

May 20, 2020

A MEETING OF THE PLANNING BOARD of the Town of Ossining was **held on May 20, 2020 at 7:30 p.m. by video conference** pursuant to Governor's Executive Order 202.1 dated March 12, 2020. Members of the public were able to view and join the meeting via computer or mobile app as follows:

<https://us02web.zoom.us/j/84796279556>

Meeting ID: 847 9627 9556
+19292056099

There were present the following members of the Planning Board:

Ching Wah Chin, Chair
Jim Bossinas, Member
Gareth Hougham, Member
Carolyn Stevens, Member
Donna Sharrett, Member

Also Present:

Kathy Zalantis, Attorney, Silverberg, Zalantis LLP
Valerie Monastra, AICP, Nelson, Pope & Voorhis, LLC
Daniel Ciarcia, PE, Consulting Town Engineer
Sandy Anelli, Secretary

Picucci Request for an Amendment to Resolution of Prior Subdivision Approval, 51 Croton Dam Road,

Mr. Mark Picucci, Applicant, and Mr. Ralph Mastromonaco, P.E. were in attendance. Ms. Monastra submitted and reviewed with the Board a draft resolution dated May 20, 2020, titled, Resolution of Town of Ossining Planning Board, Application of Mark Picucci and Yellow Jug Corporation LLC, Property: 51 Croton Dam Road (Section 89.08, Blocks 1, Lot 78.1 and R-15 Zone). Copies were sent to Mr. Picucci and Mr. Mastromonaco in advance of the meeting.

RESOLUTION

**TOWN OF OSSINING PLANNING BOARD
(Adopted May 20, 2020)**

Application of Mark Picucci and Yellow Jug Corporation LLC Property: 51 Croton Dam Road (Section 89.08, Blocks 1, Lot 78.1 and R-15 Zone)

Background

WHEREAS, the Town of Ossining Planning Board ("Board") received an application dated March 10, 2020 from Yellow Jug Corporation ("Applicant") for the property located at 51 Croton Dam Road, Town of Ossining, New York known and designated as Section 89.08, Block 1, Lot 78.1 on the Tax Assessment Map of the Town of Ossining and located in an R-15 zone ("Site"), seeking "modification of a resolution"; and

WHEREAS, by resolution dated December 12, 2007, the Planning Board granted a two-lot minor subdivision approval for a 2.3969-acre property designated as Section 1, Plate 4, Block 11, Lot 3 on the Town of Ossining tax map to create Lot 1 (a 1.1142 acre lot) and Lot 2 (a 1.2827-acre lot) subject to the condition that a note be added to the final subdivision plat reading "there shall be no further subdivision of Lot 2" (89.08-1-78.1); and

WHEREAS, in contravention of this condition, the final subdivision plat filed with the Westchester County Clerk in 2009 (Plat #28288) does not contain this note; and

WHEREAS, the Applicant previously filed an application on or about December 6, 2019 along with a Preliminary Plat and detail notes prepared by Ralph Mastromonaco, P.E, P.C. Consulting Engineers dated December 5, 2019; seeking subdivision approval to further subdivide Lot 2 from one lot into two; and

WHEREAS, the Applicant appeared before the Board at the December 18, 2019 and February 19, 2020 Planning Board meetings in connection with its subdivision request to subdivide Lot 2 into two lots;

WHEREAS, the Applicant claimed at the February 19, 2020 Planning Board meeting that the Resolution's condition regarding no further subdivision of Lot 2 was in response to the fact that in 2007 the sewage pumping station near Feeney Road could not take any additional flow and that this was purportedly the only justification at that time to restrict further subdivision; the Applicant noting that the former Planning Board Chair, George Weeks, later signed the plat without there being a note on the plat restricting further subdivision; and that since 2007, the failing pumping station was replaced with a gravity sewer, and it is the Applicant's opinion that since the purported reason for the restriction is no longer an impediment, the Board should grant the requested subdivision approval;

WHEREAS, at the February 19, 2020 meeting the Board was in agreement that they could not grant subdivision of Lot 2 when further subdivision was prohibited by the December 12, 2007 Resolution and they could not overturn the previous decision to preclude further subdivision due to the fact that the December 12, 2007 Resolution did not contain any exceptions nor did it explicitly identify the Board's reason for the restriction in the first place and therefore, the Board could not determine if the initial reasoning for the restriction has been alleviated.

WHEREAS, the Board did not find sufficient evidence in the record to justify overturning a previous Board's decision.

WHEREAS, the Board also determined that filing the 2009 (Plat #28288) without the restriction on the Plat does not negate the condition in the Planning Board's 2007 Resolution, but means that it is possible the Applicant is in violation of its 2007 approval.

WHEREAS, at the February 19, 2020 meeting the Board directed Counsel and the Town Planner to draft a resolution maintaining the original decision for consideration at the next meeting of the Planning Board;

WHEREAS, by letter dated February 25, 2020, the Applicant withdrew his application for subdivision approval;

WHEREAS, after withdrawing its application seeking Subdivision approval to further subdivide Lot 2, the Applicant now seeks to have the Planning Board modify the Planning Board's December 12, 2007 Resolution of the Board for the subject premise to eliminate condition "g" (that Lot 2 not be further subdivided); and

WHEREAS The Planning Board has carefully examined and considered the Application including the following documentation:

1. Application dated March 10, 2020;
2. Comments and recommendations from the Consulting Town Planner and Engineer in memoranda dated April 30, 2020 and May 6, 2020, respectively;
3. Short Form Environmental Assessment Form dated December 5, 2019 and revised March 10, 2020;
4. Preliminary Plat and detail notes prepared by Ralph Mastromonaco, P.E, P.C. Consulting Engineers dated December 5, 2019 and revised January 29, 2020;
5. Letters to the Board dated February 10, 2020 and March 9, 2020 from the Board's Consulting Engineer;
6. Maintenance Declaration Control number 583373281; and
7. Letter from former Planning Board Chair George Weeks dated March 2, 2020.

WHEREAS at the Planning Board's May 6, 2020 meeting, the Planning Board deliberated in public on the Applicant's request for the Planning Board to modify a December 12, 2007 Resolution of the Board.

Planning Board Determination

NOW, THEREFORE, BE IT RESOLVED the Planning Board determines that based upon the findings and reasoning set forth below, the Application to amend a December 12, 2007 resolution of the Board is denied.

I. Findings

The Applicant seeks to modify the Planning Board's December 12, 2007 Subdivision approval resolution which created two lots and which stated that a note shall be added to the final subdivision plat reading "there shall be no further subdivision of Lot 2" (89.08-1-78.1). The final subdivision plat filed in 2009 (Plat #28288) failed to contain this note.

After withdrawing its application to subdivide Lot 2, the Applicant submitted a new application requesting a modification of the December 12, 2007 Resolution to remove the subdivision condition based on the arguments presented at the February 19, 2020 Planning Board meeting. The Applicant contended that a letter they obtained dated March 2, 2020 from the former Chair of the Planning Board, George Weeks was evidence that the only reason for the restriction on further subdivision was due to the limitations of the failing pump station at that time; and since the sewer system has since been repaired, the resolution should be amended to remove that restriction.

The Planning Board has reviewed the Applicant's application for modification of the December 12, 2007 Resolution and determined that the March 2, 2020 letter from the former Chair of the Planning Board, George Weeks provided by the Applicant is from one Board member and as the Planning Board can only act by a majority of its members this letter fails to establish the reasoning of the entire Board to vote to approve the 2007 Resolution with this condition. The Board also finds that the Applicant's application and record of the Site does not provide enough evidence to justify the overturning of a prior Board's decision. The Board finds that prior decisions by the Board should be given appropriate deference. The Board further finds that the December 12, 2007 Resolution did not contain any exceptions, nor does it explicitly identify the Board's reason for the restriction on subdivision in the first place. The Board also finds that filing the 2009 (Plat #28288) without the restriction on the Plat does not negate the Planning Board's decision. Rather, the failure to properly file the restriction establishes only that the Plat was filed in contravention of the Planning Board's requirement that a note prohibiting further subdivision be placed on the Plat. The Chair, as one Board member, had and has no authority to waive a condition mandated by the Planning Board and therefore, the former Chair's signature on the Plat failing to include the required condition in no way negates the Planning Board's decision.

Further, the Applicant's application requesting a modification to the December 12, 2007 Resolution to remove the subdivision condition fails to request an amendment of the Board's prior grant of subdivision approval. The Board cannot simply remove a restriction relevant to one lot (Lot 2) but must consider the request in connection with the previously granted subdivision approval. To this point, the Board previously reviewed and granted a two-lot subdivision of a 2.3969-acre parcel where through an amended subdivision application, the Planning Board would be reviewing the Applicant's request for amended subdivision approval to create three-subdivided lots on the same 2.3969-acre parcel. The Board finds that the Applicant's request to amend or modify the resolution to remove the restriction would not, even if approved, grant the Applicant subdivision approval, but instead, the Applicant would be required to submit an application for amended Subdivision Approval. The Site is subject to the requirements set forth in Section 176, Subdivision of Land, of the Town Code and Board approval.

Dated as of May 20, 2020

Chairman

Motion by: Gareth Hougham

Second by: Jim Bossinas

In Favor: All in favor.

Opposed: None.

Abstaining: None.

Picucci Continued

At this time, Mr. Chin asked if there were any comments from the Applicant or the Board. Mr. Mastromonaco asked the Board to have the minutes reflect that the applicant objects to any denial, and if the Board denies the application, they request a certified copy as soon as it is available.

Dr. Hougham made a motion, seconded by Mr. Bossinas and unanimously passed by the Planning Board to vote in favor of adopting the **Resolution of Town of Ossining Planning Board, Application of Mark Picucci and Yellow Jug Corporation LLC, Property: 51 Croton Dam Road (Section 89.08, Blocks 1, Lot 78.1 and R-15 Zone), dated May 20, 2020.**

Marricco, 125 Morningside Drive, New Single-Family Residence, Architectural Review

John Marricco (the “Applicant” and “Owner”) is seeking Architectural Review Board (ARB) approval to construct a single-family house at 125 Morningside Drive Section Block and Lot 90.1- 1-11.3 (the “Project Site”). The Project Site is a 45,518 square foot parcel and the Applicant is looking to create a single-family home consisting of 2,130 square feet of livable floor area.

Mr. David Arango, RFA & Associates LLC was in attendance he noted that comments from the May 6, 2020 meeting have been addressed in their recent submission received May 18, 2020.

Mr. Ciarcia submitted a memo, dated May 20, 2020, offering the following comments: The stabilized construction entrance should extend to the foundation of the proposed residence. Provide an as-built survey indicating that the stormwater improvements proposed on this lot associated with the subdivision have been constructed in compliance with the approved plans. The subdivision plat provided does not address the volume of the pond. We will locate the approved plans and stormwater design to review compliance with the approved plans. The site plan should accurately depict the parcel boundaries.

A memo dated May 19, 2020 prepared by Ms. Monastra was on file and submitted to the applicant. Ms. Monastra noted, an updated zoning table was provided by the Applicant and the proposed house will meet the zoning requirements of the R-40 district. No variances are needed.

They did provide all of the materials that are needed for ARB approval, but they need to provide an example and/or photos of the proposed retaining wall and describe what the materials and colors are. Mr. Arango noted that the retaining wall is similar to some of the neighboring properties, natural stone. Mr. Arango said he can provide photos of the proposed stone wall.

Ms. Sharrett noted that the planting plan looked good, with the exception of the wall of Thuja Green Giants (wall of hedges) along the driveway, esthetically these do not relate at all with the rest of the community. Ms. Sharrett recommended something a little more natural and native possibly a mix of evergreens. Mr. Arango agreed that this is an option they can explore. Ms. Sharrett and Mr. Bossinas raised the question about lack of windows on the side elevations of the home. Mr. Arango noted that this is how the modular homes are. He can ask the owner, it could be the need to arrange furniture on a solid wall. Ms. Sharrett raised concerns with water runoff from the roof. Mr. Ciarcia will review the original stormwater plan in addition to the original site plan and subdivision map for details.

Mr. Chin asked the Board if there were any more questions or concerns; there were none. **A motion was made by Ms. Stevens, seconded by Mr. Bossinas and unanimously passed by the Board to set a public hearing for June 17, 2020.**

Fiorito, 39 Old Albany Post Road, New Duplex, Architectural Review

Bruce Fiorito (the “Applicant” and “Owner”) is seeking Architectural Review Board (ARB) approval to construct a two-family house at 39 Old Albany Post Road Section Block and Lot 80.14-1-28 (the “Project Site”). The Project Site is an 11,553 square foot parcel and the Applicant is looking to create a two-family home consisting of two three-bedroom units with 1,335 square feet of livable floor area for each unit.

Mr. Fiorito was in attendance and gave a brief overview of the updates to the project to the Board. He added trim to the front to include an outline with Azek trim, added white windows, roof line amended, changed trees in the front. They moved the driveway over a bit to save some red maples on that side. He added new trees along the front and added Rose of Sharon to the backyard to buffer the warehouse next door. In response to Mr. Ciarcia’s previous memo, grades and piping are shown, minor issues such as utilities and contours are being worked on currently. Ms. Monastra asked Mr. Fiorito supply samples of colors and finishes if the Board is comfortable with approving one of choices shown. Mr. Fiorito recommended the Board drive by 155 Cedar Lane which has the same color scheme as what is being proposed for this home.

Fiorito – continued

Ms. Sharrett noted that the changes look good with the exception of the front window which appears to have a faux window in the middle. With regard to lighting, Ms. Sharrett recommended that lighting be changed to a lantern type light, historical, yellow low lighting. Ms. Sharrett’s expressed disagreement with the revised plant selections and recommended Mr. Fiorito look at the Town’s EAC webpage native plant list. Mr. Fiorito urged that he tried to put in plants that would block out the commercial neighbor’s property. Mr. Fiorito agreed to consider some new plants but is pleased with his choices. Mr. Fiorito agreed to put the lantern type lights on the rear patios as well. Mr. Fiorito submitted a revision to the rear patios which offers additional spacing between the two residences.

Mr. Bossinas also recommended soft white light bulbs on the exterior lighting plan, something in the 2700 to 3000 Kelvin range. Ms. Stevens also recommended that the lights could be lower down on the building so it’s less intrusive all around. Mr. Fiorito said he can lower the parking area light a little lower than 12 feet to 10 feet.

Dr. Hougham agreed Ms. Sharrett with the historical light fixture. Also, Dr. Hougham asked Mr. Fiorito to add cobblestone to the front driveway and a muted herringbone bricklike path in a red earth tone color to the house. Mr. Fiorito discussed a stamp concrete with a stone pattern. Mr. Fiorito agreed to the cobblestone area at the front of the driveway. Mr. Fiorito said he will speak to his Architect about the red earth tone walk.

Ms. Monastra recommended the applicant finalize the architectural renderings and put together a materials list before the next meeting.

Mr. Chin asked the Board if there were any more questions or concerns; there were none. **A motion was made by Ms. Stevens, seconded by Mr. Bossinas and unanimously passed by the Board to set a public hearing for June 17, 2020.**

Sunrise Solar Solutions, LLC, Club Fit Briarcliff, 584 North State Road, Site Plan Amendment

Sunrise Solar Solutions (“Applicant”) located at 510 North State Road in Ossining, New York is seeking amended Site Plan approval to install a Tier One solar array on the roof of the existing fitness club building owned by Briarcliff Racquet and Fitness Club Associates doing business as Club Fit (the “Owner”) at 584 North State Road Section Block and Lot 90.15-2-1 (the “Project Site”). The Applicant seeks to install ground mounted solar equipment on the north end of the existing Club fit building, for a proposed Tier 1 rooftop solar installation. The proposal includes the construction of concrete pads for the solar equipment, trenching for utility lines, a chain link fence with privacy slats to match existing fencing on site, earthwork and a retaining wall, and removal of sixteen trees.

The Applicant submitted the following documents: Planning Board application dated March 31, 2020. Letter dated April 13, 2020, Site Plan S-1 to S-3 by Insite Engineering dated April 13, 2020, Short Environmental Assessment Form dated April 8, 2020, Club Fit Structural Certification dated April 17, 2020, Electrical Wiring Plan by Sun Rise Solar dated April 13, 2020, Solar Panel Details by Sun Rise Solar dated April 13, 2020.

Ms. Dawn McKenzie, Insite Engineering and Mr. Doug Hertz, Sunrise Solar LLC were in attendance. Mr. Hertz gave a brief overview of the plan to the Board. They are asking for a minor modification to the site plan based on a solar panel system they are proposing to install for Club Fit (Briarcliff) The system is about 544 kilowatts, it will produce about 596,000 kilowatt hours per year. Using the EPA's Carbon offset equivalencies calculator, this will offset 421 metric tons of carbon dioxide each year. Ms. McKenzie presented the site plans and reviewed photos of existing conditions and proposed location of equipment. The equipment will be fenced in with 7 feet of fence and privacy screen required for installation of this kind for safety and security. Ms. McKenzie discussed trees in the work area, the trees are very close together, too close to the building and there's erosion and exposed roots. Ms. McKenzie noted they are going to open up this area and put a small retaining wall in. One of the requirements for the Tesla storage units is that they need to have a minimum of six foot level clear access. They selected a modular block system so they wouldn't have to carve further into the existing berm. There's a gravel path around the system for access. Mr. Hertz described additional site details and equipment locations with the Board.

Ms. Sharrett asked if the applicant finalized a tree planting plan. Ms. Sharrett recommended not to plant any trees at the north side of site because nothing will grow in that area. In between the tennis bubble and the solar install there are a number of trees, Ms. Sharrett asked what would be done with those trees, also what kind of noise would from the ground units and the importance of preserving those trees in between the tennis bubble and the building as a noise buffer from a nearby gun club. Ms. Sharrett also expressed concerns of the view shed impact from the Taconic Parkway and Route 100. Her recommendation was improving the health of the existing wooded areas on site as part of their mitigation plan for tree removal. One area in the front of the parking lot near North State Road could allow for some additional planting and the other wooded area at the back of the site right area.

Mr. Hertz noted that they are not going to cut any of the trees in between the tennis bubble and the building but Club Fit has been pruning these to keep an eight foot isle cleared in preparation of this project. Ms. Mr. Hertz said there is no noise from the ground units unless you are standing on top of the units, one foot away.

Dr. Hougham asked the applicant to make contact with the neighbor (Storage Facility) to work with them on a tree replacement plan. Mr. Hertz said they would like plan something smaller there, something lower on either side of the berm.

Mr. Ciarcia submitted and reviewed his memo, dated May 20, 2020 as follows; Show the location and extent of the stabilized construction entrance. Indicate the location of the drop inlet protection. Will the existing bollard in the work area be removed? Will any parking spaces be eliminated to provide access to the solar equipment?

Ms. Monastra submitted and reviewed a memo, dated May 19, 2020 copies were sent to the applicant in advance of the meeting. The Applicant needs to be updated to reflect the bulk regulations found in Section 200-23 of the zoning code. It is recommended that this application be referred to the Briarcliff Fire Department, which services this property, for comments or concerns with the proposed project regarding fire safety or access to the building during an emergency. This application will require a referral to the Environmental Advisory Council because the permit is associated with a site plan approval.

The application was referred to the Town's EAC and Ms. Monastra recommended coordination with the EAC, Town's Tree Expert, Craig Stevens, Building Inspector, John Hamilton, and Briarcliff Fire Chief as well. Mr. Hertz said they will forward a tree plan for the next meeting. Ms. McKenzie would like to arrange a site walk with EAC, Craig Stevens and Board Members.

Miscellaneous

John Fussell, 50 Old Albany Post Road, New Single-Family ARB: Amendment to rear retaining wall design, Architectural Review approval. Mr. Fussell, Builder and Applicant was in attendance. Mr. Fussell noted that as they started working on the rear wall and they had the opportunity to use some of the natural stone that was found on site to build the retaining wall at the rear of the property. Originally, a concrete type wall was approved under his ARB Approval for this site. Mr. Fussell was prepared to submit a building permit for the new wall and it was determined that a change to the ARB plan would require ARB review and approval.

The Board was in agreement with the proposed changes to construct a natural stone retaining wall instead of original cement type wall. Mr. Ciarcia asked for certifications of the walls and to have Mr. Fussell's Engineer put this information on the as-built survey. Ms. Zalantis noted the record should reflect that the as-built plans will correctly identify the wall that is being built and the Planning Board is in agreement with the applicant to make that change to the plan. A natural stone wall with dry joints instead of the previously approved concrete wall.

Mr. Chin asked for a motion and an individual vote from each member; all Board Members voted individually in favor of the change.

A motion was made by Ms. Stevens, seconded by Dr. Hougham and unanimously passed by the Board to vote in favor of the change from the original approved concrete wall to a natural stone retaining wall with dry joints and have the applicant provide an as-built survey and certification by his Engineer of the new stone wall when completed.

Minutes

Minutes of May 6, 2020 were not available at this time.

Adjournment

A motion was made by Ms. Stevens, seconded by Mr. Bossinas and it was unanimously passed by the Board to adjourn the meeting to June 3, 2020.

Time Noted: 9:56 p.m.

Respectfully submitted,

Sandra Anelli

Sandra Anelli, Secretary
Town of Ossining Planning Board

APPROVED WITH AMENDMENTS: June 3, 2020