

**NORTH CASTLE PLANNING BOARD MEETING  
15 BEDFORD ROAD – COURT ROOM  
7:00 P.M.  
November 18, 2019**

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PLANNING BOARD MEMBERS:

Christopher Carthy, Chairman  
Steve Sauro  
Michael Pollack  
Jim Jensen  
Lawrence Ruisi

Also Present:

Adam R. Kaufman, AICP  
Director of Planning

Joe Cermele, PE  
Kellard Sessions Consulting

Valerie B. Desimone  
Planning Board Secretary  
Recording Secretary

Absent

Roland A. Baroni, Esq. Town Counsel  
Stephens, Baroni, Reilly & Lewis, LLP

Conservation Board Representative:

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**APPROVAL OF MINUTES:**

**October 7, 2019**

Mr. Jensen made a motion to approve. It was second by Mr. Pollack and approved with three ayes. Mr. Sauro and Mr. Ruisi abstained.

**September 23, 2019**

Mr. Ruisi made a motion to approve, it was second by Mr. Sauro and approved with four ayes. Mr. Pollack abstained.

**PUBLIC HEARING:**

**MISTIS PROPERTIES Inc. [19-004]**

**176 Virginia Road**

**122.16-1-3**

**Site Plan**

**Stephen Berte, Fusion Engineering PC**

**Discussion**

**Consideration of amended resolution of approval**

Proposed construction of 2 metal prefab buildings (totaling approximately 5,000 square feet) which will be primarily used as parking bays for trucks, including one wash bay. Applicant has also indicated that light vehicle maintenance and repair would occur on the site.

Present for this application was Steven Berte, PE; Azim Aliriza, EIT and Paul Berte, PE owner and president – all from Fusion Engineering, PC. As well as the applicant and owner Manuel Yanez .

Mr. Sauro read the affidavit of publication for the record. Mrs. Desimone stated that all paperwork was in order for this application. No noticed neighbors were present for this application.

Mr. Carthy made a motion to adjourn the public hearing until November 25, 2019. Mr. Sauro second the motion and it was approved with five ayes. Mrs. Desimone stated that the notice was published timely, the mailing was done timely at the post office but the post office did not put postage on the envelopes and all the envelopes were returned to the planning office. Mrs. Desimone spoke with the Town Attorney who said the publication was done correctly and we could open and adjourn the meeting to November 25, 2019 and the mailing will be done timely with an updated notice stating the meeting date was November 25, 2019.

**PUGATCH [19-028]**

**23 Creemer Road**

**108.04-2-6**

**Referral from RPRC**

**Victor Solarik, VKS Architects**

**Discussion**

**Consideration of resolution of approval**

Proposed 90 square foot addition at the rear of the existing home, expansion, a 400 square foot patio at the rear of the house, and modification to the existing side and rear entrances. A wetland permit is required for work performed in 100' Town-regulated wetland buffer. This property was recently referred for Planning Board site plan approval by the RPRC.

Mr. Jensen read the affidavit of publication for the record. Mrs. Desimone noted all paperwork was in order for this application. No noticed neighbors were present.

Present was the applicant Mr. Pugatch and his professional Victor Solarik.

Mr. Solarik reviewed the application as noted above and stated he has met with the Conservation Board, the Architectural Review Board and Planning Board. He reviewed the landscape and mitigation plan due to the work in the wetland buffer. The board had no further comments at this time.

Mr. Carthy made a motion to close the public hearing. It was second by Mr. Sauro and approved with five ayes.

Mr. Ruisi made a motion to approve the resolution as amended, it was second by Mr. Sauro and approved with four ayes. Mr. Pollack abstained since he was not able to visit the site.

**375 MAIN STREET [19-037]**

**375 Main Street**

**101.01-1-6**

**Amended Site Plan**

**Leo Napior, HKP Harfenist Kraut & Perlsten LLP**

**Discussion**

The subject property is an existing legal nonconforming gasoline filling and service station use in the CB Zoning District. In late June, 2019 there was a reported fuel spill and the Applicant was required by the NYSDEC to remove and replace the underground storage tanks.

The Applicant filed and obtained a building permit for the tank replacement; however, after issuing a permit the Building Inspector subsequently made a determination that all other work (i.e. replacement of fuel lines and dispensers) required site plan review and he issued an amended permit requiring Planning Board site plan review to complete the project.

At this time, the Applicant is seeking to restore the site to its prior condition before the tank replacement project began, with the same fuel dispensers being returned to the same exact location. Additionally, the Applicant is seeking approval to legalize an existing waste oil tank, existing fuel oil tank and a metal shed, all located at the rear of the service station.

After the site is reestablished, the Applicant will seek approval to redevelop and modernize the site.

Mr. Carthy stated at the applicant's request, due to scheduling he needed to leave early this evening and the board agreed to accommodate this request and placed this matter prior to 11 Washington Place East.

Present for this application was Jonathan Kraut. Mr Kraut summarized the application as stated above. He also stated that there was a fuel spill in June or July 2019 where the UST (underground storage tanks) needed to be replaced. A building permit was taken out for the removal and replacement of those tanks. The underground lines needed to be replaced as well. In order to do this, the physical pumps and dispensers had to be removed from the island and then everything had to be reconnected and put back in the exact same location with new concrete etc. A building permit was issued and was in conformity with all past practices within the municipality. As result of a cause with a competitor, who similarity replaced tanks with a building permit alone and did not have site plan review. The building inspector in a subsequent review asked for one change before the new tanks went in and it was to pull back the concrete pad from an area that had a real property easement on it to a more conforming location than the original building permit was issued on – that was the only change on the plan and the building inspector asked for work to cease on August 29, 2019. An amended permit was issued on September 10, 2019 with a condition that a site plan application be submitted to the Planning Department before any other work besides the UST be replaced. Which meant that the underground lines, the dispensers and concrete pads that will be placed back exactly where they were in the first place now need to obtain site plan approval.

Mr. Kraut stated that in his opinion it is a matter of law and an existing non-conforming use was there for many decades. The laws of non-conforming uses have only required a building permit and that has been the case for every application before the town as far back as the records show. It would include an interior renovation or any changes to the site. We were given the amended permit which included site plan approval that was not part of the first permit. Westchester County Board of Health issued approvals and the tanks are back in the ground.

On October 15, 2019 an application was filed to the ZBA preserving his client's rights to challenge the interpretation of the Building Inspector. The competitor across the street filed a few days before challenging the first building permit that was issued. His company represents many fuel companies in the north east and NY Fuel is a local company and are good people and the owners live in Armonk and Scarsdale. Once his client is back open for business he would like to return to the Planning board and renovate the site. He has met with town staff and it was very clear that the town would like the site updated and his client is willing to make that capital improvement. He then went before the ZBA and asked for the application to be adjourned. He would like to restore the site to its original condition before winter.

Mr. Kaufman noted that was a good summary of where we are today and there are three points the board needs to focus on. How are we going to tie the applicant into coming back to the Planning Board for site plan approval and we have been working with the towns professionals on this matter and will hopefully have an answer by time the public hearing takes places. The second item was the three issues that were never legal on site in the first place, the shed and the two oil tanks - It may be easier to eliminate them from the site plan, they are located in the wetland buffer and a wetland permit would be necessary. Mr. Kraut stated he was not aware there were any

violations on site and does not want to slow the matter down and will remove them. Mr. Kaufman stated that the third item was the encroachment on site from abutting property owner on Kent Place Amore Pizza.

The board discussed how to proceed with this applicant and address the three bullets reviewed by the Director of Planning. They also inquired why there were two building permits, the applicant's attorney was not certain of that answer.

The board was a little uncomfortable proceeding without Mr. Baroni being present this evening. Mr. Kaufman stated he has spoken with Mr. Baroni and he said that he was alright with the board setting a date this evening.

The board discussed the application that was before the board in 2008 and why that was not finalized at the time.

Mr. Kaufman noted that during phase II of this approval there are certain minimal changes the town wants to see at the site i.e.: sidewalk and landscape improvements.

Continued discussions took place regarding this application. Mr. Sauro made a motion to schedule a public hearing on December 9, 2019. Mr. Carthy second the motion and it was approved with five ayes.

Hard copies were submitted by the neighboring property owner's attorney to the board from the law firm of Keane and Beane. The email was received on Friday and sent out to the board once received.

### **NEW AND CONTINUING BUSINESS:**

#### **11 WASHINGTON PLACE EAST [17-003]**

#### **11 Washington Place east**

#### **122.12-4-26 & 40**

#### **2<sup>nd</sup> Amended site plan of Mixed Use Commercial/Residential Building**

#### **Frank Della Galla**

#### **Discussion**

Amended Site plan approval that includes the following modifications:

- Demolition of existing garage structures at rear of building and construction of a new garage/warehouse building (144 square feet larger than existing structures).
- Relocation of the outdoor recreation easement from the rear Southside of the building to the front Southside of the building.
- Addition of a one-bedroom apartment to the first floor.

Present for this application was Ted D'Amore and Frank Della Galla..

Mr. D'Amore presented the plan as summarized above.

Mr. Kaufman stated that since the submission was made, the applicant has decided to update the plans to remove the first floor apartment so that the middle income requirement would no longer be necessary. Mr. D'Amore stated that the revised plan will include only relocated open space and new rear warehouse addition - the apartment will be removed from first floor and will be turned into storage space for the other apartments and a gym for the residents in the building. Mr. Della Galla presented existing photos and proposed photos for the board at this time. The changes do not impact the parking space totals. A public hearing was scheduled for December 9, 2019 and a resolution will be considered by the board that night.

Mr. D'Amore inquired since the size of the building was increasing only one foot, could the cement footings be poured prior to the frost. The board was not comfortable with that and opined that could raise a lot of issues and that was not their decision to make. Mr. Kaufman also questioned what set of plans would be used since the amendment was not approved.

The public hearing was scheduled for December 9, 2019 and the submission deadline was Monday, November 25, 2019 by noon with electronic and hard copy submission.

**KIRSCH [19-036]**

**7 Hadley Road**

**108.04-2-28**

**Site plan**

**Blyth Yost, Yost Design LLC**

**Discussion**

This property was the subject of Planning Board site plan approval for the construction of a single family home. The Planning Board spent a significant amount of time determining the most appropriate location for development on the lot and which Significant Trees and Town-regulated trees should remain on the lot.

The submitted site plan depicts a pool and pool house in a location that was previously approved as lawn; however, the Applicant proposed, and the Planning Board required, the preservation of several important trees in the rear yard. The proposed relocation of the pool would require the removal of four large trees that were previously required to be preserved. Specifically, the plan calls for the removal of a 20" Oak, 2 24" Oaks and an 18" Oak which were previously required to be preserved.

The Committee determined that given the proposed tree removal, which was the subject of a Planning Board tree removal permit, the proposed tree removal would require a tree removal permit amendment by the Planning Board.

Chairman Carthy recused himself from this application. Dan Holt, engineer for the

applicant was not present for the application. Present was Blythe Yost from Yost Design.

Ms. Yost stated that due to the request to move the pool location and put in a pool house, four significant trees will have to be removed and that is why they are back before the board this evening. Her client will plant four additional trees along with additional screening and landscaping. She has reviewed the memos from the professionals and will be able to accommodate those comments. Mr. Holt will amend his plans and resubmit.

Discussions took place regarding the request of the applicant and original work and review that went into the original pool location. Ms. Yost reviewed the specific details of why each tree was to be removed and getting a better understanding of the applicants reasoning for the removal of the trees. She noted the four trees to be removed are not pristine. In response to comments from Mr. Pollack, Ms. Yost stated there are no wetland or wetland buffer involved with this tree removal request.

Mr. Sauro stated that you are allowed to take down 10 years annually without a tree removal permit and did not want to hold up this applicant. He and the board encouraged the applicant and their professional to enhance the plan as much as reasonably possible due to the removal of these four significant trees. Ms. Yost stated she will submit a full landscaping plan and reviewed the planting plan she had prepared to date. Her client would not like to plant in the grassy area and planting in the woods would not be beneficial.

The applicant will submit a full landscape plan. A neighbor notification was scheduled for December 9, 2019 and a draft resolution will be prepared for the boards consideration.

**GECAJ [18-025]**

**3 Vincent Lane**

**101.01-1-6**

**Residential Site Plan**

**James A. Ryan, RLA JMC Plan, Eng, Landscape Arch & Land Surveying,**

**Discussion of Site Walk**

**Consideration of amended resolution of approval**

The Applicant is proposing the following field changes:

Install stone curb along driveway

Create a 5' wide landscape area in new parking area

Modify the configuration of the platform connecting front steps to drive

Modify the patio

Construct new 3' wall adjacent to patio

Add stone veneer to walls

Construct outdoor fireplace on patio

Recalibration of landscaping – slight reduction

Present for this application was Lucille Munz from John Meyer Consulting.

Ms. Munz stated that the wall will remain as proposed and built at four feet at the driveway entrance with landscaping then stepped up to a five feet and then six foot wall with associated evergreen landscaping as you proceeded along the driveway to the residence. This has worked out to be a good compromise to the neighbors request while still honoring the applicants requests for his property.

In response to Mr. Ruisi's comments, Ms. Munz stated the landscaping is proposed for short term and long term growth. Ms. Munz answered the boards questions to their satisfaction.

Mr. Carthy stated that this is a reasonable solution and the applicant has bent over backwards trying to do what they can. This would not be out of character with the neighborhood or the street and is a reasonable solution. Mr. Pollack agreed. He was concerned about the noise and sawing on site. Mr. Kaufman noted the noise ordinance will be enforced by the Building Department.

Mr. Jensen expressed his concerns that some things in the field were still not shown on the plans and reflected in the resolutions. Mr. Kaufman noted that between the three sets of plans for the field changes everything has been addressed. Mr. Cermele also noted that an as built will be submitted and reviewed against all the field changes. After all comments were addressed to the boards satisfaction, Mr. Carthy made a motion to approve the field change. It was second by Mr. Sauro and approved with five ayes. Mr. Carthy thanked Ms. Munz for all of her hard work and creativity regarding this application.

## **ROCK HAMMER ORDINANCE**

### **Discussion by the board & professionals**

The board discussed the present noise ordinance and how that might be edited in regards to rock hammering on site. Mr. Kaufman stated there are two sections of the code, one that addresses lawn equipment and maintenance of your property and the other is construction work which includes building, repairing, grading, leveling and excavating - prohibition between the hours of 7:00 p.m. to 7:30 a.m. M – F and 5:00 p.m. – 9:00 a.m. Saturdays Sundays and federal holidays.

The board considered perhaps M-F only and from 9:00 – 5:00 p.m. with no weekends for only rock hammering. The board noted there are other activities which can be just as annoying like leaf blowing which usually lasts no longer than an hour. The board was leaning in the direction of rock hammering on the weekends or during the holidays. The board discussed other sounds like leaf blowers and lawn mowers and how the noise ordinance has a sound limit but you would need someone to monitor it.

The board inquired what other communities were doing in respect to rock hammering. Mr. Cermele stated that the hours and days of operation vary from town to town and did

not recall seeing something specific regarding rock chipping in other communities.

The board concluded that additional discussion and research were necessary on this subject matter prior to reaching a decision.

Mr. Carthy made a motion to adjourn the meeting, it was second by Mr. Sauro and approved with five ayes. Meeting adjourned at 8:32 p.m.