tree islands throughout parking lot, as part of that this plan this planter was not eliminated and we're proposing that this would be removed and we'd put two parking spaces there and the last two parking spaces we've, the hospital has been under consideration about where they want to put those on site, there are a few proposals, they haven't zoned in a specific on yet so we're not ready to present that but the next time we're here we will have a distinct presentation for you.

Mr. Hertz stated okay, so that was a parking island that's there.

Mr. Gallin stated it's there now.

Mr. Hertz stated so and you're proposing to replace that with the parking triangle that would match that or that, or was that tree island already...

Mr. Gallin stated the tree island was already proposed.

Mr. Hertz stated that was part of the new...

Mr. Gallin stated correct.

Mr. Caruso stated yes.

Mr. Hertz stated what's going to be the new landscaping.

Mr. Caruso stated part of the wall, part of that whole wall...

Mr. Hertz stated part of the wall piece and what's in the two space island that's there right now.

Mr. Caruso stated just a grassy island with a tree, it does have a tree, so we proposed taking that tree out because we're putting another tree in...

Mr. Hertz stated no, no, we're putting a tree in...

Mr. Gallin stated you're putting a tree right next to it.

Mr. Caruso stated yeah, that's the reason why we looked at and said we can make up two there and then we would go back to the back end over here and we do as Michael said, have a couple of options that we're going to present to you at another meeting, so we can hone in on it and make sure that you guys are okay with it.

Mr. Hertz stated so you think you'll be parking space neutral, effectively you can find another.

Mr. Caruso stated that is our goal, yes.

Mr. Hertz stated okay.

Mr. Gallin stated and I think it's worth just for discussion purposes to show how the adjacency works, so this is the existing vault and this is the proposed vault. These walls vary from 4' to 6' thick in concrete and that is all based on physicist's analysis and you'll see it shares an existing wall.

Chairman Cosentino stated I think we can see from Mike's...

Mr. Gallin stated so here's the existing vault and then the new vault is immediately adjacent to it and it will be the same height as the existing vault with the same shielding and it's critical that it has that adjacency because of the utilities and the thicknesses of the walls and so on and so forth.

Chairman Cosentino stated is that smoke stack an incinerator right.

Mr. Caruso stated no, that's the smoke stack for the boilers and for the emergency generators, it all goes into that.

Chairman Cosentino stated okay.

Mr. Vigliotti stated Mike, just a question on the parking island, the tree that's being removed, what's the size of that tree.

Mr. Caruso stated I want to say it's no more than...

Mr. Shopinski stated it's a small species tree, it's like a 10" caliber, maybe 30' tall.

Mr. Vigliotti stated okay, thank you.

Mr. Grunthal stated I just wanted to ask on the plan behind that.

Mr. Gallin stated yes.

Mr. Grunthal stated I'm just wondering where the building projects into these parking spaces, what actually happens in this corner of this new room.

Mr. Gallin stated so what are these squares.

Mr. Grunthal stated and just so that you can see what I'm aiming at is obviously wondering if that could not have been, if that corner could not have been trimmed off.

Mr. Gallin stated it can't be trimmed because the design of these rooms is very technically driven. The generator that's generating the radiation has a focal point here and you'll see these radiating lines, that's where the primary beam is and that's why the walls are thicker in that zone. This is actually electrical equipment, there these big electrical generators that are powering this, you can't put those generators inside those zones and there's all sorts of clearance requirements where they can't be too close to the equipment and once you lay that all out, this box is the minimum area that can accommodate the electrical with the maintenance clearances, keeping everything outside the zones and so on and so forth. There is another big piece of equipment in this corner and this one has to be on this hand, on the right side of the generator and these have to be on the left side and it gets rather elaborate and you can't just slice this off and turn because you have technical problems in layout out the room.

Chairman Cosentino stated with the generators.

Mr. Gallin stated they call them generators...

Chairman Cosentino stated are you going to hear anything during the day here.

Mr. Gallin stated no.

Mr. Shopinski stated basically it changes the frequency of the electricity.

Chairman Cosentino stated but you're going to hear any motors or anything.

Mr. Shopinski stated no, it's not a diesel generator to make electricity, it's just changing the electricity.

Mr. Gallin stated they call them generators but they're basically transformers.

Chairman Cosentino stated okay, we'll put you back whenever you, you know, talk to Michelle.

Mr. Gallin stated we need a variance for the new, if I could speak to that. The variance is, to speak briefly about that, I think it's important to discuss. This property line here is the property line for this residential building which the Hospital owns.

Chairman Cosentino stated setback problem.

Mr. Gallin stated correct, we have an 8' setback here and zone requires 30' setback. So we need to go...

Chairman Cosentino stated yeah, the Building Inspector already brought that to our attention, that you're going to need a variance on that.

Mr. Gallin stated so as soon as possible we'd like to be referred to the Zoning Board so we can start that process.

Chairman Cosentino stated go ahead, go right ahead.

Mr. Gallin stated if it's in the interest of the Board.

Chairman Cosentino stated but we knew about that, John brought it to our attention, so it's.

Mr. Gallin stated so I don't know if we need an official referral.

Chairman Cosentino stated okay, go for it. Thank you, thank you for coming. Okay, we have a memorandum from Towne Bus with radiuses, Anthony you just want to, just briefly, go by that. You want to do 29 Carpenter first, 29 Carpenter, is there somebody up here...

### **Special Discussion**

#### **29 Carpenter Avenue**

Ms. Linda Whitehead was present to represent the property.

Mrs. Whitehead stated good evening Linda Whitehead with the firm McCullough, Goldberg, Staudt, we represent Hudson City Savings Bank.

Whitney Singleton stated do you have a set of plans.

Mrs. Whitehead stated what set of plans.

Whitney Singleton stated a set...

Chairman Cosentino stated yeah, what ones.

Whitney Singleton stated the approved site plan, Jerry didn't talk to about that.

John Landi stated by the time I was done with that meeting, I didn't have a chance to get it out.

Mrs. Whitehead stated as far as I know, no one could find the approved site plans.

Whitney Singleton stated you want to go...

Mrs. Whitehead stated you want to.

Whitney Singleton stated let me just bring the Board up to speed as to why Ms. Whitehead is here....

Mr. Sturniolo stated do you dance too.

Whitney Singleton stated no, I can't sing either.

Chairman Cosentino stated we don't feel bad, you were part of this.

Whitney Singleton stated part of what.

Chairman Cosentino stated never mind, keep going.

Whitney Singleton stated 29 Carpenter...

Chairman Cosentino stated no.

Whitney Singleton stated as your Board may remember 29 Carpenter was approved in two building A & B for basically mirrored units, that got changed overtime. What happened was the applicant was supposed to put fill in the back of the building and put a landscaping area behind the building and what ended up happening was the applicant came back to you and said that it didn't really make sense to put landscaping over here which will provide no shielding from Route 117. So, the applicant proposed leaving the excavated area and not filling it in and putting landscaping on Village property which at the time the Planning Board felt very comfortable with and that was done with permission from the Village Board and it was effectuated.



Ms. Whitehead stated excuse me, that is from the 2005 site plan amendment, correct.

Whitney Singleton stated I'm off the cuff here.

Ms. Whitehead stated the original plans were approved in 2003, there was an amendment in 2005 to reduce the number of units from 14 to 12 and I think also made that landscaping change in the rear.

Whitney Singleton stated and what your Board was not appraised of at the time that was approved was that by leaving area in back unexcavated, I mean excavated not filled in with fill and landscaping, it changed the average grade of the building, by changing the average grade of the building, it changed the height of the building. Now I don't know what the exact height is, I don't know if it's even been determined but the fact of the matter is the zone allows a maximum 2 ½ stories of 30', I think that was the number

Ms. Whitehead responded 35'.

Chairman Cosentino stated I thought it was 35'

Whitney Singleton stated okay, 30 or 35, now what you have is you have, again depending on how you define the word story and what the average finished grade is, now you have four stories. So your Board technically did not have the authority to approve that plan and therefore a variance is needed and the applicant will be going to the Zoning Board of Appeals for a variance from the height requirement. It is necessary unless somebody feels compelled to tear the whole building down, which I don't think anyone does. Secondly, your Board approved a plan which again was 6 units in each building.

Linda Whitehead stated originally there were 14 units, it was reduced to 12, 6 in each building.

Whitney Singleton stated and you had the 4 units in the front with the garage and the walk up, so you have the top two stories and the garage for the front units and then in the back, in Building A you just had a single story area but on building B because of the terrain dropping down, there was a lower level that could be accessed. In the plans before your Board it was referenced either as utility or storage area and that is what your Board originally approved it as. When the applicant came in and constructed there was a modification to the plans whereby the lower level was incorporated into living space, now I don't know exactly what your Board was aware of, I started going through many of the minutes from prior meetings, I haven't finished all of them but whether your Board was aware of it or not, that's how it was constructed. The applicant that stands before you is not the applicant that built those plans, the applicant that stands before you is somebody who lent money to the builder. The builder did not pay, they foreclosed their lien and now the applicant is simply trying to finish up somebody else's mess and get this thing approved or get this thing, you know, brought to market. The finished area on the bottom whether it was approved or not approved by your Board was always shown on the building plans, it was not only show on the building plans it was shown on the offering plan to the Attorney General's office, it served as the basis for allocating the percentage of common interest within the condominium unit, units were sold based upon this and the allocation was made based upon the square footage of each of those units. The Village through its assessor's office has signed off on those floor plans; those floor plans were recorded in Westchester County Clerk's office and serve as a basis for everyone's title report that's purchased in this development. We now have a situation where there's an inconsistency between what we believe your Board approved or intended to approve and what the applicant has filed all their documents with various banks, state agencies, Attorney General's office and the County Clerk's office. The question is how do we rectify that, they are now showing their plans and presumably numerous inspections would have or should have been done during the entire construction process that showed it as one story, is now being shown at two stories of living space. The applicant would like to simply come back to you and have the actual as built updated and reflected in their approve site plan of record rather than ripping out things which they would issue building permit for and Ms. Whitehead is here to address that with both your Board, so that she can get this sanctioned by your Board and move along and get the requisite variance from the Zoning Board of Appeals. I don't really have too much to say beyond that I think it's a terrible situation that you have to be faced with this, there was a lot of things that weren't brought to your attention but when both parties are in the position that they are in and we need to come to some sort of resolution. The only thing that I would like to point out to you is the resolution of the lower units does raise an issue that is somewhat beyond your Board that has to do with the State Building Code and the Americans with Disabilities act as far as accessibility. They're only allowed to have unit, so I'll let John speak to this in a second, They're only allowed to have one unit which is non-ADA compliant or non-accessible.

Chairman Cosentino stated yeah, we understand that.

Whitney Singleton stated this will have two units, so they will either need to seek relief from the State, install an elevator, modify the layout or somehow demonstrate a means to get from point A to point B. John, if you want to comment on that.

John Landi stated you covered it pretty well. New York State requires one of the units of the Building to be ADA compliant, right now because it is two floors in both units, both are not ADA compliant, so they would need to get, like Whitney said, a state variance or install an elevator.

Ms. Whitehead stated can I elaborate just briefly and again you may all remember we were here back in February and March to get a retroactive extension of the site plan approval. Our client is in a really unfortunate position here, they're a bank, they've foreclosed, they just want to get it done and get it on the market. They have a building that's really built except for the interior finishes, we do not have the benefit of having any of the prior approved plans, we do have some sort of random plans that we have been able to find, we do have all the offering plan things which were referred to. My understanding is that the Building Department also doesn't have or, we've been asking for 6 months and nobody's been able to locate the approved plans, you realize it's now been 6 months since we were here and got the extension and our client has been held up on being able to get this project going and get building permits, nothing has really been able to move forward since we got the extension from you back in March. We have plans that go back to 2005 prior to that amended approval in 2005 that in fact do show those lower levels. So I think there's some, it's unclear because the Village doesn't have plans but I have plans that are plans that were referred to in the 2005 resolution that show those lower levels and in fact one of the units, the only access to it is on that lower level, there is not ground level, the way the floors are sort of listed its lower, ground, two, three, ground being where the garages are for the front units. These units are on, behind the garages on the ground and then also on the lower one of them has access from the side at the ground level, that's the one bedroom unit, remember there was one, one bedroom, the rest were twos. That's the one bedroom unit, the lower level of that unit was only a finished basement and utility room, there's a half bath down there, all the living space, the kitchen, the living room, the dining room, the bedroom are on the ground level for that one is entered from the ground level. The other unit the only way to get into it because of the grade is from the lower level, so I don't know how it could have been shown without that lower level being improved when it's the only way in. The plans that we have, they date back to 2005 show that lower level having the living, dining, kitchen, and then the two bedrooms on the ground level above it. So we do have those plans so we think there's some real confusion about what really was approved, I don't know if any of you remember.

Chairman Cosentino stated I sat on this Board during this application...

Ms. Whitehead stated then you have more information than we have.

Chairman Cosentino stated well my recollection of it was that, the bottom was for utilities and no living space, as a matter of fact I think you just said that there was no entrance, the only entrance was in the rear of one of the houses in the basement.

Ms. Whitehead stated in that lower level.

Chairman Cosentino stated in that lower level, that was because if somebody wanted to go there they would be going to a utility room and nothing else but a utility room.

Ms. Whitehead stated but that's the only way to get to the unit, you can't get to the ground level from the...

Chairman Cosentino stated well from the front of you can.

Ms. Whitehead stated the front is the garages for the other units.

Whitney stated right, it was originally shown on the two sides, correct.

John Landi stated the plans that I saw, first of all let me clarify...

Ms. Whitehead stated there's a lot of confusion here and we're just trying...

Chairman Cosentino stated I know we want to get it off our plate but I'm just saying what I read now...

John Landi stated let me just clarify one thing, this was all prior to my administration.

Ms. Whitehead stated or our client owning the property.

John Landi stated so I mean, none of this happened under my watch so, but anyway the plans that I did see did show entrance from either side of the building for those units.

Ms. Whitehead stated were those prior to the 2005 amendment.

John Landi stated that I do not know.

Ms. Whitehead stated you got to look at the date of those because that 2005 amendment as was just explained to you had to do with the fact that they were not going to fill and raise the grade in the back and once they weren't going to do that one of those could not be accessed from the side.

Chairman Cosentino stated well I'm not going to elaborate very long on this because I know there's a problem, we want to get it fixed and we want you to go on doing whatever you have to do but when we made a site visit there every unit had a front door to go in.

Ms Whitehead stated no, those never had front doors to go in...

John Landi stated they were side doors.

Chairman Cosentino stated and it was very clear to me that the basements were for utilities and utilities only.

Ms. Whitehead stated that's not any of the plans that we have...

Chairman Cosentino stated I don't know what happened to the plans but let's go on and let's get this completed so everybody can go on they're own way, we've spent a long time.

Ms. Whitehead stated and I just want to point out that one of the units can't physically be entered from the side because it's not at grade.

Chairman Cosentino stated I don't know what changed there but let's, you need to go to the ZBA.

Ms. Whitehead stated we do, we need clarification on the height variance, the Building Inspector is going to get us...

John Landi stated correct, height and stories and then you're going to also need the state variance for the ADA.

Ms. Whitehead stated we can show you, we actually have a plan from 2005 that has the calculations, so after the change was made with the grade in the back that has all the calculations for average grade and height showed it was conforming, so maybe we can show you that.

Chairman Cosentino stated so we need a set of plans is what we need really to show or an amendment or something, at this point I don't know, what do we need Whitney to get this completed.

Whitney Singleton stated if I could make a suggestion to your Board.

Chairman Cosentino stated yeah.

Whitney Singleton stated I think what you need is, you need a set of plans that you can reapprove as your new site plan or record which reflects what is in the field and also reflect what is involved, all the documents associated with the filed floor plans, with the filed offering plan and consistent with the Homeowner's Association as far as the percentage of common element that each unit has...

Chairman Cosentino stated that's what I need and...

Mrs. Whitehead stated we've already started on it, someone's had to go out and basically do a plan from the as built, from the as built condition.

Chairman Cosentino stated right.

John Landi stated and then I think they should work with my office to do recalculations.

Whitney Singleton stated and then based upon that and I am going to make a big assumption, you may disagree, disagree with me but based upon that or if to the extent necessary they go to the Zoning Board of Appeals for whatever the requisite variance is for the building height and then they come back to your Board and in the interim we will take those plans, we will take that variance and the staff will craft a revised resolution to make sure that everything reflects, consistently reflects what's in the offering plan, what's in the filed floor plans, reflects something that is compliant with the state as far as the ADA and then put it back on you agenda for an approval.

Chairman Cosentino stated good, excellent. So you have homework to do and we have some homework.

Mrs. Whitehead stated we just want to make sure that there wasn't going to be issue with those lower levels before we move forward with these plans and everything else.

Chairman Cosentino stated no.

Whitney Singleton stated but I think what you're saying is your Board is comfortable with it so long as there's no issues with the State.

Mrs. Whitehead stated we have to meet the legal requirements.

Chairman Cosentino stated, I think this Board is comfortable, I mean I'm talking for myself but I think this Board is comfortable, there were mistakes made...

Mrs. Whitehead stated somewhere.

Chairman Cosentino stated on both sides, we're not going to take the full blame...

Mrs. Whitehead stated and none of us were here.

Chairman Cosentino stated but there were mistakes on both side but I think we need to get this off our plate so these units can be sold and the bank can get their money and go on with our lives. Mr. Sturniolo...

Mr. Sturniolo stated question, Linda, you referred to the 2005 plans, Whitney and John have you seen those plans that Linda is referring to.

John Landi stated I have not, I have not seen those plans.

Whitney Singleton stated I've reviewed, excuse me, I've reviewed whatever is in the Building Department file, I can't, it's been a couple of weeks or months, I can't tell you exactly what the dates for the plans that I saw, there were various iterations.

John Landi stated those are the same plans that I reviewed.

Whitney Singleton stated the only thing that I can tell you with absolutely certainty is there was a representation to your Board that the back would be filled in and that the lower levels, the lowest level whatever you want to call it would be solely for purposes of either equipment or storage.

Ms Whitehead stated was that before or after 2005.

Whitney Singleton stated right, that was clearly the first iteration.

Mr. Sturniolo stated Linda, that I recall sitting here clearly.

Ms. Whitehead stated right but I think that was before the 2005 amendment.

Whitney Singleton stated what happened in 2005, now I'm going off my recollection not based upon you know any or of transcript or anything, what happened in 2005 was that they came back to you with a better plan and the entire focal point of your Board was on the landscaping and the view from [Route] 117.

Chairman Cosentino stated yes, I remember that.

Whitney Singleton stated it was never on what was the building height and what was the internal occupancy, that may have been part of the plan, it may have been part of the submission it may even have been part of what your Board approved, I don't know because we don't necessarily have that reflected anywhere but I do know that your Board was focused on the landscaping, not on authorizing something which was prohibited by zoning. So to rectify the situation short of pulling the building down or back filling the yard or anything else because they did do a nice job, I know the Chairman's been out there, is to go ahead and do a resolution both before the Zoning Board and your Board.

Mr. Sturniolo stated so, I understand the solution concept, thank you.

Whitney Singleton stated so the applicant will prepare that as-built plan presented to the Building Inspector and it will be referred to your Board, it will be referred to the Zoning Board for it's action prior to coming back to you for final approval. We will keep your Board abreast and send you a draft resolution well in advance of it being on your agenda.

Ms. Whitehead stated can I just ask one question and I think this has been discussed but I'm not sure but would it be possible to get building permits for the front units so that we can start work.

John Landi stated at this time, no. I really would need all this stuff to be rectified before I could...

Chairman Cosentino stated we would feel more comfortable.

Ms. Whitehead stated yeah, it's just our client's been held up for a long time.

Chairman Cosentino stated I know that.

Ms. Whitehead stated we were here, we got the extension...

Chairman Cosentino stated I realize but it's just the policy, we'd like to see everything in order.

Ms. Whitehead stated because those units aren't changing and nothing has changed in those front four units.

John Landi stated you know what, let me talk to staff and review.

Chairman Cosentino stated you have to meet with John, whatever you want to do I'm sure is perfectly okay with this Board to get this done, is there anybody else on here that needs any...

Ms. Whitehead stated there's some work we'd really like to get done and closed and heated before the winter.

Chairman Cosentino stated talk, it's really up to the Building Inspector but our policy is that we'd like to see a site plan of compliance before anything else is done but under the consideration talk to the legal department and the Building Inspector and you know, we don't have problem with that because of the situation.

Ms. Whitehead stated thank you, we'll do that.

Whitney Singleton stated can I ask one, I want to do just one clarification and maybe I can get a qualified position of your Board. To avoid this being thrown in my lap or John's lap, the Code requires that for any work to move forward that your Board make a determination that the work is being advanced in accordance with the site plan.

Chairman Cosentino stated we don't have a site plan.

Whitney Singleton stated if your Board is assured that the front four units are not going to change under the existing approval, nor under a proposed approval and I am not including the units in the back, I'm just including the units in the front because they're sitting dormant as winter's approaching. Do you have any problem with an applicant undertaking work so long as it is entirely consistent with the approval plan and entirely consistent with the proposed plan.

Chairman Cosentino stated not verbal, it would have to be something in writing stating that.

Ms. Whitehead stated no we'd have to get a building permit.

Whitney Singleton stated right, right but rather than...

Chairman Cosentino and have to state that.

Whitney Singleton stated yeah, okay, is that okay with the...

Ms. Whitehead stated yeah, I don't think there's any issue that those front four haven't changed from what was approved.

Whitney Singleton stated they're not going to change.

Mr. Sturniolo stated Whitney is this something that would be undertaken by the applicant at their own peril.

Whitney Singleton stated yes.

Mr. Sturniolo stated or risk I should say.

Whitney Singleton stated yes but then again at the same time...

Mr. Sturniolo stated regardless of the outcome.

Whitney Singleton stated at the same time they would have a vested right in a building permit which was based upon an approved which is still valid.

Mr. Sturniolo stated okay.

Mr. Hertz stated let me just make the comment that, I think it's a good solution but to Tony's point, I think there is a level of peril that the, because should, I mean there is nothing that says the ZBA is going to grant the variance, there is nothing that says that at this point that we will you know, de facto approve the site plan although I expect that it will be shown that we will and that it complies and everything else so I could imagine a scenario where you might want access through from the front some reconfiguration, now maybe that's not possible, I mean I don't remember the plan off the top of my head...

Ms. Whitehead stated there's no way to get to the back unit from the front.

Mr. Hertz stated I was on the Board, so but I could theoretically imagine a scenario where a change could occur maybe but I think it's highly unlikely.

Ms. Whitehead stated I think if a change occurs its going to be to those lower levels where the grading around them...

Chairman Cosentino stated I think so too.

Mr. Hertz stated and I agree with you but to the, but to the extent that there's you know an iota of risk to the applicant having completed the front units and then not being able to you know, it would be a cost change them and then make the rear units compliant, yes.

Whitney Singleton stated so you'll be in touch with them.

Ms. Whitehead stated thank you.

Chairman Cosentino stated thank you, thank you.

### **CORRESPONDENCE**

Chairman Cosentino stated Towne Bus. You've read the, Tony, Anthony Oliveri's memo, I've read it, an attorney and I've leaving it up to him, you spoke to them on this Anthony.

Anthony Oliveri stated I...

Whitney Singleton stated you're sounding a little nasally.

Anthony Oliveri stated yeah, I mentioned it to their engineer, I don't know if he has a copy of the memo yet, I'll get that to him.

Chairman Cosentino stated so you're waiting back from them. Can you sing a little solo mio.

Anthony Oliveri stated any requests.

Chairman Cosentino stated I think the memo was very good, I think the memo was excellent on your behalf, I don't know whether the turning radius could be done or not. If there's a problem, their engineer should come back to you and you come back to us.

Anthony Oliveri stated yeah I mean we wanted to get this out before they came back with a revised plan.

Chairman Cosentino stated yeah we'll work with them on it and see that it's properly done on their behalf and our behalf. We need to know if a truck, a bus can go in there and properly turn. If it can't he's got to do something to make it happen.

Anthony Oliveri stated we'll make sure on the next plan they address it.

Chairman Cosentino stated yeah. Any questions on Towne Bus, I don't, okay. Hey guys, that's it. Do we have a motion to adjourn.

Mr. Sturniolo stated so moved Mr. Chairman.

Chairman Cosentino stated second by Mr. Mareschi.

The Secretary stated oh, I'm sorry.

Chairman Cosentino asked for all in favor.

Motion carried by a vote of 7 to 0.

The meeting adjourned at 8:46 p.m.