

Planning Board
Village of Tarrytown
Regular Meeting
August 28, 2017 at 7:00 p.m.

PRESENT: Chairman Friedlander; Members Tedesco, Aukland, Raiselis (arrived at 7:11 pm), and Birgy; Counsel Zalantis; Village Engineer Pennella; Village Planner Galvin; Secretary Meszaros

Chairman Friedlander called the meeting to order at 7:08 pm.

APPROVAL OF MINUTES – July 24, 2017

Mr. Tedesco moved, seconded by Mr. Birgy, with Mr. Aukland abstaining, that the minutes of July 24, 2017 be approved as submitted. All in favor. Motion carried.

Chairman Friedlander announced the following adjournment:

Peter Bartolacci – 67 Miller Avenue - Removal of railroad tie wall, construction of retaining Walls with landscaping pending a ZBA determination.

NEW PUBLIC HEARING – 202 Lexington Group – 29 South Depot Plaza

Chairman Friedlander read the Public Hearing notice:

PLEASE TAKE NOTICE that the Planning Board of the Village of Tarrytown will hold a public hearing on Monday, August 28, 2017 at **7:00 p.m.** at the Municipal Building, One Depot Plaza, Tarrytown, New York, to hear and consider an application by:

Lexington 202 Group LLC
34 Norm Avenue
Bedford Hills, NY10502

For site plan approval to convert an existing indoor sports facility into a self-storage facility and demolish an existing structure for a parking area. The property is located at 29 South Depot Plaza, Tarrytown, New York and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.70 Block 29, Lots 37 and 38 and is located in the ID District.

Documents are available for inspection in the Planning and Zoning Office. All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing-impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

Additional approvals will be needed from the Architectural Review Board.

By Order of the Planning Board

Dated: August 18, 2017

Lizabeth Meszaros
Secretary

The mailing receipts were received and the signs were posted.

Chairman Friedlander stated, for the record, that at a prior meeting, there was reference made that his son, Michael Friedlander, may have a relationship with the past tenant of the building. He has since found out that there is still a relationship, and, as a result, Dr. Friedlander will recuse himself from this application. He asked Mr. Tedesco to chair this portion of the meeting.

Mr. Tedesco moved, seconded by Mr. Aukland, with Dr. Friedlander recusing himself, to open the Public Hearing. All in favor. Motion carried.

Mr. Tedesco said the Board received a memo from the Village Landscape Architect, Lucille Munz, with two comments: (1) to include native plants and (2) to consider planting a few shade trees. Ms. Munz indicated on her report where the trees should go. Mr. Tedesco advised the applicant to respond to these comments before the next work session with a revised landscape plan and also to reply to Village Engineer Pennella's memo, which will be forwarded.

Mark Constantine, Attorney for the applicant, also present, appeared and said he will provide any additional information necessary as a matter of procedure in terms of moving this process forward. He anticipated that the Board would issue a negative declaration this evening under SEQRA. Mr. Tedesco said it is not possible until they receive the information requested from the Village Engineer. They also would like a response to the Munz Landscape Report.

Mr. Constantine noted that he does not believe a variance for parking is required for lot 37. The Village Engineer finds that these lots are not adjacent. However, section 305-63 states clearly that there is a procedure to be followed which does not consider this a variance. He said he may appeal to the Zoning Board with regard to Mr. Pennella's determination that lot 37 is not adjacent to lot 38. He presented the plan and said that there is no intervening use between these lots. There is essentially a driveway between the two properties not unlike many properties in the village. These are two separate lots; different tax lots; the only thing between them is a driveway. He said that for the past 40 years or more, this driveway has been used to gain access to lots 37, 38, and 39 and for uses that the Metro North Railroad and Westchester County have further south of that property. It is their position, pursuant to section 305-63, if the village attorney approves the easements, as a condition of approval, they would provide those easements to clarify that lot 38 can be served with parking on lot 37 and access for vehicle and pedestrian access across lot 39. The easements on record provide for that particular use. They are asking that these lots be considered adjacent pursuant to section 305-63.

Mr. Tedesco said that, while the Planning Board can make a recommendation for parking to the Zoning Board, the Zoning Board will make this determination.

Counsel Zalantis said the Planning Board cannot overrule an interpretation made by the Building Inspector. You have the right appeal this determination to the Zoning Board. She also wanted to clarify that, in addition to conveying lots 37 and 38, that there is also a perpetual easement of ingress and egress over lot 39 and an easement for making proposed improvements on lot 39. She said the applicant is correct that, if the lots were adjacent, it could be handled through the village attorney. However, it is the Building Inspector's interpretation that these lots are not adjacent because they are separated by lot 39. The applicant does not need a variance; however, they need a recommendation from the Planning Board for Zoning Board approval for off-site parking in accordance with section 305-63 (C). The Planning Board would have to issue a recommendation that it agrees this lot is a good place for off-site parking. The applicant can either appeal this interpretation and/or ask for approval for off-site parking pursuant to section 305-63(C) but first they will need a recommendation from this Board for the approval of off-site parking by the Zoning Board.

She advised the Board that although they are not at a point to declare a negative declaration, they could recommend to the Zoning Board off-site parking at this location, which is required by the code. The Zoning Board cannot grant any approvals until a negative declaration is issued by the Planning Board.

Mr. Aukland asked Counsel Zalantis if the applicant requires a recommendation from the Planning Board for off-site parking on this lot. Counsel Zalantis said yes, the code requires the Planning Board to make this recommendation.

Ms. Raiselis asked if this is a Zoning Board matter. Counsel Zalantis said you are making a recommendation with regard to off-site parking. Counsel read through the entire section 305-63 (C) 1:

Location. Required parking and loading spaces shall be provided upon the same lot as the use or structure to which they are accessory, except that off-street parking spaces required for structures or land uses on two or more adjacent lots may be provided in a single common facility on one or more of said lots, provided that a legal instrument, satisfactory to the Village Attorney, assures the continued existence of the parking facility to serve said structures or land uses as long as they may exist. Such agreements shall also guarantee that upon the termination of such joint use, each subsequent use of the premises will provide off-street parking facilities for its own use in accordance with all requirements of this section. The Zoning Board of Appeals may also permit the substitution of space on another lot under certain conditions where, by reasons of difficult topography or abnormal shape of lot, strict compliance with the minimum off-street parking requirements specified in this chapter or in particular cases found to be necessary and so ordered by the Planning Board or by the Board of Appeals cannot be attained on the lot to which such space would be appurtenant. The Board of Appeals, after notice and hearing and upon recommendation of the Planning Board, may permit the substitution therefor of equivalent off-street parking space on another lot in the same ownership or under lease for a term of not less than five years, the entrance to which is not over 300 feet by normal pedestrian travel from the building or use to which such off-street parking space is appurtenant, and if such alternate off-street parking space is authorized, such space shall be deemed to be required open space appurtenant to such building or use and thereafter may not be used for any other purpose unless other alternative space complying with this

subsection is substituted therefor and approved by the Board of Appeals. In no event shall such parking and/or loading spaces for a nonresidential use be so located without approval of the Zoning Board of Appeals.

Ms. Raiselis said it sounds like the applicant needs a recommendation from this Board that off-site parking is a good thing to do at this location.

Counsel Zalantis said the applicant could put parking on the same lot, or seek approval under this section, or get a variance for additional parking on lot 38.

Ms. Raiselis asked Counsel if the parking would be for that site only for as long as that use is in place. Counsel Zalantis said once done, the lot could not be sold off separately since it connects to the self-storage, and they cannot use it for something else.

Planner Galvin asked if they could possibly share parking with the Village. Counsel Zalantis said they would have to come up with a substitute.

Ms. Raiselis asked Mr. Constantine how many spots are on lot 38. Mr. Constantine said there are 36 spaces on the current plan. He commented that their other application (160 Wildey Street) did provide for a variance for parking, which was granted by the Zoning Board, and this Planning Board approved that site plan. He said this situation is not very different from that application. The applicant said he would comply even though it is not tailored for self-storage, just warehouse uses. They have since modified the proposed plan for retail use. Mr. Constantine said the Planning Board has the right, on a reasonable basis, to apply an alternative parking standard based on the use and the intensity of use and this is important since the history of the site is for less parking than it is now. He said that the sports facility has a greater demand for parking. The Village Planner, in his memo, also agreed that this type of use has a lower demand on traffic and parking. Mr. Constantine's point is that this type of use has a lower demand on traffic and parking; however, they applied for a variance anyway. In this case, the applicant considered offering more parking, proposed to buy the property, demolish a building, open up site-lines, and create open space in this area.

Counsel Zalantis said the code does allow the Planning Board, pursuant to section 305-63 (D)(2), to approve reasonable and appropriate off-street parking requirements for structures and land uses which do not fall within the categories listed, when there is not a standard. However, there is a standard for self-storage in the code, so a new standard cannot be set.

Mr. Tedesco said before they can entertain a recommendation for the parking on this lot, he referred to a letter from the Acting Commissioner of the Westchester County, Department of Planning, dated August 16, 2017, in response to the referral of this application under the General Municipal Law. He read a portion of the letter into the record.

“The proposed application is generally not consistent with the County Planning Board’s long-range planning policies set forth in the Westchester 2025-Context for County and

Municipal Planning and Policies to Guide County Planning, adopted by the Board on May 6, 2008, amended January 5, 2010, and its recommended strategies set forth in Patterns for Westchester: The Land and the People, adopted December 5, 1995, because it would place a self-storage building in a transit-oriented center that would be more appropriately used for mixed-use, transit oriented development. However, we note the site's location in an industrial zoning district, which allows for self-storage facilities. Therefore we are appreciative of the applicant's intention of adding a small, 500 square foot retail space to the building, as well as bicycle parking."

Ms. Raiselis asked Mr. Galvin if he agrees with all that he put in his memo considering the nature of what the county stated in their letter. Bob said he will address that in a more detailed memo but in terms of parking, self-storage does take up less parking and traffic.

Mr. Aukland asked Mr. Constantine if the tax lots he referred to are subdivided lots. Village Engineer said they are under one ownership. Mr. Constantine said they are separate lots and not a subdivision.

Village Engineer Pennella asked if the property is under one ownership, will it have to go through subdivision. Mr. Aukland said we would have to clarify this; we cannot proceed if the lots are not subdivided.

Planner Galvin asked how long ago it was done, it depends on the code. Mr. Constantine said this was never brought up so he did not look into it, since this is the first time it has been brought up.

Mr. Aukland said he is not ready to give a recommendation for parking to the Zoning Board until a response is received to the Village Engineer's memo.

Linda Whitehead, Attorney, representing American Independent Paper, the current owner of these lots, came up to say that she is bothered that this matter is just being raised. The village has recognized separate lots by approving different uses in the past. They have always been treated as separate lots. This could be a legal non-conforming situation.

Mr. Aukland and Ms. Raiselis said they have permitted uses, not ownership. Ms. Whitehead said, if you have, then your code does not permit that. Ms. Whitehead asked how On-track Sports was approved. Ms. Raiselis said this is an issue that has to be legally untangled. Ms. Whitehead asked why this did not come up with On-track. Mr. Aukland said it was common ownership then. Ms. Whitehead said it is common ownership now.

Counsel Zalantis asked if there is a subdivision map for these properties. Ms. Whitehead said she thinks these lots pre-date subdivision requirements. Mr. Constantine said he believes there is a filed map but he knows there are separate deeds. Mr. Constantine said his client said this property has had approvals for a paper recycling use, an indoor sports facility, and the last use, a warehouse use (Gentle Giant Moving).

Mr. Aukland said we just want to know if the lot was subdivided or not. Counsel Zalantis said if you have a filed map that will answer these questions. Ms. Raiselis asked that they provide this map.

Ms. Whitehead said she is not sure they have one but these are 3 separate tax lots and have always been treated as such. This application has been in for a couple of months and this is the first time this has been brought up. Mr. Aukland said it is up to the applicant to submit this material. The proceeding has to go correctly. We need to understand if it is subdivided or not.

Mr. Tedesco said that the applicant has to provide information so that this issue can be resolved. Our counsel will assist in interpreting this information. He requested a response to the Village Engineer's memo and to the Landscape Architect and to continue the public hearing.

Ms. Whitehead asked if this issue was looked into when 3 different uses were used before because she does not believe this zone allows multiple uses on one lot. Mr. Aukland said this is a new application. Counsel Zalantis said it was not clear to the Board that we were dealing with 3 separate lots. It was not until she was looking at the tax maps. A survey was provided that there is a perpetual easement in place for lot 39. She asked if they could also clarify if lots 37 and 38 will have access over lot 35. Ms. Whitehead said they do have access and said that the easement benefits all 3 tax lots.

Mr. Tedesco said we just want to make sure things are done properly with this application. We want to correct things if they were not done right in the past. The applicant needs to provide this information and our counsel needs to review it. We hope that the project will be successful.

Ms. Whitehead said she spoke with Counsel Zalantis and it was not discussed at the work session. Ms. Raiselis said the applicant was at the work session. Mr. Ferraro said the subdivision was not discussed at work session. Ms. Raiselis said the lots were discussed. Counsel Zalantis said subdivision was not discussed, but they discussed lots in terms of easements. Ms. Whitehead said this is a different issue requiring a subdivision approval.

Mr. Constantine said his application and cover letter, dated June 1, 2017, clearly states references pursuant to section 305-63 and provides easements over lot 39 and, for the record, the importance of the work sessions or staff meetings is that applicants are asked questions and there is a dialogue. Mr. Tedesco said work sessions are opened to the public and if you are asked a question, then you can answer it. If you were there, you would have this information and be better prepared.

Mr. Constantine, for the record, said we were told this evening for the first time that the lots may have to be subdivided. We take this very seriously. This is part of our living and we come before this Board in good faith. The Board should flush out issues that need to be addressed in some reasonable matter. For us to get from June 1st to August 28th and for

first time being told that there is a subdivision approval is.... Mr. Aukland interrupted and said the implication of putting in an application is that it has to be submitted, full and complete and correct. It was Mr. Constantine's use of the term "tax lots" that flagged the question to him that maybe it was not subdivided, so the applicant should not say that the Board should have raised this matter before. The Board is just asking now if the lots were subdivided.

Mr. Constantine said the application is not deemed completed until you say so. Going to Public Hearing deems that the application is complete and now the Board is saying it is not complete. Mr. Tedesco said the application is complete when you address all issues. It does not mean that we don't have questions. Complete does not meet finite. It means you have given the basic responses. He appreciates their effort and welcomes them to the next work session to listen. They want to be positive and have them participate to the full extent.

Mr. Constantine advised that they have submitted a Zoning Board application pursuant to 305-63. Part of that is a recommendation for off-site parking. Since, they will not have a negative declaration declared tonight; procedurally what can they do now.

Mr. Tedesco said they are not ready to recommend approval of the parking spaces to the Zoning Board, but they can consider it without the approval.

Mr. Constantine asked with regard to lead agency notice, was it also sent to the Zoning Board. Counsel Zalantis said it was circulated to them as an interested agency. This is a coordinated review. Counsel Zalantis said you can request action for an interpretation only, not on section 305-63 since (1) the Board has not recommended the off-site parking and (2) there has been no negative declaration issued.

Mr. Tedesco moved, seconded by Mr. Aukland, to continue the Public Hearing. All in favor. Motion carried.

Mr. Galvin asked for structural analysis that was supposed to be submitted to determine if facility could support solar panels.

Mr. Birgy asked if applicant would be willing to let the village have use of the roof for micro-grids since Indian Point is closing in the future. He advised that NYSERDA provides funding and are looking for proposals and will provide assistance to applicants. This will make the building more valuable and save money.

Mr. Constantine said his client will take this under consideration.

Mr. Tedesco again moved, seconded by Mr. Aukland, to continue the Public Hearing. All in favor. Motion carried.

NEW PUBLIC HEARING – New Cingular Wireless (AT& T) - 120 White Plains Road

Chairman Friedlander read the Public Hearing Notice:

PLEASE TAKE NOTICE that the Planning Board of the Village of Tarrytown will hold a public hearing on Monday, August 28, 2017, at **7:00 p.m.** at the Municipal Building, One Depot Plaza, Tarrytown, New York, to hear and consider an application by:

New Cingular Wireless PCS LLC (AT&T)
One AT & T Way
Bedminster, NJ 07921

For a Compatible Use Permit and Site Plan approval to install a wireless telecommunications facility on the rooftop of the existing building.

The property is located at 120 White Plains Road, Tarrytown, NY and is shown on the tax maps as Sheet 1.140, Block 94, Lot 5.2 and is in the OB Zoning District.

Documents are available for inspection in the Planning and Zoning Office. All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing-impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

By Order of the Planning Board

Lizabeth Meszaros
Secretary

DATED: August 16, 2017

Kristen Motel, of Cuddy & Feder, representing the applicant, is seeking a compatible use permit and site plan approval to install a wireless telecommunications facility on top of an existing office building located at 120 White Plains Road. The facility consists of three sectors with four antennas per sector, for a total of 12 antennas, and an installation of a generator for backup power. Ms. Motel explained that this facility is currently at 303 South Broadway and they are seeking relocation. They have also applied for a height variance with the Zoning Board of Appeals since the building is non-conforming with respect to height. Michael Musso, PE, of Henningson, Durham and Richardson, Architecture and Engineering, PC, the village consultant, has also visited the site and will comment this evening. Since March, they have revised the plan and have added screening to the antenna to enclose them with stealth panels. These panels enclose the antennas and are painted to match the façade of the building.

Mr. Tedesco asked Mr. Musso to come up and give a brief presentation.

Mr. Mike Musso, of HDR, retained by the village to perform a technical review of the application, came up and gave a brief summary of his findings and said he will submit a

technical memo to the Board once completed. He explained that HDR only does work for municipalities and has worked with over 25 municipalities in New York State.

Mr. Musso explained that this is a new application for an wireless telecommunications facility in the OB district on the roof of an existing commercial building seeking a compatible use permit and site plan approval. The village has a number of wireless facilities, mainly rooftop. Part of purpose for this installation at this site is to fill a hole left for a former facility at 303 South Broadway. The closest facility is at 120 White Plains Road. This is the trend with wireless technologies. They subdivide the cell site. It is all about capacity and coverage. Based on data uses and demands, this is a key site for this location on 287 and route 9. The applicant has done a good with their coverage modeling showing the existing AT&T sites and the supplemental coverage provided by the proposed site. He still has questions for the applicant, but he feels the code has been followed and his comments have been addressed from both the Village Planner and Engineer.

Mr. Musso said that the nature of the site will be in full compliance. A site analysis was done. He will submit a report which will address coverage and capacity, radio frequency emissions, an alternate site analysis, visuals and structural assessment and close with a summary of findings and recommendations. He distributed photos and made reference to page 2, which show the antennas with the stealth screening wall. The original application was proposed without the screening. The walls are radio frequency transparent made from fiberglass. One of the things he wanted to raise was they looked at flush mounting. The geometry on the building is unique and the symmetry is important. Looking at the photos, the symmetry is something the Board should consider. Stealth technology is great but he feels that the aesthetics should be evaluated on a site basis.

Ms. Raiselis asked if the painted boxes are less obtrusive or offensive. Mr. Musso said that the stealth screening is required in our code. Mr. Pennella said they are not truly disguised by this. Mr. Musso said it is adding bulk to the roof. Ms. Raiselis said it looks like they are putting warts on it. She asked if they have to put in the stealth screening. She doesn't like it.

Mr. Birgy asked about the purpose of the generator located in the garage. Mr. Musso said it is a 35 kilowatt generator for emergency use in case of a power outage. Mr. Birgy asked if the garage is below grade and was concerned since it could possibly flood. Mr. Pennella confirmed that the generator is on the second level and on the north side of the building there is about 4 or 5 ft of soil and there is an opening. The parking area is open to the back so you cannot have flooding in that area

Mr. Pennella referenced Figure 3 and the rectangular box and asked if there was a possibility of sloping it as the same angle to match the building. Mr. Musso said that would be a question for the applicant. Mr. Pennella referred to "Exhibit C" in their Planning Board submission and asked, for the record, that a letter be submitted from the property owner that they declined the renewal of the lease on the existing building for 303 South Broadway.

Dr. Friedlander observed that the antennas are lower than the penthouse. Ms. Motel said yes, the building is non-conforming with respect to height. It is the interpretation of the Building Inspector that we are exaggerating the non-conformity and they will appeal to the Zoning Board for an interpretation. Mr. Galvin said the antennas are 11 feet above the roof itself.

Mr. Aukland asked if there is a functional reason to cover the antennas. Ms. Motel said no it is just to comply with the screening in the code. Mr. Aukland said he prefers no screening.

Mr. Tedesco asked Mr. Musso when his report will be submitted. Mr. Musso said before the next work session. Mr. Tedesco confirmed that the work session was September 14, 2017. He will also provide recommendations to the applicant so they have a chance to respond.

Planner Galvin said he was also at site visit and he suggested that both the stealth and without were presented so that they could make their own determination.

Mr. Tedesco moved, seconded by Mr. Aukland, to declare this a Type II action with no further action required under SEQRA. All in favor. Motion carried.

Mr. Tedesco moved, seconded by Mr. Aukland, to set en escrow for this application at \$5,000. All in favor. Motion carried.

Mr. Tedesco moved, seconded by Mr. Aukland, to continue the Public Hearing. All in favor. Motion carried.

ADJOURNMENT

Mr. Birgy moved, seconded by Mr. Aukland, to adjourn at 8:13 p.m. All in favor. Motion carried.

Liz Meszaros
Secretary