

Minutes Meeting of the Planning Board
Village/Town of Mount Kisco
Tuesday, May 27, 2014

Chairman Cosentino called the meeting to order at 7:50 P.M. in the Municipal Building.

Members Present **Chairman Joseph Cosentino**
Sol Gibbons
Vice Chairman Sturniolo
Ralph Vigliotti

Members Absent **Stanley Bernstein**
Enrico Mareschi
Doug Hertz

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

The minutes of April 8, 2014 and April 22, 2014 were not approved.

Formal Application

Flywheel
145 Kisco Avenue
69.65-2-1 (SBL)
Request to Amend Change of Use

Present:

Michael D. Zarin, Attorney at Law, Zarin & Steinmetz,
Representing the Applicant

Krista Yacovone, Attorney at Law, Zarin & Steinmetz,
Representing the Applicant

Michael Zarin: We did have a chance, albeit not a lengthy one, to quickly review the proposed resolution. Obviously, we are not supportive or highly satisfied with its substance. I would like to point to one provision that sums up somewhat of our disagreement. On Page Four, Paragraph Two, it states that the hours of operation proposed are not substantially different from the other existing uses on site. The second sentence is the one where we substantially disagree. This goes really to the heart of the matter. We had, by letter to this Board, pursuant to the last meeting that we had dated May 7, 2014, specifically resubmitted to the Board a modified proposal. We proposed that for the hours of operation from 5:30 to 8:15 AM, which are substantially different than the hours of the proposed uses, that we be permitted to operate at the 60 participants and four employees. PHA, your (traffic) consultant, shows that there is substantially excessive available parking at that time. In fact, in our submission to you of May 7, we provided a number of photographs showing that the parking lot is just not used at that time. There is just no one there. Pursuant to your concerns at your last meeting in April, we said, "Let us use for 60 participants and 4 employees from 5:30 AM to 8:15 AM, between the hours of 8:15 AM to 5:30 PM, we would remain with the 32 participants and 4 employees that you requested. At one point you said a six month trial period to see how it

works and what really happens out there, because that is the time when people are parking on that site, the regular users, and we think we have available for four hours, but we agreed with you or proposed that we maintain that at 32 participants, and we have the six month trial and see what happens out there. Then we had suggested, however, from the times of 5:30 PM and 11:00 PM, when our surveys and your surveys from PHA showed again, our times are totally different from the regular users and there is more than sufficient parking on the site – that we be allowed from 5:30 PM to 11:00 PM to have the 60 participants and 4 employees. We proposed that on May 7. I thought it was responsive to the concerns that you all expressed at your meeting. In fact, I went back to the PHA study of March 28 in the letter to your Board, and PHA even said that the times they were most concerned about were 9:15 AM to 11:15 AM and 4:15 PM to 5:30 PM. Those were the two times your own consultants thought there may be a shortfall. We're suggesting for those times, leaving it at the 32 participants. Let's go through the trial period. Let's do the monitoring, as you suggested in the resolution and the last meeting. We thought we had a proposal that we submitted to you on May 7 that really concurs and takes into consideration your legitimate concerns and would allow us to operate in a responsible way. Obviously, we had some disagreements with the resolution on that basis, and we would hope that you would reconsider. Those times, by the way, are attached in our May 7 letter. We included this chart.

Chairman Cosentino: I don't have any problems "upping" it to 45 after 6:00. We could take a test run on it and see what happens, and then re-evaluate it again.

Michael Zarin: Again, we would ask that in the morning, when clearly there is enough parking - and we even reduced our proposal from 5:30 to 8:15 because, as you started to get closer to your 9:15 time that PHA was concerned about, we wanted to create a buffer so there wasn't that tension. We even went a little over in that respect in our proposal to be a little bit extra conservative and only have the 60 to 8:15, giving that hour if there is any overlap. Again, that is what PHA, in their own letter, was the times they were concerned about, and that is what the statistic showed both in PHA and the Milbourne (sic) and the various studies that we did at the site. We would ask again that we be permitted the 60 participants for those times. The 45, again, is something that - we appreciate the gesture, but that does not allow us to get our tenant to operate. They will not operate at 45. They said they can't. They need the ability to have at least up to 60, even though they only have 70 percent utilization. One of the other things that was not accurate or a little bit misleading in the proposal is one space per one participant. We are using one space per participant. That is what we used when we looked at who is using the site and the like, as well as Kidville when we used a full party and we did March surveys where they had been operating for a little over three months. I think we got an accurate view of their operation at this site. Again, the majority of the time we are agreeing to - the 32 participants and 4 employees from 8:15 AM to 5:30 PM – we are saying let's monitor that for six months. Let's see what happens. Again, the two times that we are taking, I think everyone concurs there is no one parking there at those times. They really are substantially different.

Chairman Cosentino: I feel comfortable with the 32 and 45 after 5 or 6. What happens is when they start with whatever it may be, they come back in and say, "we can't make it on this – the economy is bad and we really need to go up to the 60, and you're there already." I'd rather it be low at first and climb up. It doesn't make any sense with the situation that is there now. This is my opinion.

Ralph Vigliotti: We said early on that whatever we do, even with the 32, that was the number we would wait six months to see how that number worked. If it did work, you would come back and appeal to the Board for more participants. I agree with the Chair. As one member, I could go one step further and look at the 45 in the evening and possibly the 45 in the AM. But we are holding off on the 60 to see if it's going to work. I think on our part it is fair and reasonable to see what the parking is really going to look like. I agree with the Chair that 60, you could be coming back to appeal that you need 80. We are trying to test the waters on the parking. If you're right on the money, in six months you may have a very good case. Maybe we could look at four months. We are trying to do the right thing. I think we are trying to be fair at our end to the site, to the other businesses that occupy that area, and to that particular section of town that has a lot of traffic that is going on. I think we need to move on being fair and reasonable.

Michael Zarin: I do appreciate it and I appreciate the gestures. I would like to say about the 45 and your point about we want to see if it works, and I understand it perfectly. I don't think anybody for those times disagrees that 60 would work. There is nobody parking there at those times. That is what all the surveys show, and to get the tenant to come to the site, we need to provide them with 60 for those times that there is no one there. With the other times, we agree with you entirely. I think the whole idea is to see how it works, but I don't think there is any question that there is available for 60 during those morning and evening hours. There is nothing in the record that suggests otherwise, and there is a lot of empirical data now in the record that shows there is more than enough parking for 60 during those two times. Fair and reasonable – we agree with you from 8:15 AM, and I will say it again, we pushed up the time to address the issue of overlap between 8:15 AM and 5:30 PM. Let's see what happens on the site. There is a very strong likelihood that we don't get the tenant to move in there if we only do 45 at those two times, or else, I would say thank you very much and walk away and say we appreciate the gesture. Again, I don't think there is an issue that during those two times there is available parking for 60.

Vice Chairman Sturniolo: I appreciate your candor, and I totally understand when you are talking about empirical data. I am going to focus on the number 60, and you've heard a lot about that already. It is too soon for me to accept that number 60. I'm not saying it's going to be a massive enforcement or policing issue, but I feel much more comfortable if we go slowly, and as Mr. Vigliotti and Chairman Cosentino said, go with 45 and then see how that works out. Then, come back and possibly it can be adjusted. It is too big of a leap into a black hole at this point for me to be comfortable.

Ralph Vigliotti: I'm surprised you got it to this point. You've done your job. This is a point that weeks ago we were not ready to address. I'd like to look at it as a victory for both parties. It's like a good contract. Both parties feel they could have gotten a little more. I think we are at that point where we feel maybe we could have been a little bit more restrictive in a sense to protect everyone there, and you may feel we could have given you more. I think that is where we are.

Michael Zarin: And I appreciate it. If the tenant walks and doesn't accept these, then we are put in a "no-win" position. It is not between you and us, how much we get and go home and feel good about it.

Ralph Vigliotti: At the end of the day – three, four or six months later, the tenant could very well be ready for the 60-appeal. They proved their case,

it's taken that long to get the participants we wanted anyway, and they're okay. It's not six years.

Michael Zarin: It's hard to get tenants to invest money up front, as you know when it's that uncertain. That's a problem. I appreciate your concerns. I don't think you'd be entering a black hole on those two times. I think there are real numbers, real data and real studies between your consultants and our consultants real life that shows that we all know what that situation is during those two times. I don't feel we are entering a situation that puts the community at risk. Obviously that is your job to protect the community. I think you will be protecting the community at 60, based on the evidence that is before you.

Chairman Cosentino: The Board feels it should be 45 and 32.

Sol Gibbons: I agree with what the other members have said. If your client is so sure it's going to work, then waiting three or four months is not going to hurt. He knows we are going to approve it.

Michael Zarin: It's a hard situation in a sense that it's not half pregnant. They have to make all the investment up front, and then take it at face value that even if they do prove it, which I think we've already proved it – that somehow they will get the additional use. That investment is made up front, and I think it's going to be very hard to get the tenant. If we cannot get the tenant, we've lost and we have to do what we have to do. We appreciate that you have to do what you have to do.

Chairman Cosentino: You're a real gentleman as an attorney, and I appreciate that. You understand, but I think we've made our case, and I think the Board will go to the 45.

Michael Zarin: What I've heard is 45 in the morning and evening, with a four month.

Chairman Cosentino: Did anyone say four month?

Ralph Vigliotti: We talked two, three, four six. It's something we need to talk about.

Vice Chairman Sturniolo: It was a general statement about time.

Chairman Cosentino: I think it was originally six months that we would monitor it and see what happens.

Michael Zarin: You should be able to get it in four months. When someone is operating, you can get a good idea.

Vice Chairman Sturniolo: Monitoring a situation in Mount Kisco is not something unusual to this Board. It happens all the time. That is probably the best check to make sure that both sides are doing what they purported to do. I'm not putting words in your mouth, but I wouldn't be apprehensive about the monitoring aspect at all. It's a common practice, and it's done methodically and carefully.

Chairman Cosentino: We've done it before.

Michael Zarin: I appreciate it. But to just be fair, we had no problem with it and you made us go through some pretty intensive technical parking utilization studies. We spent a good amount of money and time – and you did too – providing you with real data so you can make an informed

decision. All that data shows, and there is nothing in the record disputing it, that there is available parking in the morning and those evening hours for 60. There is nothing out there that says anything otherwise by your consultants and our consultants. To your point, the apprehension – if all the real data for this showed that they are available, but we're only getting 45, then what is there to say that we do monitoring in the future and it shows that things are good, but for whatever reason, the Board decides not to grant it, and that is the apprehension. Frankly, if I was in the position of the tenant based on what's happened, I would feel that uncertainty.

Vice Chairman Sturniolo: But sometimes the monitoring goes the other way and supports the concept that the parking is over-utilized as opposed to under-utilized. It's kind of a two-way street. This Board genuinely hopes that from your point-of-view and your client's point-of-view that it works out well, and that we can look at this in a reasonable amount of time.

Chairman Cosentino: How sure are you that it works in the morning and the evening?

Michael Zarin: All the data we have shows it does. That is the only basis. In my business, we try to base our decisions on substantial evidence. You made us provide you with that substantial evidence.

Chairman Cosentino: That's our job.

Michael Zarin: As it should be.

Chairman Cosentino: On a scale of one to ten, how sure are you that the mornings are going to work?

Michael Zarin: Nine.

Chairman Cosentino: Then you shouldn't be worried about the six months.

Michael Zarin: I think it works now – why shouldn't we have it now. It's not me, because my money is not in this. It's the tenant who is going to have to put up a bunch of money up front who has waited now about five months for this process to play out.

Chairman Cosentino: If you are so sure that it's going to work, what is there to gamble?

Michael Zarin: Because the point is, I may be sure but I haven't been able to convince you with all the data that you asked for.

Chairman Cosentino: You're not convincing us, but we want it to work for you and I think that's a good start. If there is really nobody going to park there, which there is probably not.

Michael Zarin: It's not "will," – they don't.

Chairman Cosentino: Then it's going to work.

Michael Zarin: If I'm a tenant and I have to put in all this money, I'm asking why doesn't it work now, because we showed it does.

Ralph Vigliotti: The site has history.

Michael Zarin: I understand. That's why you put us through this.

Ralph Vigliotti: The data is interpreted, and then you add in history. The history helps us to plan this through. We've moved from a very rigid 32 to a 45. I know there are some members here that are not comfortable with that, but they moved to that level. You guys did not hit a home run tonight, but I think you hit a solid triple and there are no outs. You have an unbelievable location right off the parkway. It's a perfect, perfect situation and your client knows that. It's something that has an opportunity to grow. Are there any other items on the resolution?

Chairman Cosentino: There are safety features. He said he is going to put sidewalks in.

Michael Zarin: We received it late this afternoon. The way I read the resolution, the sidewalks are not a requirement.

Chairman Cosentino: Mr. Martabano said he was going to put them in.

Michael Zarin: Yes, if the tenant stays.

Chairman Cosentino: Then it will be a requirement.

Whitney Singleton: This is just an amendment to the discussion. It is not an amendment to the site plan. They will have to come back for an amendment to the site plan.

Michael Zarin: That is the numbers of the issue, and it's not because it's a victory or competition. There is a very strong chance that we will not be able to get this tenant with 45.

Chairman Cosentino: It's five months. If you're established in five months and there is no parking there, come back in and we will work with you again.

Ralph Vigliotti: I think it's a good situation. Because in five months if you come back and you're pulling for 60, we may say 60 might work, but you need to change the time a little bit because of the overlap piece. I honestly believe, as one member of the Board, there is certainly opportunity. It may change the movement of time to make the opportunity to work, but five months is what we need.

Michael Zarin: You do what you have to do. I told you if the tenant pulls out because they don't want to make that investment....

Chairman Cosentino: I think he'd be foolish to pull out.

Michael Zarin: Maybe you would be. I hope he feels the same way, but I have my doubts.

Chairman Cosentino: Is he here tonight?

Michael Zarin: No.

Chairman Cosentino: We told you what we wanted. I think we were very reasonable. I think it's going to work. I don't even see the prospective tenant here tonight.

Michael Zarin: The Martabano's are here and it's their responsibility to provide the tenant with provable and usable space.

Chairman Cosentino: I'm not blaming the Martabano's. I just thought the tenant might be here. You've heard our case.

Whitney Singleton: You seem to be focusing on the actual approval components. On Page Six, it provides for up to 45 participants after 6:00 PM only and the rest of the existing approvals shall remain in full force and effect. I heard the Board discussing 45. Is that the number you'd like inserted?

Chairman Cosentino: Yes.

Whitney Singleton: It also makes provision for there to be revisions to this re-examination of this after 12 months. Your Board discussed a much shorter period of time.

Michael Zarin: On your 45, on your first resolve, I heard the Board say they would agree to morning and evening at 45.

Ralph Vigliotti: I said, as one member, I would be willing to entertain that.
Whitney Singleton: Up to 8:15 AM?

Ralph Vigliotti: 45, 8:15 AM to 5:30 PM, 32 participants and 5:30 PM to 11 PM. Correct?

Michael Zarin: Correct.

Whitney Singleton: Are you changing the 12-month review period to a shorter period?

Chairman Cosentino: Yes, five months.

Michael Zarin: The first paragraph is not 6 PM, it's 5:30 PM? I believe we agreed after 5:30.

Ralph Vigliotti: We did discuss 5:30 PM.

Michael Zarin: 5:30 PM to 11:00 PM. It's 6:30 AM to 8:15 AM in the morning, and 5:30 PM to 11 PM.

Jan Johannessen: 5:30 AM or 6:00 AM.

Krista Yacovone: 5:30 AM until 8:15 AM, 5:30 PM until 11:00 PM.

Michael Zarin: Also, included in our May 7 letter, it was 6:00 AM to 8:00 AM for the weekends, and the rest for 32. There is nobody parked during the weekend from 6:00 AM to 8:15 AM. This was not in the resolution, but when we were doing the numbers, I don't think Whitney distinguished between weekdays and weekends.

Chairman Cosentino: There is not much there on the weekends anyway.

Ralph Vigliotti: What are you proposing for weekends?

Michael Zarin: Weekends were 5:30 AM to 8:15 AM. Kidville doesn't open until 9 AM and then 10 AM on Sundays. Then, 32, and they don't have evenings on the weekends.

Whitney Singleton: What would the Chairman like in here relative to Saturday and Sunday?

Chairman Cosentino: It's the same as the weekdays as long as the place is locked up.

Krista Yacovone: Flywheel would be from 5:30 AM to 8:15 AM, then it stays open throughout the day, but we would stick with the 32.

Ralph Vigliotti: Will you be open on Sunday?

Krista Yacovone: Yes, with the same times.

Sol Gibbons: Closing at 5 PM on the weekends?

Krista Yacovone: It's 4 PM or 5 PM.

Motion to Approve the Request to Amend the Change of Use Permit, Including the Verbal and Handwritten Changes that were Subsequently made by the Planning Board to the Printed Document, Adding the Revised Times

**145 Kisco Avenue / Flywheel
PB2014-025**

Whitney Singleton: It will now read that the Change of Use permit is granted to the extent that the Change of Use granted on October 24, 2013 is hereby deemed to allow up to 45 participants between the hours of 5:30 AM and 8:15 AM and after 5:30 PM. Two paragraphs down will provide for five months rather than twelve months for a review period.

Ralph Vigliotti: Also show between the hours of 8:15 AM and 5:30 PM, 32 participants.

Whitney Singleton: By definition it shows.

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

Michael Zarin: Thank you. Under protest, but I hope it works.

Conceptual Application

**23-25 South Moger Avenue
PB2015-0266, 69.81-6-14 (SBL)
Site Plan**

Present

**Mark LaPointe, AIA, Director of Architecture, Friedland Properties,
Architect for the Project**

Marc LaPointe: I just received these comments this evening. Is that what we need to review?

Chairman Cosentino: Yes.

Marc LaPointe: I guess the comments from Robert Melillo – points one, two and three are not requiring anything of us. Point four says, “the applicant should provide what is in the landscape areas on the plans.” It is my understanding that area is an easement of the Town of Mount Kisco, and they maintain it. I’ve requested copies of Shoppers Parking Lot, and also of South Moger Avenue, because those adjacent parcels are really what defines the building. The building is basically just a rectangular concrete structure surrounded by South Moger and the parking lot. It would be helpful if I could receive that information from the Town, but I have not been successful in getting it.

Chairman Cosentino: Do you have a copy of the letter? Who did you address it to?

Marc LaPointe: I was not a letter. I went to the Building Department. I spoke to Patti Tipa, who did not have any plans and referred me to the Village Manager. I then spoke to Paula, requesting this information, and she gave me a brochure of Shopper’s Park.

Whitney Singleton: I can help with that. I will be in touch with you. I don’t know the extent of the easement that was in there in regards to the Village landscaping. I don’t have a recollection of how far it goes.

Marc LaPointe: It is my understanding from our personnel who works in Town, is that area sort of has sea grass, and I believe that is part of the Town of Mount Kisco. I guess the plan basically shows where the sidewalks are. It’s two small areas of planting. On the second page, (from the memo of) Jan Johannessen, it refers to site plan elements of Section 110-45B. “It is recommended that the site plan be prepared on a larger scale sheet to accommodate the additional required information.” Ironically, I prepared my site plan exactly as required by the Section 110-45B. It required a scale of one-inch equaling to 30 feet.

Jan Johannessen: The elements that are required by the code aren’t depicted on your plan.

Marc LaPointe: If I were to put the site plan check list, and have it all on the same paper, would that (suffice)?

Jan Johannessen: The requirements of the checklist need to be graphically illustrated on the site plan. Responding to the checklist items in written format is not sufficient.

Marc LaPointe: To the extent they cannot fit on the plan, then I can actually use a different scale than stipulated in Section 110-45B?

Jan Johannessen: You could modify the scale, but the idea is that there are a lot of elements required for the site plan that are just not shown on your plan.

Marc LaPointe: I understand that. I could not fit them on the plan because the required scale was insufficient.

Anthony Oliveri: I believe the required scale is a minimum scale.

Marc LaPointe: No, it’s very explicit. I’m an architect. I don’t use an engineering scale. I actually broke my rule to do an engineering scale on an architect’s drawing, because it was explicit.

Jan Johannessen: It definitely has to be an engineering scale. Maybe you should go to a larger sheet of paper and you can fit all the elements.

Marc LaPointe: That is what I mentioned. If the drawing is at this scale and the information is adjacent to it. Are you saying it's okay to use a larger scale?

Jan Johannessen: The information has to be graphically illustrated on the site plan, not as notes, per se.

Anthony Oliveri: The site plan check list is a guideline for the Building Department. I don't know that the code actually requires one inch to 30 feet. It's usually a minimum scale.

Marc LaPointe: I looked up the code, and that's what it says. It says, "unless specifically modified by the Planning Board, the site plan shall be prepared at a scale of one inch equals 30 feet." I had no choice than to submit it like this.

Anthony Oliveri: Generally, it's a limited (sic) scale.

Marc LaPointe: I understand that, but I am trying to do this specifically. If you want it that size, I can put it that size.

Anthony Oliveri: That would be fine.

Jan Johannessen: The point is that you responded to the site plan checklist in narrative form. These are elements that are supposed to be graphically illustrated.

Marc LaPointe: I understand that, but having said that, graphic illustration could include an index number referring to a table on the plan.

Jan Johannessen: You have to go through the checklist.

Marc LaPointe: Item Two says the site plan shall include a bulk zoning table. I did not see that on the site plan checklist.

Jan Johannessen: It's a requirement of the plan above and beyond the checklist.

Marc LaPointe: That is an additional requirement. I'd like to point out that when I submitted my application on April 7, I was two weeks early for the Planning Board meeting that was held two weeks ago. Indeed, I was two weeks early and I'm getting the information two weeks later. It's been a month of additional time, where if I had received some comments back, I could have responded.

Anthony Oliveri: The comments are released on the night of the meeting. You're getting them exactly when you're supposed to be getting them.

Marc LaPointe: I guess what I'm saying is, I was supposed to be here two weeks ago, based on when I submitted my application.

Whitney Singleton: A new application has a 21-day lead time.

Marc LaPointe: I know, but it was submitted on time. Item three (On Mr. Johannessen's letter) states "The site plan should illustrate the division between the two (2) tenancies; floor plans for each existing and proposed tenant space should be provided." I didn't see that information requested

on the site plan checklist.

Jan Johannessen: That is another standard requirement of the Planning Board.

Marc LaPointe: So it was an extra requirement. I had that information and I didn't include it because it was not requested.

Mr. LaPointe then passed a schematic diagram around to each staff and Board member.

Marc LaPointe: This is basically a schematic diagram of what we are proposing to do in the building. When Jersey Mike's came for their hearing, you noted that you would like to have a rear egress. We've enlarged their space to bring it closer to the back wall and also to consolidate the egress to maintain the maximum amount of usable area. We have spoken to Key Bank, and we're going to reconfigure their exit out the back of the building. Therefore, Key Bank and Jersey Mike's will share a common area corridor to an existing door. The remaining space at the back of the building will become a separate tenant space, perhaps a sidewalk café. When I look at it, I see that location as that type of use. This is what is the proposed layout of the interior of the building. The only difference between the existing is basically the space on the left is totally vacant and was Zee Vacuum with various portions of the area behind Key Bank. Key Bank has a straight shot common area corridor to that door. This is basically what we are trying to do to get the best use out of the building. The next item is "an existing conditions survey should be included with the submission." Are you talking about the interior?

Jan Johannessen: From property line to property line. The exterior, including the building – whatever is on the property.

Marc LaPointe: Basically the Town of Mount Kisco has more information on that than we do. It's basically South Moger on one side of the building, and an easement to the town of Mount Kisco on the opposite side of the building. As indicated, I have not been able to acquire that information. The town has more information on that than I do.

Jan Johannessen: You are going to have to provide an existing conditions survey of the property. It's up to you to provide that to us.

Whitney Singleton: You have to have your surveyor provide a survey of the existing conditions. The fact that there may be a Village sidewalk doesn't evolve upon the Village to provide you a survey.

Marc LaPointe: I guess I'm asking. Is that something I can get from Mount Kisco?

Whitney Singleton: No, it's something you have to have prepared by a surveyor.

Marc LaPointe: In my submission I used the Town of Mount Kisco downtown survey.

Whitney Singleton: Do you have a survey of your property?

Marc LaPointe: I have your survey.

Whitney Singleton: You don't have a survey of your own property?

Marc LaPointe: No. It was not requested on the site plan checklist.

Whitney Singleton: In order for you to prepare a site plan, which you currently do not have, you are going to need that based upon a survey of the site. You're going to have to have a survey of your site. I'm sure that one was done prior to your client owning the building.

Marc LaPointe: I can look for a survey, but again, it was not the information that was requested on the site plan checklist.

Jan Johannessen: It's an additional requirement.

Anthony Oliveri: What is the site plan based on?

Marc LaPointe: It's based on the Town of Mount Kisco Shopper's Park. Does this site plan look familiar to you?

Anthony Oliveri: No.

Marc LaPointe: It's all of that downtown area.

Whitney Singleton: Right, and I would imagine that the same surveyor that performed that performed a survey of your client's property. I would simply inquire about it. We are not certifying anything to you. You need to certify to us.

Marc LaPointe: I understand that, but as you've indicated, these are all additional requirements.

Anthony Oliveri: You need to base the site plan on the actual survey. You can't just take tax parcel map lines and draw. The base map should be a survey.

Marc LaPointe: Again, I understand what you're saying, but it's not information that was communicated on the site plan checklist.

Anthony Oliveri: There is a lot of engineering information that is not on that checklist. There are some basics to providing a site plan.

Marc LaPointe: I'm not trying to be facetious. I am just disappointed.

Anthony Oliveri: Not everything is on that checklist.

Robert Melillo: Why don't you set up a meeting with the staff?

Chairman Cosentino: You need a survey of the building.

Marc LaPointe: Again, I am not trying to be facetious, but I was trying to respond to the requirements of the Town to prepare a site plan for a building that has been there since the 1950s. We are trying to document something that has been there forever.

Chairman Cosentino: You need to set up a meeting with our staff and get this straightened out. We will put you back on the next agenda. I do appreciate what you're doing.

Robert Melillo: Your points are well taken. After this, we will review our checklist and make modifications if necessary at that time so this

misunderstanding does not happen again.

Whitney Singleton: As far as requirements, you were required to provide sufficient description or information to define the precise boundaries of the properties, All angles shall be given to the nearest (10) seconds or closer.

Marc LaPointe: That's on the plan.

Whitney Singleton: Is it certified? You are using somebody else's book drawing.

Marc LaPointe: Right.

Whitney Singleton: Is it stamped?

Marc LaPointe: I used the Town of Mount Kisco's overall downtown plan.

Whitney Singleton: That is not our plan. That is by a surveyor.

Marc LaPointe: I understand what a surveyor is.

Whitney Singleton: I understand, but he has certain rights to that property. You can't just use it without consent.

Marc LaPointe: Do you have any other requirements for the next submission?

Whitney Singleton: I will be happy to look into the easement issue, and you can meet with the Building Inspector and Planner with regard to further submissions.

Marc LaPointe: I'd also like to make note that when we requested for a site plan for this building about two months ago, and that it would hold up any new tenants in our buildings, I submitted a written request to the town of Mount Kisco for all of our properties in Mount Kisco, and I have yet to receive a formal response. So, basically, we are in a situation where if tomorrow we have a vacancy, that building does not have a site plan on record and we will be delayed through this process again.

Whitney Singleton: You submitted a F.O.I.L. (*Freedom of Information Law*) request to the Village Manager?

Marc LaPointe: To the Building Department to find out which of our buildings have recorded site plans and which do not, because we don't want to end up in the same situation again. These are existing buildings. They've been here forever. We've got tenants who want to come in and lease the space. These are vacancies. We've been approached by the Mayor of the Town of Mount Kisco, and the Village Manager asking us, "How can we help you to fill your vacancies?" And what we are going through now are basically paperwork hurdles for buildings that have been here since before most of us were born.

Whitney Singleton: First of all, that's not true that they've been here for that period of time. Many of these buildings are relatively new and many of them have site plans. You have been responsive to the Board's request to make sure that there is rear access for the purposes of delivery, access, trash, etc., and that is certainly appreciated. This Board cannot entertain an

application for your existing site plans, which buildings do and don't have them. It has nothing to do with this Board. If you misdirected the application to someone else or you F.O.I.L. requested not to the designated F.O.I.L. Officer for the Town that would explain the delay. If you sent them to the F.O.I.L. Officer, you would have had a response within five days. By law you would have that response. I don't know where you sent it. I did not receive a copy of it. With regard to the easement area, we will work on that. With regard to this being grandfathered in some sort of way, your client's only owned the property for several years. It has not been decades and decades. This is a requirement of the Board.

Marc LaPointe: It's not the ownership, it's the building.

Whitney Singleton: Understood, but when your client purchased property I presume that they got a survey of the property. This should be a minor issue.

Marc LaPointe: Presumably the Town of Mount Kisco has something on record for that building, but they can't find it.

Whitney Singleton: But you don't have a right to use that. You still need to reach out to the surveyor who did the work, and you have a copy of his plans.

Marc LaPointe: On that subject, I am going to get a survey but what I was talking about was all the other buildings.

Chairman Cosentino: What does this have to do with all of your other buildings? You're here for an application, and that is what we should be talking about. You need to do your homework and come in with facts instead of blaming this Board. I want to make this very clear to clarify that. This Board had nothing to do with the problems you're bringing to us tonight. We are here on one application, not all the buildings that you own. Let's work on the one application. On all the other buildings that you're talking about, I think something happened. We cannot control that. In all due respect, let's talk about the one application and what you have to do to get this cleared up.

Marc LaPointe: I am trying to avoid coming back here for future buildings.

Chairman Cosentino: Then you need to sit down with the Village Manager.

Robert Melillo: That is something that is to be taken up with the Building Department.

Marc LaPointe: That is who I've been dealing with, the Building Department, because they are the ones who brought this to my attention.

Ralph Vigliotti: That is not a Planning Board issue, and we cannot help you on that issue.

Marc LaPointe: That is what I'm trying to find out. I have nobody else to ask.

Chairman Cosentino: You are venting to us, and I can understand that, but you're venting to the wrong people. We are here on an application that you submitted. Let's talk about this application solely. Bottom line is that you are going to have to sit down with the Building Department and the Planner and while you're talking to the Building Department you can suggest your

other buildings. As of now, so we can get this done, you need to meet with Jan.

Marc LaPointe: Thank you. I appreciate that.

Conceptual Application

**Jersey Mike's Subs
23 South Moger Avenue
PB2014-0263 69-81-6-14 (SBL)
Change of Use**

Present:

Brian Egan, Franchisee, Jersey Mike's Subs

Brian O'Hagan, Area Director, Jersey Mike's Subs

Brian Egan: In response to our last meeting, we were asked to review the rear access. This is a copy of our space going into the rear access, which then goes into what Mark has proposed. So, we now have the rear access that you requested.

Jan Johannessen: Those plans need to be revised to show the entire limits of the building so you can illustrate the rear access.

Brian O'Hagan: We thought the last time we were here you needed the rear access.

Jan Johannessen: Yes, that was the main issue.

Brian Egan: We know there is no approved site plan, it is in process. We know an RPZ (backflow device) will be required, but a sprinkler system will not be required. We have that.

(Now referring to Mr. Oliveri's memo) The floor plan should include the entire space including the adjoining bank for clarity. We will reflect that.

The proposed floor plan must be reviewed by the Building Department for code compliance. What does that mean?

Anthony Oliveri: Rob needs to review the floor plan. Do you have that in your memo?

Robert Melillo: Yes, I looked at it. I did not do a building plan review of it.

Brian Egan: That would be on the building permit process?

Robert Melillo: Yes.

Brian Egan: And this Change of Use Application cannot be approved until the owner has procured an approved site plan of record.

Chairman Cosentino: He will do that with the planner.

Brian Egan: I want to make sure I'm ready for approval. What else do you need from me?

Anthony Oliveri: That, and the adjoining space needs to be shown. This

floor plan is going to be in the record, so I suggest you sit down with Rob to make sure this floor plan works.

Whitney Singleton: Have you been to the Architectural Review Board (ARB) yet?

Brian Egan: We have not.

Whitney Singleton: They will review your signage and any monitoring they may have. Mr. Chairman, do you have any objection if they dual track this with the ARB?

Chairman Cosentino: Not at all, I think it would expedite it.

Whitney Singleton: Speak to Patti about getting on the next agenda for the ARB. She will tell you what materials need to be submitted.

Jan Johannessen: You can also work with the owner so that subsequent submissions are made simultaneous with the site plan application. The Board cannot approve this without the site plan. Date your submissions so they appear on the agenda the same date.

Robert Melillo: If (the Board) is alright with the layout of site plan, they can submit for the building permit so I can at least review it.

Chairman Cosentino: Yes, he can submit for a building permit. The layout is okay.

Robert Melillo: If they get that going, by the time I review for the building permit, this will be through the process, and you will get all your permits at the same time.

Brian Egan: Thank you.

Vice Chairman Sturniolo: Besides these sub heroes, what other type of food are you going to be serving?

Brian Egan: Submarine sandwiches, hot and cold, Lays potato chips and soft drinks - pretty simple.

Vice Chairman Sturniolo: Where does the bread come from?

Brian Egan: New Jersey. We bake it on site.

Conceptual Application

**Timber Ridge Condominiums
Armonk Road
PB2014-0267 80.73—1-8 (SBL)**

**Present: Charles V. Martabano, Attorney at Law, representing
the applicant**

**Stefanita Vasilescu, President, Timber Ridge
Condominium Board of Managers, Owner of Unit 43**

From the Public:

Residents of Timber Ridge Condominium:

Rich Mintzer, Unit 5

Diana Abraham, Unit 21

Gina Anstett, Unit 49

Bill Tower, Unit 15

Florence Zelenko, Unit 7

Pearl Cohen Unit 3

Gil Nahmias, Unit 22

Mickey Zucker, Unit 18

Eugene Senal, Unit 16

Karen Schleimer, Unit 9

Barbara Richards, Unit 25

Charles Martabano: We obviously know tonight is not a public hearing.

Chairman Cosentino: If they want to say something, I am going to let them talk.

Charles Martabano: That's up to you.

Charles Martabano: I apologize for not attending the last meeting. I was delayed at another municipality. I do apologize for the inconvenience. Tonight, unfortunately, our architect took ill. He is not with us tonight. I believe Stefan can take you through the very basics of how we got to the most recent version of the plan. I want to give you a little bit of history, because we are really here on a conceptual review. You have had experience with a very early variation of this application. In 2011 they came before your Board on a conceptual application, and with the suggestion of Austin Cassidy, members independently conducted a site visit, not together as a Board. Unfortunately, the application was not very well coordinated at that point in time. No one escorted you or showed you the plans, and we really didn't get a lot of traction at that point in time. When we got involved, we resubmitted to the Zoning Board of Appeals, and we have gone through a couple of different variations. One of the important things to understand here is that we do require variances for, I believe, 23 decks. These decks exist today. They existed in 1979. Nothing that we are proposing creates any new use whatsoever. These decks, as they are proposed to be expanded, would be compliant today if the law had not changed subsequent to the construction of the development. The law began in 1967, which was the code that applied to this subdivision. It then changed again in 1984, then in 1987. It changed it rather significantly. Originally you had side yards of 12 feet, rear yards of 30 feet. Now, the rear yards are increased to 80 feet against a single-family lot. I think the earlier determination by the Building Inspector indicated that was applicable to this side yard. I think that is actually an error, but that is not for you to discuss at this point in time. In any event, we've gone to the Zoning Board, they conducted a site visit, and they asked us for a new "as built" survey. Then they made suggestions, on a second site visit, to decrease the extent of the

magnitude of the deck revisions that we asked for you. Stefan will take you through the plans.

Stefanita Vasilescu: In 2011, Barry Goewey was approached by our Board to give us an idea how we can replace the existing decks which are in advanced state of decay. At that point, because we had requests from the unit owners, we also wanted to consider enlarging them. He met with the Building Inspector at that time, Austin Cassidy, and Austin suggested that Barry meet with your Board to get an input before we start looking or doing anything. As Charlie described, that did not seem to be the right approach, so in 2012 we met again with Barry Goewey, and this time he told us that this time we will need to hire a counselor and approach the ZBA. We hired Mr. Martabano, and we started the process. Our first approach to the Zoning Board ended up with a resolution that would be a site visit so we can better explain to them what we are trying to do. At that point, Mr. Goewey was presenting a conceptual plan where all the decks were enlarged to the full width of the unit. They were touching each other, and we were providing a privacy wall. Also, existing decks are 5 feet, and we are asking to double it to 10 feet. *Mr. Vasilescu now presented a drawing.* For example, Unit 2 is the first unit with a deck. It mentions 12 x 5. Going to the width was 22 x 9. We made a presentation to the Zoning Board, they made their comments, and based on the input from the community in favor or opposing the project, the Board asked us to review the site plan showing smaller decks and even more privacy, eventually eliminating those privacy walls and eliminating the fact that the decks were touching before.

Charles Martabano: Going back to the comments that your Board made in 2011, it gives you some insight as to how we approached this by listening to things that were said. For example, because the application was not coordinated, Vice Chairman Sturniolo asked where the people were that were in support of it, or something to that nature. Usually in a case, you see people turn out. On that point, I have letters from the community. 41 of 49 unit owners have signed letters of support, which I will give to Mr. Singleton. That is an approval rating of 83.679. So, almost 84 percent of the unit owners support this application. Mr. Vigliotti commented also at that time saying that looking around, you could understand – and again, these were much larger decks we were proposing – that in certain places it would not have any sort of an impact, and you had to look at it almost on a case by case basis. That is exactly what happened before the ZBA. Chairman Rose said, “Let’s look at each one individually,” and made suggestions, such as let’s not have them touch. Let’s shrink them to reduce the magnitude of the variance. If we do that, issues of privacy are lessened, and there is less impact on it. That is how we got to this plan. Our real purpose in being here with you tonight is to be able to show you these things in the field. We’d like to get you to come out and take a look at exactly what we are proposing in what locations because the ZBA would like to get your input. In any event, if we are successful with the ZBA, we need to come back to you for an amended site plan approval. That is our real purpose in being here – to give you an overview of there, but truthfully, just like you picked up things in the field and were very smart to make certain comments, we want you to go back now and look at our revised plan, which is significantly lessened and get an idea of what we are proposing. Our real purpose is to get a date to come out with you and do a field inspection.

Vice Chairman Sturniolo: I’d like to address a point to the record. Mr. Martabano made some mention of some facts that I may or may not have said going back a couple of years. I don’t have my notes in front of me, but the mere fact that he stated it does not mean that there is any type of endorsement one way or the other on my part for this presentation. My

question is, at the beginning you had said some of the decks are falling apart and people wanted to replace them and make them bigger. Did you ever consider the concept of just replacing the decks in kind without increasing the size?

Stefanita Vasilescu: That is where we started. There was some previous work done with two or three of them at the time. In 2010, we actually had the concept where the decks, instead of being replaced, were supported, because those are cantilever decks. Actually, that is where we learned from one of the bidders who refused to bid on the supporting of the decks because he believed those decks should be replaced. We moved from replacing one or two to replacing all the decks in the community.

Vice Chairman Sturniolo: Whether the residents wanted them replaced or not, you decided to go ahead and replace them.

Stefanita Vasilescu: It became a safety issue. There are some decks that were replaced, and they are safe as of now. The majority of them are not safe, and actually, a month ago, Unit 2, which I was giving as an example, collapsed; just collapsed. Number 44 collapsed last year, and I have a few others where immediate attention would be taken. We want to do this as a project for the whole community and come up with a uniform concept. We have a lot of families with children. Those old horizontal bars are not safe and up to code, so we need to work with spindles. Instead of doing one, two at a time – different sizes, different and different shapes, we wanted to make something uniform.

Charles Martabano: Directly to your point, there was testimony at the ZBA already when property owners got to make presentation to the Board. They pointed out that the existing depth of the decks is approximately five feet. Imagine you're going to want to have dinner on your deck. Your table is four feet wide. What are you going to do? You basically have a chair and a chair and one table. What we are talking about is that you might be able to get a table for four out there. It's not a very large expansion, and the abstract is that the decks are presently so small, and as Stefan point out in many cases built on a cantilever.

Stefanita Vasilescu: They are all built on a cantilever.

Charles Martabano: This is a significant project in terms of trying to do the right thing for the community and to do the right thing from a construction point of view. It is not something that was done without the endorsement of the resident owners. Obviously, with respect to condominiums, you do things by a majority. It is something we want to do to enhance their living experience and you have to protect now, because of the reductions, the privacy of each individual unit owner. We are trying to reach an accommodation. We got good input from the Chairman of the ZBA, and we are looking for good input from you. We would like you to come out and take a look to really understand the impact. We will have our architect available and walk you through in a proper way. You will have the plans and you can look at individual situations. I think that is the best way for us to proceed.

Stefanita Vasilescu: This is how we actually got to today's plan. We came up with a concept where we brought everyone to 15 feet, which is an increase by three to four feet from the existing width wise, and from 10, we are down now to 8. We moved from 5 to 8, we moved from 11 to 15. We tried to make as many as possible to the community being 15 to keep it uniform. Between the unit owners with visual impact, there were a few instances.

Right now there are 22 in 1978 when they were built. There will be three of them that will remain the same. There are 49 total units, and we have 4 unit owners without a deck. Units 1, 8, 13 and 42 did not have a deck from inception. They are in a situation where they cannot have a deck.

Chairman Cosentino: We should set up a site visit.

Ralph Vigliotti: I am not available until the 15th of June.

Vice Chairman Sturniolo: I would like to do a site visit after you come back to the Planning Board. After you have completed what you have to do with the ZBA then come back to the Planning Board, then I'd like to do the site visit then.

Charles Martabano: The only problem with that is that the ZBA is looking for some input from the Board. That is why we brought this in on a conceptual basis, because, theoretically speaking, we cannot make a formal application because we need variance. We cannot make a formal application and get input from your Board before that time.

Vice Chairman Sturniolo: Has the ZBA contacted the Planning Board?

Whitney Singleton: Not at any meetings I attended. There was one meeting that I missed. Usually when they request something from you, they request it from you directly, not through the applicant.

Chairman Cosentino: We have not gotten anything.

Vice Chairman Sturniolo: I would prefer to wait until you settle what you have to do with the ZBA, then go out and approach it strictly from a Planning Board site plan viewing of this, because the ZBA is more than qualified to make their own decisions, and they don't surely need our suggestion one way or the other.

Chairman Cosentino: I think if the ZBA wanted us, they would have sent something to us. The decision is really up to the ZBA.

Charles Martabano: Since they know that an amended site plan application will be made to you, I think they want your input. Let's be honest, you are the experts in planning in the Village. That is the way that it works.

Vice Chairman Sturniolo: But not the experts in granting zoning changes. That is their world of expertise and not ours, and I don't see how we could contribute anything to help them out.

Charles Martabano: Again, because the way that works, and you're saying, I think, that if the ZBA wants input on any application you cannot give it because they can't make formal application to you because they have a variance.

Whitney Singleton: There is a provision in State law that allows the Zoning Board to request input from any official Board or agency that they want relative to a particular application. It doesn't mandate that you give it. It doesn't mandate that it be of a particular nature; whatever your thoughts are if you're so inclined to give it. I don't know that the Zoning Board has requested that. Nobody asked me to write a letter to them. Usually that is the protocol, for me to request it of the Planning Board in writing. I will inquire of Chairman Rose. If it is a request of the Zoning Board, then it is up to you to determine whether you wish to comment.

Vice Chairman Sturniolo: Here is the point, gentlemen, if it's requested, it's up to us to decide whether we are going to comply with the request or not, but we are not obligated.

Whitney Singleton: You are certainly not obligated, correct.

Chairman Cosentino: I would not want to steer the ZBA one way or the other. I want them to make their own decision on this application. I would not want to make a recommendation to the Zoning Board saying that the Planning Board is in favor of it. I don't want to do their job. They have to make their own decision based on what they view. I think you agree with that.

Charles Martabano: I don't think they are asking if they should grant the variance. I think they are asking you for your planning expertise. As Whitney is pointing out, you don't have to do it. If they request it, you can say no, and it sounds like that is what you want to do. I'll go back to them and say you don't want to comment at this point. I was following through on what I believe they wanted us to do.

Chairman Cosentino: I really don't know what they want us to do. I think they should send us something.

Charles Martabano: At that point, I think you're still saying you don't want to say anything.

Chairman Cosentino: I just don't think it's the right thing to do. I just don't want to tell them their job. As they said one time, they don't want us to tell them what to do. If he is going to put us in a situation and say, "Look, guys, what do you want to do?" No, you tell the applicant what you want to do. We are not the ZBA here. It is up to them whether to deny or not. I think the consensus of this Board is we are not making a recommendation to the ZBA. We didn't do it for the Hearth, and that's a major project. They are still before us, and what do we tell them when they tell me, as a chairman, that I made a recommendation for Timber Ridge, and I didn't make it for them, which is a multi-million dollar project. I would be put in a situation I would not want to be in.

Charles Martabano: If it is the consensus of the Board, this is what I should report back, I'm okay with that. As Whitney pointed out, nobody is forcing you to do anything.

Chairman Cosentino: You need to go before them.

Stefanita Vasilescu: We didn't understand why they asked us to contact you, to be honest.

Charles Martabano: I think we knew why. This is the Board that has planning expertise.

Stefanita Vasilescu: They were referring more to the engineering part.

Anthony Oliveri: The structural aspects of the deck should be reviewed by the Building Department.

Chairman Cosentino: I didn't say that this Board was for or against the project.

Charles Martabano: I'm not saying that. You're saying you don't want to give input to the ZBA. That's fine.

Chairman Cosentino: I'm going to be very clear. I think Vice Chairman Sturniolo is correct in what he's saying. He feels you should go to the ZBA first, like most applications do, and come back before us.

Whitney Singleton: Did you say all of the decks are cantilevered?

Stefanita Vasilescu: Yes, that is why they are five feet.

Jan Johannessen: All 49 decks?

Charles Martabano: There are 45, and they are all cantilevered.

Stefanita Vasilescu: We need to be 100 percent accurate. I didn't look at that. Two were built two years ago, and ten years ago. Maybe they reinforced the cantilevers. Maybe they cut that and made the frame the way it should be, true-bolted (sic). They were all built on cantilever. That's for sure.

Ralph Vigliotti: Supposedly all the cantilevered decks will be taken down and be made stand-alone?

Stefanita Vasilescu: Yes, we will go from the cantilevered bolt to today's technology and code.

Charles Martabano: Which they say they are in need of, which you probably remember after visiting in 2011.

Ralph Vigliotti: I am hearing that we are telling you to go to the ZBA, and if the ZBA says we would like to get some input from the Planning Board, at that point, we would make a decision.

Charles Martabano: That's not what I heard.

Ralph Vigliotti: That is something we need to discuss. It does happen that the ZBA says, "We have a job, but we'd like to get a sense of the Planning Board." The Planning Board may say at some point, "We don't have any opinion to make. We are sending it right back to you."

Charles Martabano: That is not what I heard a few minutes ago.

Ralph Vigliotti: I'm trying to figure out if that is what we are trying to do.

Charles Martabano: The best thing now is for Whitney or one of us to contact Chairman Rose and clarify this situation for the Board.

Chairman Cosentino: Yes.

Whitney Singleton: I will be happy to do that. Just for mapping it out a little bit, does that mean there is not going to be a site visit? Either way, you are going to proceed to a site plan application.

Charles Martabano: Yes. A site plan visit will be required anyway because there are a lot of decks that do not require variances that will be constructed, and for that we will need amended site plan approval. Perhaps a site visit might be in order in any event.

Vice Chairman Sturniolo: Why would we want to do a site plan visit in advance, not knowing what the Zoning Board of Appeals is going to decide?

Chairman Cosentino: Because they'd have to come back even to re-do the decks.

Vice Chairman Sturniolo: That would be the logical time to go out there.

Chairman Cosentino: They can get denied, but we still have to go back when they come in for application to re-do the decks.

Charles Martabano: About half of them can be expanded no matter what, because we don't need variances for them, so we are going to have an amended site plan approval process anyway.

Chairman Cosentino: It would not make any difference.

Vice Chairman Sturniolo: We are stepping into, what we said ten minutes ago we weren't going to.

Ralph Vigliotti: We are having an open dialogue and conversation. One way or the other, it's beginning to evolve.

Chairman Cosentino: For ZBA purposes, I agree. But, if the ZBA denies them a variance, we are still going to have to go back and address this.

At this time, Chairman Cosentino asked anyone who would like to speak on behalf or in opposition of the project to come forward.

Rich Mintzer – Unit 5

Rich Mintzer: I am in opposition. There are five other unit owners here in opposition. They tell you they have an overwhelming majority. They have five unit owners here in support of them. We have six in opposition. That is not an overwhelming majority by any means. There were eight letters sent to the Zoning Board in opposition, and there are three more people here who did not send letters to anyone, so that's at least 11, or 22 percent of this community in opposition. Why? We don't want to lose our privacy. We don't want decks being moved closer to us. We don't want to undergo the expense of a deck change. We understand if the deck is about to fall down or fire hazard or anything else that we need to do something, but when you start building larger decks you incur a larger expense. We have been told no possible expenses. We have been given no parameters, no ballpark figures. We have not been told what they are spending on the architect. We have not been told what they are spending on the attorney. We have been completely in the dark.

Chairman Cosentino: That is not my business.

Rich Mintzer: I understand. We do not want to lose our views with other decks. We do not want unit owners who are this far away (indicating) to now be much closer. These decks, as you will see – and some do need repair – are very, very different. There was almost no unity between them. There are four people who don't have them. Some people have them raised, others are on stilts. Other people have them on the ground. They are going to require a tremendous amount of work on the part of whoever does this project. This is not an easy project. Our front porches are all uniform. They were all easy to replace for \$600. This is not this type of project, and we are going to have to be there living through an amazing amount of

construction for three feet more on a deck. We feel that is an imposition to those of us who live here. There are at least 11 or 12 of us who are opposed to this – not whatever he says – he took that survey three years ago. We don't want to have to pay for something that we don't want.

Chairman Cosentino: Thank you very much.

Mickey Zucker – Unit 18

Mickey Zucker: I am a former president of the Timber Ridge Board of Managers. I consider Stefan a good friend, but we just are not on the same side of this particular situation. I actually came up, by our count with 12 letters that we have. The numbers don't quite add up, because 12 out of 49 is actually 24.5 percent. My guess is, if we had a more concerted effort to really get to the bottom of it, the numbers might be different. I guess that is one of the things that I would love to see. I would love to see a little more involvement of the community at this stage in really making a determination. I personally think the comment that was made earlier about replacing the decks with decks in kind is the more appropriate way for us to go. I am concerned about a loss of privacy. Just before I came here, I (was at) the sliding glass doors that open up onto my deck. I realized I could look to the left on my deck and I see roughly 25 percent of my neighbor's deck as it exists right now. If the decks are larger, obviously I'd be seeing more. But it's not the amount that I'm seeing that concerns me and others, it's the amount that, if someone else now is sitting at that larger deck, they are looking right into my living room. It's a concern, and I think at this point, we are a little premature. My personal opinion is, I'd love to see more involvement of the community so we could one day come before you much more united.

Gina Anstett – Unit 49

Gina Anstett: I've been living at Timber Ridge for 17 years, and there are several reasons why I think it would be a very, very good thing for all of us to have a slightly larger deck. Larger to me means a couple of feet out from the side of the building. I actually tried this once. Three of us were sitting on beach chairs on my deck. Our knees were touching. That's how tight it is. Two people can have a dinner or lunch on the deck, but you cannot even put four people around a small table. The other reason I think we should have larger decks is that I think it would increase the value of all of our units, because our decks are so inadequate. I think the objection from a few unit owners that it would impinge on your privacy is a little frivolous and bogus. If we wanted to have a loud party or we wanted to infringe on somebody's privacy, we could do it right now. We don't need a larger deck. We can set up chairs and have a party right on the common property with plenty of grass that we could throw a party and annoy our neighbors. We don't need a bigger deck to annoy our neighbors. I think that is a bogus argument. I think it would be to the advantage of everyone. We have a majority of people who are in favor of larger decks. We are not looking for 10-foot decks. We are looking for something a little bit more livable.

Chairman Cosentino: Thank you.

Karen Schleimer – Unit 9

Karen Schleimer: Just to counter the point, this (indicating) is a table for four on my deck. The three-bedroom decks are bigger than mine. Mine is a two-bedroom deck. It's a table for four, and I've got three chairs. The deck is not quite as inadequate as it's made out to be. I wanted to say that

anyone who has approved the concept of decks did it on a presentation made almost two years ago. The facts are entirely different. I was provided with information tonight that, in fact, the decision will be an individual decision by unit owner as to whether his or her deck is enlarged, assuming variances are granted. That means, where we now have consistency, and the decks are of a uniform size and depth, we will now have a situation perhaps where you have one deck that's larger and one deck that's smaller. Who is going to maintain these, whether that's a common expense, whether that's an individual expense...the problem is there has been a lack of information. No one can make a decision whether they do or don't want a deck, because we simply don't have the facts and know how it's going to operate. The privacy screens that Stefan talked about today, I was told still exist. If your neighbor wants a privacy screen, you get a privacy screen. That is what I was told by a very knowledgeable unit owner this evening. In my case, that would be a disaster. I have a wall on one side of my deck; I would now have a privacy screen on the other side of my deck. The original plan – and I don't know if it's valid or not – was that they were going to be six feet high. So, instead of looking at a vista of a forest and a brook, I am now going to be penned in, blocking light and air. I don't know the parameters of how the Board intends this to work, because there has been a lack of information. I don't think anyone can make a decision yeah or nay. If somebody came to you and said, "Would you like a Porsche?", most people would say yes. But that's as much as we know. We don't know any of the details; model, variety, we don't know if it's going to have steps, or not going to have steps.

Ralph Vigliotti: Have you met as an Association in a general forum?

Untranscribable feedback from the audience.

Karen Schleimer: Not in two years. I would also ask this Board if you make a site visit, please invite members of all parties to the site visit. Gina's location of her deck is in a very unique location. What is true for her deck is certainly not true for my deck. My deck is here (indicating) - any going out further, (my neighbor) will see into my living room. We are closer than many of them, but we are close. Every area has different issues. If you go out further on my deck and make it bigger, my entire backyard will be covered by the deck, and that is true for several areas. Where the President of our Board lives, he doesn't have a sliding glass door in the basement, which we do. He could go out till Christmas and have no impediments; he has a big, open area there. Every portion of the site is different and you really have to look. I have pictures, and I don't think you need to look at them tonight. If you do make a site visit, I would ask you invite other members.

Beth Vetare–Civitello – 20 Timber Ridge

Beth Vetare-Civitello: I have lived at Timber Ridge for 14 years. Thank you so much for hearing us. I think some of this is obviously not necessary this evening, because this is not your application. We are looking for, I think, the majority who had signed off three years ago, is the ability to expand the decks. That does not mean that once the Zoning Board hopefully grants our application, that it's an automatic. Then we certainly need to get together as an Association. Obviously, the majority rules. There are going to be variations, as Karen so succinctly pointed out. Some of the buildings have a lot of land behind them. Some of the decks are already enlarged. Some of them have decks that walk out onto the grass that don't require what we are asking. Some of us went out on our decks on Memorial Day and touched knees with each other, and there were three of us. We are really

trying to look to the village and the Zoning Board to at least grant us the application so we can further say, "Let's do some more informed decision making at this point." Yes, it is different now than two or three years ago. The decks are falling down. Mine was a cantilever. They had to re-post it so it would not literally fall down. It's still not doing great. These things were built in the 70s, and a lot needs to change just to keep up. None of them are in great shape unless they were rebuilt. We are looking for the ability to proceed. We are, at this point, stilted. We are just trying to move ahead, and then we will have to deal with our decision-making within ourselves, but without the Village's and Zoning Board's approval, we can't even get to that point. It certainly will enhance any resale value or value of the home. We are trying to be levelheaded about it, and we all have our points, yeah or nay and we will have our differences, but we would like to at least have the ability to have that discussion.

Whitney Singleton: I'm not talking about your unit or anyone else's unit, but on the perspective of each unit, or each building or each location being different, in the event that some relief was granted, some were modified and some were denied by the Zoning Board ultimately; how is that going to weigh on your Board's decision? I can understand if you're going to do a deck and then another deck, and then somebody says, "I don't want a deck," and then no deck. Is this going to be an all or nothing? A unit owner's?

Beth Vetare-Civitello: I don't think I can answer that as an individual, but I think if you look at the different pods, so to speak, you will see in our area, most of our decks are all raised. Whereas, on the upper end, some of the decks are on level, so they can walk right out onto their grass. There are some decks that have already been enlarged, whether they were on the model home, etc. You already have varying sizes and areas, but I don't want to answer that.

Whitney Singleton: Charlie, do you?

Charles Martabano: That is a decision they will have to make as a Board. It's not a zoning issue for us.

Whitney Singleton: Mr. Chairman, would you like me to confer with the Zoning Board Chairman?

Chairman Cosentino: Yes.

Whitney Singleton: If it's okay with you, I will put that in the form of a memo to you and your Board with a copy to the applicant's attorney so they are aware of it.

Chairman Cosentino: Please.

Gil Nahmias – Unit 22

Gil Nahmias: To get to the heart of the matter, this deck, to me means more than enhancing property value. I am the father of two young children. Spending time with my kids, which I don't get to do a lot, is very important to me. This deck that we have now is really a balcony. I cannot go out there, enjoy the outdoors, and spend some time with them. We can't do that. We can do two at a time. We don't get the opportunity to just go out there and have a nice meal together and enjoy what many families throughout Mount Kisco do. That is really what we are asking to do. I know some people may have complaints about privacy issues, construction issues.

I cherish my privacy just about as much as anyone else, perhaps even more. I am one of the individuals that went to the Board when this project came up, and one of the first things I addressed to them was the issue of privacy. I wanted to know how is it that I am going to be able to maintain it? They came to a compromise with that. They came up with the privacy fences. This is not a project that came out of nowhere and just arbitrarily decided. It was thought out. They went through architects, and regardless of what some people might tell you, we went through the lawful process of meeting as a community, voting to authorize our Board to come forward to the town to request permission to do so. It is not a process that will always make everyone happy, but it is nonetheless one recognized by the law. Is there going to be construction? Yes. But regardless of whether the deck is going to be ten feet or five feet, there will always be construction. These decks need to be repaired. There is probably also other work that is going to be done on our condos, they date back to the 70s, and we really need to improve that. My neighbors may have issues with all these things, but I don't think the town should get involved with our internal matters. The State of New York passed a law called the Condominium Act. That act has procedures for us to decide what we do with our property. We are going to do that. We are going to follow the law. We have a Board that is going to be able to enforce whatever regulations are necessary to make sure that everybody's privacy is maintained, noise is kept down, etc. We will follow that process, and that process is going to take care of everything. If anything, I would ask this Town to take the objective point-of-view and treat us as any other property owner, not listen to our internal squabbles but just listen to the application of our Board and make a decision according to that.

John Macdonald – Unit 46

John Macdonald: Last weekend my grandkids came up from Brooklyn with my daughter and son-in-law. When we ate our food from our barbeque, we sat out on a stump in the backyard and on the stairs of the deck, because we couldn't all fit at a table. If I look over the railing like this (indicating), I can see into the living room of my neighbor. There is no privacy now. Expanding the deck isn't going to mean I can stand further out and look into their window. I already can. I don't see what the privacy issue is. We live in a condominium. We don't live in a house in the woods someplace where you can do whatever you want and have whatever privacy you want. You live in a community, and by definition, there are certain things you give up by being in a condominium. One of them is a certain amount of privacy. You still can be private and have drapes in front of your sliding glass door so people can't see into your house. That is up to you. This is the way condominiums work. Everybody bought the condominium that they decided to move into, and they are all different. All the decks are different sizes. Nothing is uniform in the entire community, partly because some of it was built in 1973, and the next seven units were built in 1979, the next in 1983. I did not move in until 2003, but that is the way the community has been built. There is no compartmentalization of all the units. They are all different, the insides are all different and the outsides are all different. All we're asking to do is basically give us a small amount of living area outside our back doors for us to enjoy.

Chairman Cosentino: Thank you. It sounds like you have a "hot potato" within.

Charles Martabano: We can go back to the point, as Gil pointed out, there are procedures. This Board follows those procedures. I heard talk of a survey from two years ago, and that is where I got my number of 84 percent. I don't. I have individual letters signed by unit owners, which I will

give to Whitney. They are signed by unit owners. So, I am not sure what survey they are talking about. I think they did one early on. Most importantly, we talk about the issue of squabbling among the Board. These are not issues your Board should be involved in terms of procedures, etc. On the issue of privacy, they had that meeting two years ago, and everything that has been done to this plan since then is to increase the privacy aspect or decrease the impact on privacy. The ZBA chairman's suggestions – you're paying architects, they reduce the size of the decks and adjust the privacy fences. They are doing everything. The fact of the matter is, you've been there. These decks are tiny enough to be cantilevered. The bottom line is that they are looking for a small expansion for the decks for the people that enjoy the livability. We are doing everything we can. The Board, as a representative of the community, is doing everything you can, and we want to move forward with this application.

Chairman Cosentino: Thank you.

Charles Martabano: As I understand it, Whitney is going to send something to Chairman Rose, if Chairman Rose wants your input, you will determine whether you want to or not, and then we will decide how to proceed. I'm probably going to head back to the Zoning Board in any event. You are hearing that these decks are falling apart, and the fact of the matter is, we've been in this process for a very long time, most of it due to quorum issues at the ZBA level, but we are trying to move it forward for the majority of the people in this community. Whether you take their numbers, my numbers don't matter. It's 22 percent, and it's 78 percent on the other side. The fact of the matter is, we're trying to move this forward.

Chairman Cosentino: To be fair, this is only conceptual.

Charles Martabano: I understand. That is the only way we could come to you.

Chairman Cosentino: This Board is not making any decision. It's a conceptual, and that's why I wanted to hear the pros and cons. We will take it from there. If we really didn't like it, we'd say, don't come back.

Charles Martabano: Understood.

Chairman Cosentino: We need to know more about it, and a site visit is going to help the rest of us.

Planning Board Procedures

Chairman Cosentino decided to postpone discussing the review of the Planning Board Rules and Procedures until the next Planning Board meeting.

Correspondence

- Letter from Helen Mauch, Zarin & Steinmetz, dated May 12, 2014 regarding Application by Diamond Properties, LLC for 333 North Bedford Road – Field House and Improved Access
- Letter from Cynthia Garcia, New York City Department of Environmental Protection dated April 30, 2014 regarding Notice of Intent to be Lead Agency, Boys & Girls Club of Northern Westchester

- Minutes of the Mount Kisco Beautification Committee dated May 7, 2014.

As there was no further business to be discussed by the Planning Board, on motion by Mr. Vigliotti seconded by Vice Chairman Sturniolo, the meeting was adjourned at 10:00 PM.

Respectfully submitted,

Sol Gibbons
Acting Recording Secretary

dm