

**Village/Town of Mount Kisco  
Zoning Board of Appeals  
Minutes of Tuesday, October 18, 2016**

Members Present: Don Rose  
Harold Boxer  
Kim Lapple  
Dan Guyder

Members Absent: Barbara Richards

Staff Present: Whitney Singleton, Board Counsel  
Peter J. Miley, Building Inspector  
Michelle Lailer, Secretary

Chairman Rose called the meeting to order at 7:37 p.m.

Chairman Rose stated okay, let's begin.

*Overlapping conversation.*

Chairman Rose stated good evening everybody, this will be, I think a rather short meeting, Tuesday, October 18, 2016. We have no new cases, we have two returning cases and we have the minutes from September which we were sent via e-mail, so hopefully you got a chance to look at them. Kim, Harold and I were present so we have a quorum to approve the minutes.

**Ms. Lapple stated motion to approve the minutes from September. Mr. Boxer seconded the motion.**

**Chairman Rose asked for all in favor. The motion carried by a vote of 3 to 0.**

Chairman Rose stated we will hear the retuning case, Elliot Kracko 35 and 39 Kiskon Road.

**1. Elliot Kracko/35 & 39 Kiskon Road, LLC  
35 & 39 Kiskon Road  
Mount Kisco, NY 10549  
(SBL) 80.48-5-1 & 11**

**Case# ZBA16-8**

Mr. Charles Martabano, Esq was present.

Mr. Martabano stated I do have the site plan if you want to see that, we did a, let me introduce myself, Charles Martabano for the applicant.

Mr. Boxer stated really?

Mr. Martabano stated yes, it's going to be one of those nights, isn't it. As you recall we made a full presentation at the last meeting but at that point in time the Planning Board had not adopted its revised negative declaration based on the plan changes which we reviewed in detail with you. They did in fact adopt a revised negative declaration, a copy has been provided to Michelle. At that time, we did a preliminary poll of the Board and you instructed that a resolution of approval be granted, drafted for your consideration, forgive me, so as far as we're concerned, that's what we're here for. I do have the plans available if you want, if anyone needs a refresher.

Mr. Boxer stated yes, please.

Mr. Martabano stated let's do it.

Chairman Rose stated and Dan, I don't know whether you saw the plans, were you here at the first meeting?

Mr. Guyder stated I have the original file, no.

Chairman Rose stated it has changed a little bit.

Mr. Guyder stated Planning Board had made the suggestion?

Chairman Rose stated actually, it came out of an interpretation by the Building Inspector, who ruled that the second little storage building...

Mr. Martabano stated right, this is what...

Chairman Rose stated couldn't be standing alone by the Code, so they revised it to connect...

Mr. Martabano stated where previously the building was pretty much centered on the property here, we had to in fact attach it to the main property. That did change our site development coverage by a small factor, it did change the square footage again by a small factor but we were able to revise the site plan. Another change that we made is that we now have one way traffic circulation coming in and the curb cuts are adjusted so that you can't have left hand turns going out, which was a concern of the Planning Board. In terms of the appearance, now this does not show yet the building being attached to where this addition is but that's the appearance for the façade prior to the addition now being attached to this area here. In terms of the surrounding area and the existing conditions of the site, these are the existing conditions of the site...

Whitney Singleton stated Charlie, what's your last revision date?

Mr. Martabano stated on the site plan, hold on one second Whitney. That would be 8/23/16, Whit.

Mr. Boxer stated its not my specialty.

Mr. Martabano stated as I mentioned existing conditions of the site surrounding uses as well. This colored site plan also shows you the extensive landscaping that is proposed for the site. At this point in time there is virtually no landscaping except of course on the property which was previously undeveloped. This shows the extensive landscaping plan all around the property.

Mr. Boxer stated no flag pole?

Mr. Martabano stated did you want a flag pole, Harold?

Mr. Boxer stated I think everyone should have a flag flying.

Mr. Martabano stated well, we haven't given any thought but I can certainly that. I'm not sure where we have room to put it right now.

Mr. Boxer stated on top of the building.

Mr. Martabano stated a parapet right here, I'll mention it, he might do it. As you know he's made virtually every modification the Planning Board has asked for, the applicant has been very good in exceeding to those and its going to be a significant upgrade for the area, as we discussed previously.

Chairman Rose stated was there another copy of that? Is that a draft?

Whitney Singleton stated it's very rough and I'm not sure that it was done on the current plans or the old plans. Are you still requesting a side yard variance?

Mr. Martabano stated yes sir, yes. For a very small portion of the site, it's only for this area here and I'm referring to the area of the addition.

Whitney Singleton stated is .5 feet? Or is it 0 because you requested .5 feet.

Mr. Martabano stated I think its .45 if I remember correctly.

Chairman Rose stated so in other words...

Mr. Martabano stated the side yard is .45

Chairman Rose stated the relief requested is as stated in Peter Miley's memo.

Mr. Martabano stated yes, that was never changed.

The Secretary stated the variance required is 9.55 feet.

Mr. Martabano stated and therefore the side yard we're providing is .45, that's correct, right that has never changed. If you're concerned about whether that relates to the current plan, just check the site development coverage factor and see what that is and then we'll know. I think it went from 83% to 85%, if I remember correctly...

Whitney Singleton stated you're increasing it beyond the proposed 83%?

Mr. Martabano stated that is correct, originally proposed our modification request...

Chairman Rose stated it went to 85%.

Mr. Martabano stated I went from 83% to 85%.

Chairman Rose stated which is still a reduction of 14 or...

Mr. Martabano stated if you look at the existing conditions with 39, 39 is about 97 or more percent and I think that, I think what's shown as being part of that percentage is actually on Village property, so I think its actually 100%.

Mr. Boxer stated is the building that's there being rehabbed or are they going to put a new building up?

Mr. Martabano stated no, it's going to be rehabbed and the addition obviously is new. A new façade, a new coating on the outside, totally renovated on the inside as well.

Mr. Boxer stated okay and you're allowed to store paints indoors?

Mr. Martabano stated I'm sorry?

Mr. Boxer stated you can store the paint indoors? It's not a fire problem? I mean I'm not going to say no but I'm just curious.

Mr. Martabano stated I would presume so, I don't know myself, I think the Building Inspector would have flagged that if it was an issue.

Mr. Boxer stated okay, I have paints in my basement, everybody does.

Mr. Martabano stated I have them in a barn outside and then I remember when I say, now I can finally patch that part of the bathroom, I remember I didn't mark the can. Then you start opening all the cans and then you say I'll just paint the whole bathroom over.

Chairman Rose stated so I think we basically have gone over all of these issues before, we were just waiting for that negative declaration...

Mr. Martabano stated revised negative dec., yes.

Chairman Rose stated Whitney, I know you're familiar with the site and the history there, I don't know if you've got any thoughts on additional requirements, I'm sure that we're going to grant the request, we haven't done it yet formally but we have to make sure, there will be, I'm sure, some standard additions in there that...

Whitney Singleton stated they will pave the whole parking lot, correct.

Mr. Boxer stated yeah.

Whitney Singleton stated standard condition.

Mr. Boxer stated reserve spots for the Zoning Board.

Whitney Singleton stated I think the only thing that stands out to me as being different with this particular project is that there's more approvals involved in this beyond yours. And perhaps you simply want to reference or incorporate by reference any conditions of the Planning Board and/or the Village Board.

Mr. Boxer stated okay.

Whitney Singleton stated I don't think it has to go to the Village Board but depending on what happens with the Planning Board it might.

Chairman Rose stated so it hasn't gotten final Planning Board approval, is that...

Mr. Martabano stated it could not until the variances are granted, it can't...

Whitney Singleton stated so with regard, to update this a little bit for you, on page 1 paragraph 4 A, the maximum square footage...

The Secretary stated I don't have that.

Mr. Martabano stated can I ask for a copy?

Whitney Singleton stated yeah, just...

Mr. Martabano stated thank you so much.

Mr. Boxer stated good stop.

Whitney Singleton stated the maximum square footage proposed would be 23,222, not 22,948, so the maximum square footage allowed for the zone is 20,000 square feet and he's proposing a, the applicant is proposing a 3,222 square foot addition.

Chairman Rose stated yup.

Whitney Singleton stated on the next page the variance B is the same, variance C will be changed, it's not a 13% variance...

Mr. Martabano stated it's a 15...

Whitney Singleton stated it's a 15% variance and paragraph D, is simply to allow an expansion of the nonconforming use. So that is pretty straight forward.

Mr. Martabano stated so we're going to revise A, and C, is that correct?

Whitney Singleton stated yes.

Mr. Martabano stated okay.

Whitney Singleton stated I don't know at the last meeting, I presume that you did not close the public hearing.

Chairman Rose stated right, that's correct.

Mr. Martabano stated on this one?

Whitney Singleton stated so today would continue to be a public hearing date, I presume that you're going to take action as of today's date.

Chairman Rose stated yes.

Whitney Singleton stated with regard to the next page, paragraph 8 needs to be changed, this is not a Type II action, this has already undergone SEQRA review, determination of a neg. dec. by the Planning Board and their capacity as lead agency, I will modify that. Paragraph 9, you're probably not going to wait to agree with. Paragraph 10 is up to you and then the conditions of approval are obviously up to, my recommendation would be to remain cognizant that other Boards need to act.

Chairman Rose stated right, okay. Now, there is one person in the audience, do you wish to comment?

Mr. Martabano stated she's the next applicant.

Mr. Boxer stated we know.

Chairman Rose stated it doesn't stop her...

Mr. Martabano stated that's a very good point, thank you, I apologize.

Chairman Rose stated but in any case, just to dot the I's, in which case do I have a motion to close the public hearing?

**Mr. Guyder stated move to close the public hearing. Mr. Boxer seconded the motion.**

**Chairman Rose asked for all in favor. The motion carried by a vote of 4 to 0.**

Chairman Rose stated and then we need to review the mandatory 5 factors for an area review. An area variance, rather.

1. *Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance.*

Mr. Boxer stated no, it will upgrade the area.

Chairman Rose stated I think we're all in agreement there.

2. *Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than area variance.*

Chairman Rose stated I doubt that there was any...

Mr. Boxer stated no, the only other thing would be to take it down and build it all up again.

Mr. Martabano stated or change the zoning district.

Chairman Rose stated right, it was an existing situation that is improved by this applicant.

3. *Whether the requested area variance is substantial.*

Chairman Rose stated and of course that depends on the item, we have 4 variances, the excess square footage of gross floor area is 3,222 square feet, that's about a 15% increase, just a numerical estimate in terms of the effect on the development of the site, in my mind that would be a nominal increase.

Mr. Martabano stated and just on that point Mr. Chairman, the reason for that is, although Zoning Code allows for building and lumber supply yards, it does not allow for outside storage, so we have to put everything inside, hence the increase in building size.

4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.*

Mr. Boxer stated no, put down see number one.

Chairman Rose stated well the environmental, that addresses more the engineering really, drainage and whatnot.

Mr. Martabano stated and now it will have drainage, where presently it has none.

Chairman Rose stated so it will actually be improved from the present condition.

5. *Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board which shall not necessarily preclude the granting of the area variance.*

Chairman Rose stated that's clearly self-created because it's a new development or redevelopment of an existing site and the whole point of their presence here is to make it possible, so...

Ms. Lapple stated sure.

Chairman Rose stated so while its self-created, the net effect for the Town is very much improved condition at that location. And so, we didn't really comment on the other variances as to whether they have a different aspect in terms of the substantiality of the variance. Beside, this is one of those things that's almost comical the way it has to be applied. The required side yard setback is 10 feet and proposed is .45 feet, so a 9.55 foot variance is required in the side yard, that would by any measure be substantial but in the particular location...

Mr. Martabano stated limited only to this right here, this little thing where my finger is, that is the entire magnitude of variance.

Chairman Rose stated right and so its numerically substantial linear feet that's an area...

Mr. Martabano stated about this table.

Chairman Rose stated and the development coverage of course, its 15% over what is permitted [inaudible] slightly more than the first site plan before the reinterpretation by the Building Inspector of the requirements but its still substantially less than what is there now. And I don't think anyone has a problem with allowing the noncomplying building to be enlarged according to the plans; **therefore do we have a motion to grant the requested variances?**

**Mr. Boxer stated moved. Ms. Lapple seconded the motion.**

**Chairman Rose asked for all in favor. The motion carried by a vote of 4 to 0.**

Mr. Martabano stated thank you very much.

Whitney Singleton stated this one for you.

Ms. Lapple stated we'll share.

Whitney Singleton stated I'll get another one.

Ms. Lapple stated is the site near Martino's and the fish market?

Mr. Martabano stated Martino's, yes, it's the former Varco property. I know you're upset at the applicant for tearing down that beautiful historical building but you're just going to have to get over.

Ms. Lapple stated two girls, right.

Mr. Boxer stated yes.

Chairman Rose stated Harold has a new granddaughter.

Mr. Martabano stated congratulations, that's awesome.

Mr. Boxer stated thank you.

Mr. Martabano stated much more interesting than my presentations.

Mr. Boxer stated nicer looking too.

*Laughter.*

Mr. Martabano stated thanks.

Mr. Boxer stated certainly.

The Secretary stated congratulations, Harold.

Mr. Boxer stated thanks. I have a bigger picture of her after, if you want to see it.

Chairman Rose stated okay. This second returning case is 461 Lexington Avenue LLC, again we're waiting for additional action...

**2. 461 Lexington Ave, LLC  
461 Lexington Avenue  
Mount Kisco, NY 10549  
(SBL) 80.64-2-15**

**Case# ZBA16-15**

Mr. Charles Martabano, Esq. and Ms. Tina Fischer were present.

Mr. Martabano stated yeah, exactly, by the Planning Board. The Planning Board adopted a negative declaration in connection with this application at the last meeting, the Secretary has a copy of the negative declaration. That is what we were waiting for, we could not vote at the last meeting, I don't believe you closed the public hearing at the last meeting, either. If anyone wasn't here, I can just go over this quickly, if you'd like.

Mr. Guyder stated sure.

Chairman Rose stated yeah, I think...

Mr. Martabano stated okay, great, are you familiar with the preexisting building?

Mr. Guyder stated unfortunately.

Mr. Martabano stated tragically we had to take that down and we propose to build a two-story office building for the existing business that is presently located at 19 North Moger Avenue in Mount Kisco. They're going to build a two-story brick office building, when they looked at the site, you'll notice the site has an unusual configuration, whereas this is the property line in this direction, this property is owned by the Village of Mount Kisco. We wanted to center the building, especially to save some trees that were here, the Catalpa tree being one of them, in order to do that the building would move over here but would require a 10 foot side yard setback, this property, despite the fact that you cannot build residential structures on the property owned by the Village by reason of its zoning designation but its classified as a residential district. And they say that when you are adjacent to a residential district, the side yard is 30 foot, as opposed to 6 feet is the standard otherwise, so we needed this variance. We're also talking about doing a cross easement with the Village to give the Village access to its property from Lexington Avenue and to allow us to use the Village property to come into here. The Conservation Advisory Council has been consulted with respect to the plan, they're very much in favor of it and they've issued a letter to that effect. We're pending before the Planning Board and also before the Village Board for the cross easement, were it not for that, the building would have to be shifted over, we'd have to lose some significant trees in this area and the building would not be centered on the site. There are other improvements that she's doing to replacement of the fence in this direction, she's offered to allow the Village to utilize the parking lot on weekends, its been a very, very good relationship in terms of developments to this plan and the benefits to the Village. We do have to go back to the Planning Board for final approval and we do need to go to the Village Board for the granting of the cross easement, upon which this plan depends. Brief, right, to the point?

Ms. Lapple stated great.

Mr. Boxer stated unusual.

*Laughter.*

Mr. Martabano stated can't let it go, huh Harold?

Mr. Boxer stated that's the only fun I'm going to have today.

Mr. Martabano stated okay.

Chairman Rose stated and the only variance identified by Peter Miley as being necessary is the side yard setback.

Mr. Martabano stated correct, because it's a residential district to which its adjacent.

Chairman Rose stated and again, this is a case where the benefits to the Town and the area are definitely well beyond expectations.

Mr. Martabano stated this client and she's sitting be hind but I would say it if she want's. Every time something is asked, for example, the Conservation Board, their memo said could you do a further modification so we can save a quad maple in the back and again, her answer is always yes I will, let me do this, let me do that. It's a pleasure to represent someone like that who obviously is trying to do something good for the Village, as well as to improve a property like that, it's a pleasure from our end.

Mr. Guyder stated you should have left the house up until after Halloween.

Mr. Martabano stated it would have been so much better for the application to leave it up before the application to say now if you grant this, we'll get rid of that gorgeous house. It reminds you of the Adams' Family except for the satellite dishes.

Mr. Boxer stated yeah.

Chairman Rose stated will the applicant need our addresses for shipping of the cases of wine?

Mr. Lapple stated we want to know if there's going to be a wine fest like Oktoberfest?

Mr. Martabano stated I'll let the client answer.

Ms. Fischer stated no, I can't sell to you, you have to be a retailer or a restaurant.

Mr. Martabano stated that's right, she's a distributor. However it doesn't mean that there might not be samples at that Grand Opening, there might be samples, hopefully you'll all attend that when she does that.

Chairman Rose stated its not the kind of area where things fall off the truck or anything.

Ms. Lapple stated its going to be a great upgrade.

Chairman Rose stated it will be a wonderful addition to the Town, that's for sure.

Mr. Boxer stated yup.

Ms. Lapple stated yeah.

Chairman Rose stated if there are no other questions or comment, **we can close the public hearing.**

**Mr. Boxer stated closing the public hearing.**

**Mr. Guyder stated move to close the public hearing. Ms. Lapple seconded the motion.**

**Chairman Rose asked for all in favor. The motion carried by a vote of 4 to 0.**

Chairman Rose stated and again we have to properly go through the requirements, we have a draft...

Mr. Boxer stated do we have a draft of that one?

Whitney Singleton stated yeah, that's fine...

Mr. Martabano stated no, I understand, I just wanted to point it out.

Whitney Singleton stated it's the one below it. I just had Alex slap something together.

Mr. Martabano stated its not a problem.

Chairman Rose stated Whitney was this your copy perhaps, you have some handwritten...

Whitney Singleton stated I suggest that to address the concern of the other Boards and I also suggest an additional provision which I haven't provided you yet. My suggestions for the additional conditions beyond what's in there, that the applicant should make all improvements to the subject premises and adjacent parcel to the south, necessary, required by other Boards, Commissions, or Agencies at the applicant's own expense and two that the variance shall be null and void if the site plan approval for the reference plan here it and a cross easement is not secured from the Planning Board and Village Board of Trustees respectively with one year. As Mr. Martabano pointed out, he can't keep the building there if he can't put the access on Village property.

Mr. Martabano stated that's correct. We can, we just can't get to the back of it.

Chairman Rose stated okay, with that let us go through and see if there's any need to flush out the requirements.

1. *Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance.*

Mr. Boxer stated probably not.

Ms. Lapple stated yup.

Chairman Rose stated I don't think so. Definitely an improvement.

2. *Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than area variance.*



Chairman Rose stated and here it should be underscored that the answer technically would be yes but it would involve taking down a feature tree and doing harm to the existing landscaping that other Boards would like to see maintained. So that certainly, we look on favorably.

3. *Whether the requested area variance is substantial.*

Chairman Rose stated ordinarily it might be considered a substantial amount but, I have the wrong one here. The required setback of 30 feet proposed is 10 feet, and therefore a 20 foot side yard variance is required. Since it technically is a residential district that its abutting but no residence will ever be there, we did not feel that that's a substantial item in its effect.

4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.*

Ms. Lapple stated its an improvement, right, environmentally.

Chairman Rose stated right, it will be improvement.

Mr. Guyder stated absolutely.

Chairman Rose stated a lot of effort truly is going into that.

Mr. Martabano stated especially the stormwater improvements, that's the key thing here.

5. *Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board which shall not necessarily preclude the granting of the area variance.*

Chairman Rose stated and again its self-created but in a sense didn't have to be, again referencing the tree to be saved in the process so that definitely does not negate the positive view of the whole situation. **So do we have a motion to approve the variance requested?**

**Mr. Boxer stated moved. Mr. Guyder seconded the motion.**

**Chairman Rose asked for all in favor. The motion carried by a vote of 4 to 0.**

Whitney Singleton stated who was the second?

Mr. Martabano stated thank you all very much, appreciate it.

Ms. Lapple stated thanks.

Whitney Singleton stated I have one other question for you, who moved and seconded on the last resolution, I wasn't paying attention.

The Secretary stated Harold and Kim.

Chairman Rose stated it was a tie.

Ms. Lapple stated thank you.

The meeting adjourned at 8:01 p.m.