

Planning Board Meeting Minutes – June 27, 2022

A meeting of the Town of Yorktown Planning Board was held on **Monday, June 27, 2022 at 7:00 p.m.** in the Nutrition Center at the Albert A. Capellini Community & Cultural Center.

Aaron Bock called the meeting to order at 7:00 p.m. with the following Board members present:

- Bill LaScala
- Rob Garrigan
- Bob Phelan
- Bob Waterhouse, Alternate

Also present were:

- John Tegeder, Director of Planning
- Robyn Steinberg, Town Planner
- Nancy Calicchia, Secretary
- Dan Ciarcia, Town Engineer
- James Glatthaar, Esq.

Correspondence

The Board reviewed all correspondence.

Mr. Bock stated that the Planning Board meeting schedule has been revised for the month of July to include an extra meeting. The dates for the meetings are July 11 and July 25. He noted that there will be no meeting on July 18th as originally scheduled.

Motion to Approve Meeting Minutes of June 13, 2022

Upon a motion by Bill LaScala, and seconded by Bob Waterhouse, and with all those present voting “aye”, the Board approved the meeting minutes of June 13, 2022 with a minor correction as noted by Mr. Glatthaar.

Motion to Open Regular Session

Upon a motion by Bill LaScala, and seconded by Rob Garrigan, and with all those present voting “aye”, the Board opened the Regular Session.

REGULAR SESSION

McDonald’s Restaurant

Discussion: Request for 1st One-Year Time Extension
Location: 36.05-1-10; 3481 Crompond Road
Contact: Brown Altman & DiLeo, LLP
Description: Approved amended site plan to add 886 square foot addition for storage space and second drive-thru line by Resolution #21-15 dated June 14, 2021.

Comments:

No representative was present. The Board had no objections to the request for a 1st one-year time extension.

Upon a motion by Rob Garrigan, and seconded by Bill LaScala, and with all those present voting “aye”, the Board approved the request for the 1st one-year time extension for the McDonald’s Restaurant.

Nantucket Sound Sons

Discussion: Request for 1st One-Year Time Extension
Location: 37.18-2-86; 385 Kear Street
Contact: Site Design Consultants
Description: Approved three-story, 8,100 sf building consisting of 2,500 square foot retail use on the first floor and two upper floors of 2,800 square foot, and 3 apartments each on 0.36 acres in the C-2R zone by Resolution #21-14 dated August 9, 2021.

Comments:

Joseph Riina, P.E. of Site Design Consultants was present. Mr. Riina stated that the project is ready to move forward once the bond and fee amounts are set. The Board had no objections to the request for a 1st one-year time extension.

Upon a motion by Rob Garrigan, and seconded by Bill LaScala, and with all those present voting “aye”, the Board approved the request for a 1st one-year time extension for Nantucket Sound Sons.

Atlantic Appliance

Discussion: Request for 2nd One-Year Time Extension

Location: 37.15-1-31 & 35; 2010 Maple Hill Street

Contact: Site Design Consultants

Description: Approved site plan for a two-story, 25,720 sf building on 5 acres in the C-2 and C-4 zones by Resolution #20-10 dated July 13, 2020.

Comments:

Joseph Riina, P.E. of Site Design Consultants was present. Mr. Riina stated that the project is ready to move forward once the conservation easement is approved. The Board had no objections to the request for a 2nd one-year time extension.

Upon a motion by Bill LaScala, and seconded by Rob Garrigan, and with all those present voting “aye”, the Board approved the request for a 2nd one-year time extension for Atlantic Appliance.

Bellamy Subdivision

Discussion: Decision Statement

Location: 37.10-1-38; 379 Hallocks Mill Road

Contact: Burns Engineering Services, P.C.

Description: Proposed 2-lot Subdivision on 1.417 acres in the R1-20 zone.

Comments:

Steve Burns, P.E. was present. Mr. Burns stated that the plat is prepared and noted that he received the description for the road parcels to be deeded to the town. He reviewed the draft resolution and had no issues.

Mr. Bock asked the Board and Counsel if there were any comments and there were none.

Upon a motion by Bill LaScala, and seconded by Rob Garrigan, and with all those present voting “aye”, the Board adopted the Negative Declaration.

Upon a motion by Rob Garrigan, and seconded by Bill LaScala, and with all those present voting “aye”, the Board approved the resolution approving subdivision plat, stormwater pollution prevention plan, and tree permit for the Bellamy Subdivision.

Motion to Closed Regular Session and Open Work Session

Upon a motion by Rob Garrigan, and seconded by Bill LaScala, and with all those present voting “aye”, the Board closed the Regular Session and opened the Work Session.

WORK SESSION

Lakeview Estates - Lot 6

Discussion: Site Plan

Location: 47.11-1-15; 1102 Gambelli Drive

Contact: Gregg Chappell

Description: Proposed residence on the last subdivision lot in the Lakeview Estates subdivision.

Comments:

Greg Chappell was present. Mr. Bock stated that at the previous meeting there were concerns about changing the conservation easement line to allow the application to move forward. At that meeting, there was discussion about other developments within the subdivision that may not have adhered to the conservation easement restriction and asked the applicant if there was any information to support this. Mr. Chappell stated that there was a package prepared with some history from the Town and Planning Board minutes. There is also history to show the way the first deed was recorded that has been referred to in the subsequent two deeds and noted that it goes back to being managed as if it were a wetland

buffer. There has been mitigation as if it were a wetland buffer and not a conservation line. He cited the Grotto property which went forward and reset a conservation border with a 466' contour line and the installation of concrete monuments for the town. He is not sure where they got the 466' number and is not sure why they didn't use the current conservation line but he thinks it was recorded on their deed as an easement. He noted that his deed calls it a wetland area and is demarcated by the metes and bounds. Mr. Bock asked if the applicant's position is basically that his property restrictions are wetland related and not conservation easement related. Mr. Chappell responded that the research shows that this is how the conservation boundary has been administered since the creation of the subdivision and was looked at as a 100-ft buffer. He noted that he hired an independent environmental engineer to perform a wetland survey and found that there is a deviation between the conservation boundary and the current 100-ft buffer. He stated that the house was positioned and reconfigured to be outside of the 100-ft buffer but it is about 12 to 15-ft over the conservation boundary.

Mr. Waterhouse questioned how many homes exceeded the conservation line. Mr. Chappell responded that none of the primary structures are over the line but two of them have in-ground pools, structures, a fountain and driveway improvements exceeding what the original intent was. He feels that the neighborhood has been maintained well and the density of improvements within the easement are light. Mr. Waterhouse questioned if the majority of the footings for the house will be on the rock cropping. Mr. Chappell responded that it was and that all the disturbance over the conservation boundary is just on the rock. The whole purpose being that the majority of the property rolls down into the conservation area which they would like to enjoy. Rather than disturb the rock, they will place their primary living spots (living room, kitchen, and rooftop patio) on top facing the wetlands. He noted that they are not disturbing the soils and the stormwater management will be outside of the conservation area.

Mr. Bock stated that if this was purely an issue of building in a wetland buffer he would view it differently and questioned why the Board felt the need to have a double level of protection in this case and noted that during the time of this development the wetlands law was only a few years old which may have been a reason. Mr. Tegeder stated that the Planning Board is responsible for the administration of conservation easements within a subdivision or site plan. During their research of this subdivision, he expected that if they found anything it would be a Planning Board matter, but that was not the case. The documents and Town Board resolution for the Grotto residence show no mention of resetting or modifying the conservation line. There is mention of looking at the environmental values in terms of the wetland permit application process and then establishing a conservation easement along elevation line 466'. He thinks it was an error that it was before the Town Board and during that time they set a new conservation easement without going into the record to look at the subdivision plat that was produced by the Planning Board pursuant to that lot. It may have happened with another home that was issued a wetland permit by the Town Board as well. He noted that it would make sense to issue a wetland permit after the lot is developed according to the improvement plan but not so with the conservation easement. The Planning Board always reviews conservation easements that they set to allow or disallow any encroachment or modification. For this application, the Planning Board will need to consider the encroachment based on what it actually does pursuant to what the conservation easement was intended to do. He feels that what happened to the two lots that have a record from the Town Board was in error in terms of the encroachment into the conservation easement. The other two encroachments have no record of any action.

Mr. Glatthaar stated that he reviewed the materials and noted that there seemed to be some procedural chaos. However, he also noticed that the Planning Board showed flexibility in terms of developing the individual lots based upon particular hardships and thinks that this is what they have here. There is a hardship with this lot that isn't the fault of anyone and the applicant has gone out of his way to try and make it work while keeping in mind the whole purpose of the conservation easement. He thinks that the Planning Board has the right to grant changes to the map by allowing deviations where it is a good showing of need and feels that the applicant made a good show. Mr. Bock asked the Board if they want to proceed with a resolution with the finding of a hardship. Mr. LaScala had no issues and felt that they should move forward. Mr. Garrigan stated that the applicant hasn't really claimed a hardship but what he has shown is respect to the environment and has approached it in a prudent manner and had no issue. Mr. Bock questioned if there was enough in the record to proceed with a decision. Mr. Tegeder responded that he felt there was and requested for the applicant to reinforce the hardship with a written narrative to the Board.

Volta Charging Stations at Staples Plaza

Discussion: Site Plan

Location: 36.06-2-76; 3333 Crompond Road

Contact: Cuddy & Feder

Description: Two electric vehicle charging stations to be located in existing curbed islands adjacent to existing parking spaces.

Comments:

Dean Apostoleris of Kimley-Horn & Associates, Inc.; and Sam Lee of Volta Charging were present. Mr. Apostoleris stated that the applicant is proposing to install two Volta electric vehicle charging stations at the Staples Plaza. The charging stations are proposed to be located in the existing landscaped curbed islands and will serve the adjacent existing parking spaces as shown on the plans. They are proposing to tie into the existing utility power. He noted that Volta was before the Town Board a while back for a zoning amendment to permit display screens on EV charging stations that was subsequently adopted on April 19th. There will be no reduction in parking or change to the traffic circulation. All the parking will remain the same with the exception of striping and signing that will allow the users to identify the charging stations.

Mr. Bock asked the Board if there were any comments. Mr. Waterhouse questioned if the locations are in the existing islands or if they will create new. Mr. Apostoleris responded that they are located in the existing islands and stated that there will be minimal construction with no real disturbance. Mr. Garrigan questioned if these were the same stations proposed for the Jefferson Valley Mall and Mr. Lee responded that they were. Mr. Tegeder asked about the sign post bollard. Mr. Apostoleris responded that the sign is a standard 36" bollard with a metal sign. Mr. Tegeder questioned the "control system" structure. Mr. Apostoleris responded that the structure is a 7-ft tall electrical cabinet that will allow them to power the two stations that are both DC fast chargers and require more power. The power control system will supply the additional power needed for those stations.

The Board agreed to move forward with a Public Informational Hearing. The applicant was advised to work with the Planning Department.

Shrub Oak International School

Discussion: Amended Site Plan

Location: 26.05-1-4; 3151 Stony Street

Contact: DTS Provident Design Engineering

Description: Proposed amendments to the approved site plan and stormwater permit.

Comments:

David Steinmetz, Esq. of Zarin & Steinmetz; Gerard Schwalbe of DTS Provident Design Engineering, LLP; and Brian Koffler of Shrub Oak International School were present. Mr. Schwalbe stated that they submitted a letter dated 6/23/22 requesting approval to begin construction for the Phase 2 parking which was part of the master plan. A diagram was submitted to the Board identifying the area. The school is anticipating an increased enrollment for the fall and will require additional parking spaces for their growing staff. A stormwater management analysis for the new parking lot was previously submitted to the Town Engineer for review and they will follow up accordingly. Additionally, he noted that there has been ongoing discussion with respect to secondary access on the south side of the property which can be discussed this evening as well.

Mr. Tegeder questioned the area that expands out from the landscaped island between the two bays. Mr. Schwalbe responded that this is where the generator and electrical equipment will be located. Mr. Tegeder informed the Board that all this is under an existing approval and noted that they are moving around some of the phasing with some amendments that don't affect the parking. He added that they may want to revisit the ratio population between the students and teachers and what they expect to be coming to the site on a daily basis. From the Planning Department perspective, they have no objections to moving forward with the Phase 2 parking provided that the approval continues in its review. The Board had no planning objections. The Planning Department will submit a memo to the Building Inspector and Town Engineer noting that they are in favor of moving forward with the Phase 2 parking.

Upon a motion by Bill LaScala, and seconded by Rob Garrigan, and with all those present voting "aye", the Board approved re-arranging of the phasing to allow for the phase 2 parking as requested.

Discussion continued with respect to the secondary access road. Mr. Tegeder stated that his view has not changed and noted that they have an existing driveway or road that is inadequate according to the code required grading. He thinks that everyone involved in the discussions have acknowledged that the road will be used when necessary. His recommendation is that in order to be code compliant in addition to the safety factor of using that road, that it be upgraded to lessen the grade as much as possible and to smooth and widen the connection to Stony Street so that it functions in a safe way. Mr. Schwalbe stated that the original plan had a much more robust secondary access that came off of Stony Street and curved back in around the cemetery and back into the park area but noted that the cuts and excavation was tremendous and costly. As a result, they presented an alternative plan that would modify the profile of the existing driveway on the south side by cutting the grade in some areas so that the maximum slope would be no more than 14% and would be a straight line. Mr. Schwalbe stated that if necessary, they could coordinate this for a future phase to plan with the current growth of the project.

Mr. Bock and Mr. LaScala thought that this seemed to be a reasonable compromise. Mr. Garrigan stated that while Mr. Tegeder's thought might be the most prudent, it may not be the most practical. In this case, it serves everyone's needs and seems to be a workable solution. Mr. Phelan questioned the condition of the road. Mr. Tegeder stated that the road is fairly old and has been there since the 1950s. The proposal is to widen it and lessen the grade down toward Stony Street which will make it significantly safer to use. In terms of prudent site planning, it makes sense and has value. It will present more utility than it does in its current condition not only to the school but to the park as well.

Mr. Steinmetz informed the Board that his client is fully prepared to cooperate with the Town and facilitate parking for the Town's Park and Recreation Department as discussed, however, the parking was offered at a point in time when there was not an understanding that the Town would be asking for a substantial upgrade of that road configuration given the fact that they believe meaningful access can be obtained from the site. The construction of the parking lot is predicated on his client not having to do the balance of the road configuration. The land area will be available if the Town wants to allocate funds to create the parking lot for the park. Mr. Tegeder stated that this is not a new driveway and the current approval has a two sectioned new roadway that moves north and south that is probably 24-ft wide and is the one referred to by Mr. Schwalbe with a significant 30-ft cut and expense. The Board approved this plan to provide adequate access and flexibility for the users of the site and emergency access. The applicant is now proposing to eliminate that part of the approval to build either a parking lot or to cut down about 5-ft of the existing roadway and widen it to bring it to a safe configuration. If this is the discussion, he thinks a cost estimate should be submitted so that they could understand what the implications are to the applicant. He doesn't think it removes the safety consideration of that existing roadway. Mr. Phelan questioned who had control to determine the use of the gates. Mr. Steinmetz responded that the gates are for the school's security but the Town's first responders will have access. Mr. Phelan stated that there needs to be some form of protocol for the gates. Mr. Tegeder asked about the emergency access function. Mr. Schwalbe responded that there are three ways to get into the site – through the park itself, the main driveway entrance and this driveway. Mr. Tegeder asked how they will get through if the main access is blocked. Mr. Schwalbe responded that it would be through this driveway. Mr. Steinmetz stated that it was fortuitous for the Town that his client and the park were improved at the same time and the good news is that they have reciprocal emergency access.

Mr. Bock stated that the Board needs to decide on the alternatives for eliminating the originally planned access road which is to either improve the south driveway and not build a parking lot for the P&R Commission or build the lot and leave the driveway as is. He feels that the access drive is more important and that the parking is secondary. Mr. Garrigan asked if it was ever their intent to improve the roadbed at the section of the road that comes off of Stony Street. Mr. Steinmetz said there wasn't. Mr. Tegeder stated that it would have been eliminated with the construction of the first road. The current approval has part of that roadway being eliminated and noted that a structure was already removed. Mr. Steinmetz stated that his applicant is happy to grant the town a temporary access easement to improve it. Mr. Garrigan stated that if by improving that strip of driveway, it would provide the Town with emergency secondary access to the park and secondary access to the school. Mr. Tegeder responded that it would and is needed. If the school's main entrance is blocked and this road is not accessible, they would need to use the park as a way in which would add a half mile in either direction to the emergency response for the school which makes this short run much more attractive and reasonable. Mr. Garrigan stated that the alternative plan without the parking lot seems reasonable as it is accessible and to burden the applicant with the additional parking seems to be over the top. Mr. LaScala agreed. Mr. Tegeder stated

that he spoke with the P&R Superintendent and noted that he is prepared for whatever the outcome may be. The Board agreed that the safety and operation of the site was more important than the parking lot. A draft resolution will be prepared for the next meeting.

Dell Avenue Solar Project

Discussion: Site Plan & Special Use Permit

Location: 70.05-1-2; Dell Avenue

Contact: Zarin & Steinmetz

Description: Proposed 3,625 kWac fixed tilt ground mount solar array and 3.7 MW (Tier 2) battery energy storage system.

Comments:

David Steinmetz, Esq., Rennie Friedman and Erick Alves de Sa, of Sol Systems; and Matt Matthews, property owner, were present. Mr. Steinmetz stated that Sol Systems is the proposed tenant for this property formerly known as Croton Overlook. He reviewed the history of the site with the Board. A few years back the 65-acre property was re-zoned to accommodate a proposed age-restricted multi-family residential townhouse project. His client at that time never built the project and ultimately passed away. The property then passed on to the current owner, Mr. Matthews. He and his client were before the Town and Planning Boards a while back preparing to move forward with the proposed residential project. During that time, Sol Systems and other solar companies were also looking at the property for a potential ground-mounted solar array system. There were informal discussions with respect to the what the Town's preference would be. He noted that the site is a unique location given its bucolic nature with very few neighbors and low visibility. As a result, the owner was encouraged to pursue the solar proposal as a viable and suitable alternative for this location. A formal application was submitted to the Planning Department. He added that they have been actively engaged with the neighboring property for a period of time and noted that this neighbor is represented by their counsel this evening. As the project progresses and they continue to share more detail, they feel confident that it will lead to positive results with this particular neighbor.

Mr. Friedman stated that Sol Systems is a company that was founded in 2008 and has deployed over 1 GW of solar projects and also offers a full suite of in-house services. In 2019 they formed a joint venture partnership between Capital Dynamics now Arrevo Energy to form Sol Customer Solutions (SCS). The project site is located on Dell Avenue and is a total of 62 acres. The site is well screened with existing trees and natural vegetation. The proposal is to construct and operate a 3,625 kWac fixed-tilt ground-mounted solar energy system. They are proposing to develop 14 acres of the total 62 acres which is less than 25% and noted that over 75% of the property will remain undisturbed. The project will avoid the wetlands and the 100-ft buffer. The height of the panels will be between 8 and 8 ½' tall and will not exceed 10-ft. They anticipate that the construction phase will take about 9 months from start to finish. The lease is for a 25-year operating term. At the end of the operating term, the decommissioning process is expected to take about 6 months. The solar farm will generate over five million Kw hours of solar electricity which is enough to power about 450 homes. It is a community solar project that will allow residents and business to participate in the program to receive reduced energy costs. He informed the Board that they are no longer pursuing the Battery Energy Storage System (BESS) component of this application as it is not economically feasible. However, they have designed the plan to preserve the space to make it battery ready as an option for the future. The stormwater management plan was designed to include the additional impervious area that the battery system would require so that in the event it does get built it is accounted for and if it doesn't the stormwater facility will be a bit larger. A 7-ft chain link fence with a 6" bottom clearance to allow small animals through is proposed as per the National Electric Code. A pollinator-friendly seed mix is proposed to maintain a meadow like environment that will require less mowing. The access roads are proposed to be pervious gravel, and pervious concrete pads will be installed where necessary. Stormwater management is proposed to treat the impervious area. Two access points are proposed on Dell Avenue (one to the west, and the other further east) that will provide an ingress and egress for normal site operations and emergency vehicles. A Knox box is proposed at the gates for fire access. The system itself is quiet and does not generate much noise. The visual impact to the surrounding area will be minimal as the site is naturally screened. There is one cell tower and one residence on Dell Avenue. The tree impact will be kept as minimal as possible and they are proposing to clear only what is necessary. In addition to the landscape plan, a contribution to the Tree Bank fund is also proposed. The proposed solar farm will help to further Yorktown's commitment to green practices and also help with New York State's renewable energy target

goals. There will be less reliance on fossil fuels and will also reduce the carbon footprint. The project proposes no impact to public services, traffic, pollution, water, and schools. The town will also benefit from increased tax revenue via the PILOT agreement. Renderings of the northern and southern solar arrays were shown to the Board.

Mr. LaScala questioned how much of the project was financed through the tax payers. Mr. Friedman responded that there is no direct tax payer financing. There is the state incentive program and also the federal investment tax credit. Mr. Glatthaar questioned the amount of grading to be done at the site. Mr. Friedman responded that it would be minimal. Mr. Steinmetz added that the location for the proposed solar array is almost identical to the location of the previous residential proposal and it was determined that there was less disturbance with this plan. A comparative analysis will be provided to the Board. He noted that there was a full SEQRA finding statement by the Lead Agency concluding that there were no adverse environmental impacts. Mr. Glatthaar questioned how to proceed with the SEQRA process. Mr. Steinmetz responded that his feeling is that this is a new application but much of the data that the Planning Board relied on as Lead Agency still remains valid. They will provide the additional information that pertains to the solar array and proceed with a long EAF and supplemental studies.

Mr. Bock questioned how much land is proposed to be preserved for the potential future battery storage system component that was removed from the application. Mr. Friedman stated that it was a small footprint and showed the location on the plan (small triangle area). He added that due to the current economic incentives for battery storage systems, it didn't make sense to move forward with that part of the application, but they preserved the space for the future as an option should things change. He noted that the state is constantly reviewing their programs.

Mr. Steinmetz requested to move forward with a Public Informational Hearing. Mr. Garrigan questioned if there were any timelines relative to the grants. Mr. Friedman responded that there were but did not foresee any issues with this application. Mr. Bock stated that the Board is always concerned about the visual aspect of these projects so screening is important. He feels that the sight lines need to be expanded as there are significant natural resources in the area that might or might not be impacted such as Turkey Mountain, Kitchawan Preserves, etc. Mr. Steinmetz responded that nothing they are proposing is taller or more visible than the originally proposed 68 townhomes that went through the SEQRA process and were found to create no significant adverse environmental impact. Mr. Tegeder stated that they will review the EIS. He agreed that there are visual sight lines from other places in town that could be provided such as Turkey Mountain and Hilltop Hanover Farm as a starting point. Mr. Steinmetz stated that they would expect the Board to declare themselves Lead Agency but believes they already did this a year ago. The Planning Department will check into this and if not, will circulate for Lead Agency. Mr. Alves de Sa informed the Board that they are scheduled to meet with the Conservation Board this Wednesday. They are also looking to meet with the Fire Inspector and Town Engineer. With respect to the timeline, they have all their credits in place through NYS as well as their interconnection with the utility company. With respect to the grading, the racking used for the solar panels is good up to a grade of 20% on the site, so the average grading adjustments based on the existing are about 5% in grading changes.

The Board agreed to schedule a Public Informational Hearing for the July 25th Board meeting.

Motion to Close Meeting

Upon a motion by Rob Garrigan, and seconded by Bill LaScala, and with all those present voting "aye", the Board closed the meeting at 8:56 p.m.