

**NORTH CASTLE PLANNING BOARD MEETING  
15 BEDFORD ROAD – COURT ROOM  
7:00 P.M.  
Monday – March 12, 2018**

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PLANNING BOARD MEMBERS PRESENT: Christopher Carthy, Chairman  
Steve Sauro  
Jim Jensen  
Michael Pollack

Planning Board Member Absent: Gideon Hirschmann

ALSO PRESENT: Adam R. Kaufman, AICP  
Director of Planning  
  
Joe Cermele, PE  
Consulting Town Engineer  
Kellard Sessions Consulting, PC  
  
Roland A. Baroni, Esq. Town Counsel  
Stephens, Baroni, Reilly & Lewis, LLP  
  
Valerie B. Desimone  
Planning Board Secretary  
Recording Secretary  
  
Conservation Board Representative:  
John Krupa  
Zenaida Bongaarts – Co Chairman

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The meeting was called to order at 7:00 p.m.

No minutes were considered for approval this evening.

**NEW AND CONTINUING BUSINESS:**

**OAMIC INGREDIENTS INC. [17-016]**

**6 Labriola Court**

**107.04-2-19**

**Amended Site Plan for Change of Use**

**Mark Miller - Veneziano & Associates**

**James Ryan, John Meyer Consulting**

**Discussion**

**Consideration of negative declaration**

**Consideration of resolution of approval**

Present for this application was Mark Miller, Jim Ryan and applicant Steven Gu.

Present on behalf of the Town of North Castle was Steve Verdibello from HES.

Mr. Miller discussed the draft resolution and draft negative declaration with the Board and the professionals. The Board also discussed the comments from Zenaida Bongaarts, Conservation Co-Chairman's email. Mr. Miller noted many of Ms. Bongaarts comments would be addressed in the Operations Manual which will contain site specific information. It was also stated that the applicant will have to return to the Planning Board for approval of the operational manual and creation of the bond amount.

Discussions were had regarding the structural integrity of the building and it was noted the Building Department would review that aspect of the plan and/ or had the option of sending the plans out for review by a professional for comments.

Mr. Pollack made a motion to approve the negative declaration. Mr. Sauro second the motion and it was approved with four ayes. Mr. Hirschmann was not present for the vote.

Mr. Carthy thanked Mrs. Bongaarts for her thoroughness while reviewing this application. He also thanked Armonk Fire Chief Phil Goulet and Assistance Fire Chief Carlos Cano for all their time, site walks, meetings and discussions regarding this application. He also thanked Mr. Baroni, Mr. Cermele, Mr. Kaufman and Mrs. Desimone for all of their contributions to this application as well as all the Planning Board members and the applicant and his team of professionals to complete this application.

Mr. Pollack commended Chairman Carthy on conducting a very complicated and in-depth dialogue in a very constructive and amicable way. The Board agreed with Mr. Pollack and Mr. Carthy thanked the members of the Board.

Mr. Sauro made a motion to approve the site plan resolution as amended. Mr. Pollack second the motion and it was approved with four ayes. Mr. Hirschmann was not present for the vote.

**NORTH BROADWAY TOWNHOUSE DINER [14-097]**

**720 North Broadway**

**122.16-3-31**

**Amended Site Plan**

**Joel Greenberg, Architectural Visions**

**Stephanie Zalantis, Esq. Silverberg Zalantis LLP**

**Discussion**

Present for this application was the applicant's professionals Joel Greenberg and Stephanie Zalantis.

Mrs. Zalantis stated that she was present this evening to request a minor modification to her client's site plan resolution that was approved March 13, 2017 and requested an extension of that approval. She noted that her client has substantially completed most of the work required except for the previously approved off-site improvements within the NYSDOT right-of-way. Mrs. Zalantis then reviewed the background history of this application to bring the Board up to date. She recounted that there was an approval on June 9, 2014 (that approval expired) and a reapproval in September, 2015 (which also expired). She noted that her client, at that time, decided not to do the extensive site work which was approved by the Planning Board as the cost of those improvements were in excess of \$200,000. She further noted that her client was then granted another approval in March, 2017 and the onsite improvements have been substantially performed and completed. She reminded the Board that the site was an existing diner and that given the constraints of the building location, the site plan is not laid out as if it were new construction.

Mrs. Zalantis stated that her client was only seeking minor modifications; specifically, to add a handicapped ramp; enclose a refuse container and add landscaping. She stated that her client used best efforts to get approval from the NYSDOT for the proposed striping and painting in the right of way; however her client was unable to obtain NYSDOT approval and a denial letter from the NYSDOT was dated December 13, 2017.

Mrs. Zalantis opined that the request to eliminate the work within the right-of-way should be considered a field change and she was directed to come back before the Planning Board. She did not think a public hearing was necessary because nothing has changed. She further noted that everything within the property lines conforms to the plan and NYSDOT should not be able to hold up her client's CO.

Mrs. Zalantis stated that she has reviewed the memos from the Director of Planning and Town Engineer and opined that a lot of these issues were already discussed and resolved with the most recent approval and should not be rehashed again. She handed out her written comments to the Board and professionals regarding her response to comments from both memos. She opined that the memos slightly mischaracterize the applicant's request. A sidewalk was not part of the prior approval; it was proposed to be striping and painting of the right of way.

Mrs. Zalantis then reviewed point by point Mr. Kaufman's memo and she did not agree with the majority of those comments.

Mrs. Zalantis stated that the zoning non conformities were extensively discussed a year ago and the Town Attorney agreed with her determination that the applicant would not have to address the zoning nonconformities because it was a preexisting non-conforming parking lot and adding a handicapped ramp does not require an applicant to go and get variances.

Mrs. Zalantis stated that her client is conforming to the most recent site plan except for the DOT approval. She agrees that there are two more items to be completed as noted in the engineer's memo and holding a \$41,000 bond is excessive for the two remaining conditions. There is approximately \$1,800.00 of improvements left to complete.

Mr. Carthy stated that he understands that it did not work out with the DOT. He noted the Director of Planning's memo was very clear. He noted that if he recalled correctly the DOT stated in their memo that they did not regard striping as a viable solution here and it did not solve the problem with respect to pedestrian safety along North Broadway. He noted that the proposed solution did not work to the satisfaction of NYSDOT. He asked the Applicant to find a solution that would be acceptable to the NYSDOT. Mr. Carthy suggested that the Board take another bite at the apple and discuss a viable solution.

Mr. Baroni stated that he has been consistent on this matter from the beginning and he has largely agreed with Ms. Zalantis. He noted that the exterior improvements to this site were very minor in nature and the addition of a handicapped ramp should not be triggering the level of improvements previously considered and that is what led us to here. Mr. Baroni agreed that the Board cannot mandate offsite improvements within the NYSDOT right of way. He noted that it is certainly great when the Board has an Applicant willing to make off-site improvements; however, this particular applicant feels that the requested off-site improvements are not his responsibility. Mr. Baroni stated that since the use did not change, the Board is limited to the amount of site improvement that can be requested by the Board.

In a response to Mr. Sauro Mr. Kaufman stated this is a very difficult situation for the Planning Board. He noted that he views the situation very differently from the Applicant and the town attorney. He recounted that the Building Department determined that there were very substantial improvements to the building that those improvements triggered the diner to meet current Building Code requirements with respect to emergency egress and handicap access (triggering the need for a new staircase and handicap ramp). Mr. Kaufman further noted that the exterior changes necessitated site plan review by the Planning Board. He noted that the new review of the site plan by Planning Board, in his view, gives the Planning Board the authority to upgrade the site plan to meet modern site plan requirements. He noted that if the upgrades in the interior of the building triggered the need to meet the current Building Code, then why wouldn't the Planning Board require the same level of compliance on the outside of the building. He noted, that previously the applicant received approval and agreed to

complete the site improvement in order to obtain a Temporary CO. He further notes that the Applicant then decided not to do those improvements and returned to the Town and asked for some accommodation. Mr. Kaufman noted that the paramount concern of the Board were the pedestrians walking on North Broadway. He noted that, previously, the Board agreed that they would accept a painted sidewalk, provided that NYSDOT permitted the improvement. He noted that we now have the answer – NYSDOT won't permit it. Mr. Kaufman stated that the Board is now at the point where they need to decide what is the best plan for the North Broadway frontage and pedestrian safety. He stated that the Board can reinvestigate the site plan and try to make it safer and bring it up to code or the Board can leave it as it is as the applicant is requesting. He noted that as Mr. Baroni made clear, the Board can't require offsite improvements, but the Board can still control the vehicular access with curbs and curbcuts on-the site and not in the right of way. He noted that the Board can require everything but the sidewalk and hopefully the DOT will see the other improvements and construct the missing sidewalk link. Mr. Kaufman noted that if that were to occur, the result would be very substantial improvements on site to go along with the improvements to the building.

Mrs. Zalantis interrupted and stated that Mr. Kaufman's interpretation is not supported by the code and that the Board can't require wholesale site improvement and reconfiguration of the parking lot of an existing business. Mr. Kaufman noted that the Applicant previously agreed to make those improvements. Mrs. Zalantis did not agree and stated that the Town Code states that a building that is conforming in use, but does not conform to the off street parking requirements of this chapter, shall not be considered to be non-conforming within the meaning of this section of chapter 355-66. She stated that this means the site does not become non-conforming and the Board can't then require the diner owner to go and get 10 different variances that they would need now to bring it into compliance with the current code regulations. She noted that the ramp was a minor addition to the site and that does not trigger a wholesale site improvement and review.

Mr. Kaufman stated that he was referring to the other Town Code requirements, not the requirement regarding the number of off-street parking spaces (which Mrs. Zalantis referred to). He noted that he is in agreement with Mrs. Zalantis with respect to the Applicant not needing to meet the minimum required number of off-street parking spaces; however, Mr. Kaufman continue to state that he is referring to the other sections of the code, such as lighting and landscaping which are not covered in the same section of the code as the parking requirements. Mrs. Zalantis stated that we have had this discussion before and had this disagreement before and the Board made a determination to issue the site plan approval without requiring changes to the site. Mr. Kaufman stated that was done with the understanding that there was going to be some improvement to make the site safer and now this is not the case since the DOT will not grant approval. Mrs. Zalantis stated that painting a sidewalk is not really making it safer, it was more aesthetics. The Board and the professionals did not agree with this statement.

Mr. Greenberg stated that the rep from the DOT wanted the lines moved closer to the building as they did not want the lines in the gutter and wanted people to walk on a flat surface. He noted that he made those changes on the application submitted and when the material was reviewed by staff in Poughkeepsie, it was turned down.

Mr. Cermele stated that the Board approved the revised site plan with the understanding that a sidewalk or some form of pedestrian access would be provided along North Broadway and now that feature it is not being provided. Mrs. Zalantis asked the Board what is changing on the site. Mr. Pollack stated that there is a concern with site safety and the way the parking from the Diner interacts with Route 22 and that issue has been consistent and the Board has been trying to address that issue since day one. He noted that regardless of the site plan that has been approved, the Planning Board has a legitimate concern and that is what the Board is trying to address. Mr. Pollock further stated that the Mrs. Zalantis can argue what the code says or what it covers or does cover but that site access and pedestrian safety has been the common thread throughout this discussion. He noted that the Applicant is now coming before this Board and saying they are not willing to do anything to address the issue and that the Board should eliminate this issue from the site plan. He noted that is why the Board having a hard time since the Applicant is requesting that the Board ignore the issue since the DOT did not find the striping satisfactory. Mr. Pollock noted that the issue has to be addressed in some way shape or form. Mrs. Zalanits and Mr. Pollack continued to disagree in this regard; Mrs. Zalantis reiterated her comments as stated previously during this meeting.

Mr. Greenberg stated that if you move the parking spaces from perpendicular to angles you will lose spaces, He noted that vehicles do not back up past the fog line of the travel way on Route 22. He further stated that the police can verify that there has never been a traffic accident with a car or pedestrian in the last 50 years. Mrs. Zalantis stated that her client has improved the site by providing landscaping, striping of the parking lot and new signage. Mr. Greenberg stated that his client has made improvements on site to make it safer and diners need as much parking as they can get and in this situation, the track record of the site and the signage that was put up, does make an improvement.

Mr. Pollack stated that the Board needs to discuss how it would like to proceed regarding the failed condition in the resolution.

Mr. Jensen stated that he thinks the Planning Board is on the same page. He noted that as Mr. Pollack pointed out, the failed condition and the concern from the prior Board required that the Applicant prepare a site plan that was consistent with the goals that we have with improving pedestrian safety and access on the site. He further noted the Applicant has not been able to comply with the previously approved site plan and the Town Planner, Town Engineer and Police Chief have all expressed concerns with the current proposal. Mr. Jensen noted his support for the addressing the issue and asked how the Board and the Applicant can achieve the Board's initial intent.

Mr. Kaufman stated that there is most likely some compromise that would be acceptable to the Board and the Applicant that is different from what was originally approved.

Mr. Sauro agreed with Mr. Pollack in that the Board approved the March 2017 site plan with the understanding that there would be some improvement in that location.

Mr. Cermele stated that for every application, the material is distributed to the Fire Department, Police Department, Highway Department and whomever is appropriate with that particular application for their input and approval. He noted that, in this case, we have not heard back favorably from the Police Department, the DOT and Highway Department and Mr. Cermele expected to sign off on a plan that has not received favorable comments. Mrs. Zalantis stated that these comments were made and the Board was aware of them prior to their voting on this site plan in March, 2017. She noted that the police were not in favor of this plan and that the Board decided to approve it anyway in March, 2017. Mr. Cermele noted that the DOT has just now, in 2018, come back stating that they did not like this plan and that the NYSDOT preferred the original plan. There was continued discussion regarding the DOT and police comments.

In response to a comment from Mrs. Zalantis, Mr. Carthy stated that the Board did think that striping that area and demarking that area along Route 22 would have addressed the issue of how vehicles and pedestrians interacted along the property frontage. He noted that the NYSDOT said that our plan was not good enough and that the Board needs to relook at the plan and come up with a better solution.

Mr. Kaufman read the DOT letter into the record at this time.

Discussions ensued regarding the DOT comments. Mr. Kaufman stated that the DOT wants to control vehicular access. Mr. Zalatis stated that the DOT wants a sidewalk and we have already discussed that her client won't construct a sidewalk. She stated that the DOT already admitted that what the Applicant completed on the site improved the site and improved the non conforming parking lot. She further stated that she believes that the Board does not have the right to require the Applicant to make changes to this nonconforming parking lot based on the proposed minimal improvements to the lot and the NYSDOT is not agreeing to something in their right of way. She stated that her client 100% complied with what this Board approved and was an improvement to what was existing.

Mrs. Zalantis stated that her client cannot agree to install a sidewalk which is a \$200,000 improvement. She said that if the NYSDOT wants to do install a sidewalk that her client would not object. She said, however, that to make her client redesign the site for the third time when her client has been down this path and have incorporated the improvements the Board asked for is too onerous and unfair and predicated by something off site that is not within her client's control.

In response to a comment from Mr. Sauro, Mr. Kaufman reread the NYSDOT letter which referenced curb cuts for traffic coming in and out and a short raised pedestrian sidewalk would be approvable by the NYSDOT. Mr. Kaufman stated that if the applicant does not wish to construct the sidewalk, the Applicant could limit

improvements to the subject site and consist of a curb and curb cuts with the NYSDOT constructing a sidewalk at a later date.

Mrs. Zalantis stated that her client is being told to redesign the entire access in and out of this nonconforming site of an existing diner because a handicapped ramp was installed. Mr. Kaufman stated that is the crux of the issue. She stated that she did not think the town can require her client to redesign the entire site and this Board agreed a year ago and said go out there and try to get the approvals from the DOT. Mr. Pollack stated that he feels that is a mischaracterization, Mr. Kaufman agreed. Mr. Pollack said that Mrs. Zalantis keeps repeating that statement and that she continues to mischaracterize the intent at the time.

Mrs. Zalanatis stated that from a legal perspective the Town Planner does not have the authority to interpret the code and at this time would like to request a determination from the Building Inspector on how to proceed. She stated that based on that determination her client will have to come back before this Board with a new site plan application or obtain a CO for the site. She stated that her client has been paying \$500.00 a month for a Temporary Certificate of Occupancy (TCO) since he got his approval and that it is very onerous and that her client has done everything that he was asked. She stated that the site is improved and that if the Board requires further action, her client will be forced out of this site because of the additional \$500.00 a month for the TCO. Mrs. Zalantis continued and stated that if her client has to return to this Board for another site plan, for an existing business, the Town is not going to have a diner.

Mr. Carthy noted that unfortunately that her client's economic situation is not an argument that can dictate how the Board can act. Mr. Carthy inquired about the next steps for this applicant. Mr. Baroni stated if the Board does not grant or deny the changes in the resolution and takes no action the applicant has no appealable right from this Board's action because this Board did not take an action. He stated that the only recourse for the applicant is to go to the Building Inspector and get a determination on what can be done or not done and if the applicant does not agree with that determination, the Zoning Board of Appeals would make a determination. He further stated that if the applicant is not happy with the ZBA determination, they can sue the Zoning Board. The Board continued discussion regarding the next steps for this application and depending on what step was taken where it would lead the applicant and the Town.

Mrs. Zalantis stated that the requirements on the plan for offsite improvements could be handled as a field change. She reminded the Board that when this application had been before the Planning Board previously it had gone to the ZBA for an interpretation as her client opined they did not need to come to the Planning Board at all because a handicapped ramp did not need site plan approval. She noted that based upon that decision we obtained an approval from the Planning Board in March, 2017 where her client had extensive discussions regarding the scope and authority of this Board regarding wholesale improvement and offsite improvements. She stated that during the entire discussion she has been at a loggerhead with the Director of Planning and in agreement with the town attorney. Mrs. Zalantis stated that the plan that was approved in 2017 has been substantially completed and that it would be a deprivation of her



client's rights to now require a wholesale re-approval. She requested an interpretation from the Building Inspector. Mr. Carthy noted that the only way that an interpretation can take place is if the Planning Board does not make a decision this evening. Mrs. Zalantis stated that she would prefer to get the amendment to the resolution from the Board.

Mr. Carthy summarized the Board's options at this time and asked the applicant if there is any possible solution they could come up with? Mr. Greenberg stated they have tried many different layouts and there is no affordable option and the site is better than it was before.

The Board was informed that if it wanted to gain legal advice it could adjourn into executive session.

At 8:45 p.m. the planning Board adjourned into executive session. Mr. Carthy made a motion to adjourn into executive session, it was second by Mr. Pollack and approved with four ayes. Mr. Hirschmann was not present for the vote.

At 9:13 p.m. the Board reconvened. Mr. Sauro made a motion to reconvene the meeting, it was second by Mr. Pollack and it was approved with four ayes. Mr. Hirschmann was not present for the vote.

Mr. Carthy stated that the Board has given this very serious consideration and that the Board is concerned about the safety of the site. He stated that the Board is concerned about the entry and exit of the site and that it is in everyone's best interest to do whatever we can to enhance the safety of that site. He suggested the applicant review the plan again and try to come up with a plan that the applicant thinks will foster a safer plan, whatever that is. He noted that the Board will not take an action this evening.

Mrs. Zalantis requested a six month extension of time on the approval that was granted in March 2017. Mr. Carthy made a motion to grant a six month extension of time. Mr. Pollack second the motion and it was approved with four ayes.

Mrs. Zalantis noted that her client has been charged \$500.00 a month since his first TCO and opines that her client should not be charged any longer. Mr. Baroni noted that he thought it was good for 90 days, not 30 days. Mr. Baroni noted that the Planning Board could make a recommendation to the Town Board but cannot make that decision.

Mrs. Zalantis inquired when her client can come back to the Planning Board. Mr. Carthy stated that he would love for the applicant to come back to the Board as soon as possible. He asked that the Applicant work on the plan, get it revised and back before the Board.

In response to a comment from Mr. Kaufman, Mr. Carthy stated that a viable alternative may be something modest in comparison to the original. Mr. Sauro suggested speaking with the town's professionals and have a conversation and see if there could be a meeting of the minds - something that will not break the bank of the applicant. He

reiterated that the main concern of the Board is the safety of the pedestrian and clients entering and exiting the site.

Mrs. Zalantis inquired about getting an interpretation from the Building Inspector, she still opines that the zoning code is being misinterpreted. Mr. Baroni stated that the Applicant would need to instigate the request for the interpretation from the Building Inspector. Mrs. Zalantis stated she would pursue that course of action.

Mr. Carthy stated that he would like to see the applicant go back to the office and review the plan and come back to the Board as soon as possible with a modest plan which accomplishes the Planning Board's goal of improving the safety in and out of the site. Mrs. Zalantis inquired if the Board wanted a plan where the clients do not back out into the street because that is a complete reconfiguration of the plan. She asked for some guidance. Mr. Sauro stated that was a question for the planner. He noted that the main concern is the improvement along North Broadway. He further noted that the Board wants nothing but success for your client but we also have to consider the most egregious point, the main area right in front of the diner. Mr. Carthy stated again that the Board is looking for a modest solution.

Mrs. Zalantis stated that it comes down to what modest means in the eyes of the Board. She stated that she did not feel she had that guidance here tonight. Mr. Carthy stated that the applicant/professionals were welcome to call Mr. Kaufman. Mr. Carthy suggested the applicant call the Director of Planning tomorrow and schedule an appointment as soon as possible so that real progress can be made.

Mr. Greenberg and Mrs. Zalantis thanked the Board.

**34 CREAMER ROAD [18-002]**

**34 Creamer Road**

**108.04-2-14**

**Single Family Home Site Plan**

**Ralph Alfonzetti, PE Alfonzetti Engineering**

**Joseph Palumbo, AIA JM Palumbo Architect LLC**

**Discussion of site walk**

No one was present for this application.

**868 North Broadway**

**122.12-5-63**

**Amended Site Plan Approval**

**Joseph Riina, PE Site Design Consultants**

**P Daniel Hollis, Esq: Shamberg Marwell Hollis Andreyck Laidlaw PC**

**Lou Levy, Lou Levy Construction**

**Discussion**

Present for the applicant was Dan Hollis, Lou Levy.

Mr. Hollis stated that the Planning Board declared lead agency intent at the February 10, 2018 Planning Board meeting. In response to Mr. Hollis's comment, Mr. Kaufman stated that no objections or comments were received regarding lead agency intent.

He has reviewed both memos and the professionals will continue to work on addressing those comments and he would like a referral to the zoning board. He would need two variances to go before the board and was hoping to get on their April 5, 2018 meeting. He would like a public hearing with the Planning Board on April 9, 2018.

He also noted that his client will have 1,000 square foot stores and tractor trailer trucks for delivery on site would not be necessary. The board agreed not requiring a loading dock for this application. Mr. Baroni inquired if the encroachment on town property had been resolved. Mr. Hollis stated he would work on that with Mr. Baroni. Mr. Levy noted he could resubmit plans to this effect by the end of the day by tomorrow. In response to Mr. Kaufman's comment regarding the violation, Mr. Hollis stated the bollards were put on site as a temporary measure to discourage people from the neighboring site from parking on this lot, this is not part of the final plan and this is on his property, not in the right of way. Mr. Kaufman reminded the applicant that if the violation becomes a summons the planning board will not be able to finalize their review until the summons is addressed. Mr. Hollis instructed his engineer to remove the line of bollards on site and Mr. Levy stated he will put a temporary fence up.

In response to comments, Mr. Cermele stated that applicant has preliminarily addressed the stormwater on site.

It was noted in the letter from Westchester County that they would like the pedestrian sidewalk to connect to the B-line bus stop to the sidewalk at the northern end of the site. The applicant agreed to review the plan to connect the sidewalk from the southern side to the northern side of the site where the bus stop is. Mr. Hollis stated that part of the sidewalk would go over some of the town property and would need a cross easement.

A public hearing was scheduled for April 9, 2018 providing ARB and ZBA are granted for this application.

Meeting adjourned at 9:34 p.m. Mr. Carthy asked for a motion to adjourn the Public hearing. Mr. Sauro made a motion to close, it was second by Mr. Jensen and approved with four Ayes. Mr. Hirschmann was not present for the vote.