

**APPROVED**

**HAROLD GARY**  
*Chairman*  
**RAYMOND COTE**  
*Vice-Chair*

**TOWN OF CARMEL**  
**PLANNING BOARD**



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**MICHAEL CARNAZZA**  
*Director of Codes  
Enforcement*

**RONALD J. GAINER, P.E.**  
*Town Engineer*

**PATRICK CLEARY**  
*AICP, CEP, PP, LEED AP  
Town Planner*

**BOARD MEMBERS**

**EMMA KOUNINE**  
**CARL GREENWOOD**  
**JOHN MOLLOY**  
**JAMES MEYER**  
**ANTHONY GIANNICO**

**PLANNING BOARD MINUTES**  
**MAY 23, 2012**

**PRESENT:** CHAIRMAN, HAROLD GARY, VICE-CHAIR, RAYMOND COTE, EMMA KOUNINE  
CARL GREENWOOD, JOHN MOLLOY, JAMES MEYER

**ABSENT:** ANTHONY GIANNICO

<b><u>APPLICANT</u></b>	<b><u>TAX MAP #</u></b>	<b><u>PAGE</u></b>	<b><u>TYPE</u></b>	<b><u>ACTION OF THE BOARD</u></b>
Mehra, Sanjay	75.16-1-27	1	Public Hearing	Public Hearing Closed. Planner to prepare Resolution.
Bavarian Corp. (Ariano's)	75.44-1-70	1-3	Site Plan	No Board Action.
Ronin Property Group, LLC.	74.11-1-20	3-5	Amended Site Plan	No Board Action.
Dring Holding Corp.	86.11-1-25	5-6	Amended Site Plan	No Board Action.
Woodcrest Garden	76.9-1-19	6-8	Site Plan	Motion to table to next Meeting.
Upper Lake Subdivision	42.-1-57	8-9	Sketch Plan	Public Hearing Scheduled.
St. John the Evangelist & Temple Beth Shalom	65.17-1-50 & 65.17-1-43	9	Ext. of Approval	6 Month Extension Granted.
Old Forge Estates	75.15-1-19-40	9	Ext of Approval	6 Month Extension Granted.
Pulte Homes – Terrace Dr.	55.14-1-11.2	9	Discussion of Rec Fees	No Board Action.

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

Rose Trombetta

**MEHRA, SANJAY – 10 VESCHI LANE SOUTH – TM – 75.16-1-27 – PUBLIC HEARING**

The consultants had no comments.

Hearing no comments from the audience, Mr. Greenwood moved to close the public hearing. The motion was seconded by Ms. Kounine.

Mr. Gary asked the Planner to prepare resolution.

**BAVARIAN CORP. (ARIANO'S TRATTORIA) – 18 CLARK PL. – TM -75.44-1-70 – SITE PLAN**

Mr. Carnazza read his memo which stated the applicant proposes to utilize additional space in the existing building including the outdoor patio for the restaurant use. Provide an elevation of the building. Variances are required from the ZBA.

Mr. Gainer had no comments.

Mr. Cleary read his memo which stated this application involves the utilization of existing off-street parking spaces located across the street from Ariano's Restaurant to accommodate the restaurant use. The site across the street supports an office building use. No additions or exterior alterations to the existing restaurant building are proposed.

**SITE PLAN REVIEW COMMENTS:**

- "Parking and loading facilities *for the principal use*", is a permitted principal use in the C – Commercial zoning district. Clarification is required from the Director of Code Enforcement regarding the use of parking spaces at the office building site, for a separate off-site use. It is unclear if this shared use of parking spaces is permissible.
- The restaurant requires 30 off-street parking spaces – 8 spaces are provided.
- The existing restaurant parking spaces encroach into the Clark Place right-of-way. Have variances been granted for this non-conformity?
- The office building across the street (where the additional parking is sought) requires 45 off-street parking spaces, 47 are provided.
- During what periods would the restaurant use the office building parking spaces? Would there be periods of overlap, when both the restaurant and the office building are using the parking spaces (lunch time, early dinner hours, etc)?
- How will patrons move between the two sites? Is a direct and safe pedestrian connection available or proposed?
- A note on the site plan indicates that an easement will be granted to the restaurant for the use of the office building spaces. The Planning Board Attorney should review the easement, and determine if an easement is the best instrument to memorialize the parking space arrangement.

Mr. Molloy asked for clarification with the regards to the parking lot being discussed which is diagonally across the street and owned by the applicant.

Mr. Carnazza stated that's correct. He said the zoning board generally would not give a variance unless there is an easement or something in perpetuity that shows they have these parking spots.

Mr. Gary stated I don't think we should leave it up to the applicant to decide what's permitted or not.

Mr. Cleary agreed.

Mr. Gary asked if it is permitted.

Mr. Cleary said it's not, it requires a variance.

Mr. Gary stated we have to clarify if whether we could accept the application with something that is not permitted.

Mr. Cote inquired about the additional use of space in the building and outdoor patio.

Mr. Willie Besharat of Rayex Design stated the outdoor patio is existing right now. We are not building anything. The patio is seasonal only. There is a room in the back that is used privately every now and then. The majority of the business is done in the restaurant.

Mr. Greenwood said being they have expanded the use of the restaurant, wouldn't it be more appropriate to see a map that has the property blown up, rather than where they are proposing to put additional parking?

Mr. Cleary stated we could certainly do that.

Mr. Besharat stated we will enlarge it. That's not a problem.

Mr. Gary asked Mr. Charbonneau if he was satisfied with moving ahead.

Mr. Charbonneau stated I would like to see the proposed easement agreement or lease agreement.

Mr. Besharat stated we will have the attorney work on it.

A discussion ensued around the board with regards to the use of the building.

Mr. Cleary asked Mr. Besharat to clarify the use issue. He asked if the deck and party room was currently being used.

Mr. Besharat stated yes.

Mr. Carnazza stated they are being used without approval.

Mr. Besharat stated as it is used right now. The building is remaining the same. We are not adding any seats, or will there be any construction.

Mr. Greenwood stated this use that is being used was never approved.

Mr. Carnazza said that's correct. They are only approved to use the main dining room and they expanded out to the deck. We told them they were in violation and that's why they are here. They expanded without approval.

Mr. Gary asked Mr. Besharat to sit with the consultants.

Mr. Besharat stated we will address the legal issue, lease versus easement. I think the lease makes more sense because if the building gets sold the lease would be part of the sale.

Mr. Gary asked Mr. Charbonneau to look at the agreement before it comes back to the board.

#### **RONIN PROPERTY GROUP, LLC – SECOR ROAD – TM – 74.11-1-20 – AMENDED SITE PLAN**

Mr. Carnazza read his memo which stated the applicant proposes to change the approved 2 story building to a one story building and add a drive through lane to the rear of the building. At the rear left side of the building, the traffic circulation does not work. The vehicles in the drive-through lane cannot stay in the lane as they turn at the building corner. The lane needs to be widened or the building pulled back. A wetland permit is required from the ECB. Provide a trash enclosure detail.

Mr. Gainer read his memo dated May 21, 2012.

Mr. Cleary read his memo which stated this application involves amending the previously approved site plan approval (July 8, 2009) for this site, which called for the development of a two-story, 9,600 square foot building supporting retail space on the first floor and office space on the second floor. A single two-way driveway curb cut was proposed serving a 55 space off-street parking lot.

The current plan reduces the size of the building to a 6,000 square foot, one story building. The building will support at least two tenants, one of which will be a Dunkin Donuts, with a drive-thru window. Instead of the single curb cut, two, one-way driveways are proposed, and the parking lot has been reduced to 32 spaces.

#### **SITE PLAN REVIEW COMMENTS:**

- Subject to the provisions of Section 156-31, and pursuant to the determination of the Director of Code Enforcement, the proposed Dunkin Donuts may be classified as a "Fast-Food Restaurant." As such, it would be permitted in the C – Zoning District as a Conditional Use, subject to the following 3 criteria:
  - It shall be fully enclosed.

- The site shall not be located closer than 200' to an abutting residential zone or another fast-food establishment.
- Points of vehicular ingress and egress shall be limited to the adjacent thoroughfare having commercial zoned frontage only.

The site meets the first and third criteria. Additional documentation is required to determine if it meets the second criteria.

- The variances granted in 1986 (for lot area and minimum lot width) would not change for this application.
- The applicant should supply peak use operational data from other Dunkin Donuts to support and document the anticipated intensity of the use of this site, including the drive-thru.
- How many vehicles can queue inside the site at the drive-thru window?
- Would there ever be instances when the vehicle queue would extend out into Secor Road?
- It is noted that the storefront entrances are located at the front of the building (no rear entrances). Only 7 of the site's 32 parking spaces are located at the front of the site, the balance is located to the side and rear. While a sidewalk is provided in front of the building, no sidewalk is provided along the side and rear. As most of the customers would be coming from these areas, accommodations should be made for pedestrians (sidewalks, etc.).
- Pedestrian circulation is a particular concern given the fact that the drive-thru vehicular queue for Dunkin Donuts surrounds the building.
- Is a roof or overhang proposed at the drive-thru window? If so, how large is it and How much vehicle clearance will be available?
- The applicant has calculated the off-street parking for the site using the retail parking requirement for the entire building. Would the restaurant parking requirement apply for the Dunkin Donuts? Clarification is required from the Director of Code Enforcement.
- The refuse storage should be contained within a fenced enclosure.

Mr. Carnazza stated if it's going to be a fast food restaurant then a variance will be required.

Mr. Willie Besharat of Rayex Designs, representing the applicant stated if Dunkin Donuts does commit to it, it will be an express Dunkin Donuts. At this stage, this building will be more of a retail business.

Mr. Cleary asked if you do not have Dunkin Donuts will you still build a drive-thru?

Mr. Besharat stated we will have it provisioned for the future if we need to do it. He said we could definitely address the issue with the circulation, and as far as the parking we are proposing we could go angular. I will work with the Planner on that.

Ms. Kounine stated my only comment is, at this time we do not know what we are looking at. Are we looking at retail space or fast food? They both have different criteria. She said what happens if we approve this site for retail development and then come back and say we are getting a Dunkin Donuts?

Mr. Cleary stated they would have to come back to the planning board for a change in use.

Mr. Besharat stated we will try to address all the items (drive-thru, parking) from the beginning.

Mr. Greenwood stated approving it with the drive-thru, does that clarify it being fast food regardless of who the lessee is?

Mr. Carnazza replied no, you could have a drive-thru pharmacy, which would be retail.

Mr. Gary stated wouldn't the traffic flow be easier on the turns if the parking was closer to the building instead of the outskirts.

Mr. Gainer stated they have a variety of alternatives. As the Planner said they could provide sidewalks around the perimeter of the building.

Mr. Besharat stated we will address those issues with the parking and traffic flow.

**DRING HOLDING CORP – 119 ROUTE 6 – TM – 86.11-1-25 – AMENDED SITE PLAN**

Mr. Carnazza read his memo which stated the applicant proposes to remove the existing outdoor storage area and replace it with a retail building with a drive-through and add a warehouse building to the southeasterly side. What is the proposed use of the warehouse building? Will it be wholesale storage? Provide a north point on the site plan. The drive-through aisle at the northerly side of the proposed building does not work. The 90 degree turn cannot be made with the adjacent driving aisle turning around the building. Provide a Trash Enclosure Detail.

Mr. Gainer read his memo dated May 21, 2012.

Mr. Cleary read his memo dated May 23, 2012.

Mr. Willie Besharat of Rayex Designs, representing the applicant stated the property as it is right now is very cluttered, very busy and unorganized. The owners are proposing to get rid of all the outdoor storage and put up a new building. What exist are two houses and a huge warehouse in the back. He said we want to reorganize the site completely. He said the access through Route 118 has always been there, but has not been used. He said the proposed building in the back will be for storage only. We will be reclaiming almost 30% of the site to be a green area. We will be adding 45 more parking spaces to accommodate the need of the building. He said Walgreens is very interested in the site, but we do not have a commitment. We will address the issues the consultants have brought up and come back to the board. He said cleaning up the sight would have a positive effect on the community.

Mr. Molloy stated he is very excited about the project.

Mr. Gary stated you need to meet with the consultants.

#### **WOODCREST GARDEN – 675 ROUTE 6 – TM – 76.9-1-19 – SITE PLAN**

Mr. Carnazza stated the applicant proposes to move the pond from the east side of the pool to the west side of the pool. He said I have no zoning comments.

Mr. Gainer stated he did not have any new comments for the board. He said we previously raised a concern over the extended disturbance in an existing wooded area versus where the approved detention pond was first proposed.

Mr. Cleary stated when the applicant was last in front of the board, that was the board's concern and it was expressed to the applicant.

Mr. Peder Scott of P.W. Scott, representing the applicant stated the project was to enhance a pool which was required as a recreational amenity for a multiple family dwelling.

Mr. Scott continued to discuss the previous site plan that was approved by the board.

Mr. Scott stated we are proposing to put the basin from the east side of the pool to the west side of the pool. We will provide evergreen screening, far superior then what exists there today. We are removing limited amount of trees. He said there is no change in use, no change in occupancy. There is a slight increase in disturbed areas. Limited amount of trees will be taken down.

Mr. Greenwood stated the original plan that was approved by this board; you proposed putting that detention pond exactly where you are putting it. It went through an entire review; the Engineering Department determined that the detention pond should be located where it is on the approved site plan.

Mr. Greenwood asked Mr. Gainer (he was not the engineer at the time of approval) if he concurred with the original review by the Engineering Department.

Mr. Gainer stated I take no exception to it. You would typically place these facilities towards a low spot on the property.

Mr. Greenwood stated based on what I said, I will make a motion to deny the application.

Mr. Scott stated sometimes when you conceive a project; issues arise that cause a request to re-evaluate a project.

Mr. Greenwood stated he didn't disagree with him, but you don't see a plan that has gone through a review that something was moved based on the town's engineering department request and best practices and after it's approved, you come back to amend it and put it back where it wasn't in the best interest of the town to put it. That is the problem I have. For us to consider approving it, we are going against the requirements of the engineering department.

Mr. Scott stated there are many ways you could handle a project. He said we looked at an alternative by going underground, but it is too expensive. He said the goal of the project was to create a cabana and a pool house. He said stormwater management is a big part of our development work and there are a lot of different ways to do it.

Mr. Scott asked Mr. Gainer if we could make this engineering work.

Mr. Gainer responded you absolutely could.

Mr. Greenwood stated during the original review if you had an issue with the engineering department's placement, we could have discussed it, but you didn't.

Mr. Gary said to Mr. Scott I agree with a lot of things you are saying, but the truth of the matter is, once this got approved and it went back to whoever hired you to do this job; they decided they don't want it there. That's the bottom line. But your submittal is what Mr. Greenwood said, I agree with him. But we are not the whole board.

At which time Mr. Gary asked if any of the board members had any comments.

Mr. Molloy stated if you are going to have a detention pond, you are better off having it on the low end of the lot then on the high end of the lot. It would be more efficient the lower it is. There were comments the last time, moving it would put the bike path in jeopardy and the adjacent commercial building in jeopardy for stormwater flooding. And trees will be impacted also.

Mr. Cote stated I also recall the conversation that went on. I do remember conversations about fear of overflow in the proposed location. Having said that, I would like to hear more from the experts (Mr. Gainer & Mr. Cleary) and tell us whether there is a difference in the two locations.

Mr. Meyer commented and said aesthetically I like the new plan if the engineer says it really doesn't make a difference where the pond is located. I would tend to allow this amendment to go through, however if it is a negative impact I would go along with Mr. Greenwood.

Ms. Kounine said I would like to seconded Mr. Greenwood's motion because I don't think it is a question as to where the pond should be located. The point is we had an applicant, The Town of Carmel spent a lot of time analyzing it and making comments. Our consultants went through it thoroughly. The applicant agreed to do what was asked. The board approved it and now they change their minds. We can't have applicants come back to use and say we changed our minds. The pond was set in that location for a specific reason. It is not a principal or policy I would like to start setting.

Mr. Gary addressed Mr. Charbonneau and Mr. Cleary and stated I still agree with what Mr. Greenwood has proposed and his motion. But I also think the planning board should consider the people who it serves. Therefore, part of me agrees with Mr. Meyer. There should be a mechanism that the applicant could come back before the board regardless of what they want to do. Is that a possibility if he wants to re-submit?

Mr. Cleary stated the applicant submitted an amended site plan.



Mr. Gary stated he did not come back with a re-submittal. With a re-submittal it brings everything back into play.

Mr. Cleary said he came back with an amended site plan. Now in your deliberations, the board could ask for everything. That is within your absolute rights.

Mr. Greenwood stated we had a change in engineers, but I don't think that is an issue.

Mr. Gary said it has nothing to do with the engineer.

Mr. Greenwood reiterated what he previously said and wasn't going to change his mind.

Mr. Gary asked Mr. Cleary to clarify if the applicant re-submitted and paid the fee to be heard again.

Mr. Cleary stated that's correct, as an amended site plan.

Mr. Gary asked Mr. Charbonneau if he had any comments.

Mr. Charbonneau stated I agree with what Mr. Cleary said. You have an amended site plan before you; you have the right to review it essentially. The board could make findings based on the original approval as well as any new information presented. He said the board is correct in its assessment right now. There is a motion on the floor and it has been seconded.

Mr. Gary addressed the board and stated the applicant is asking us to reconsider because they feel it is more beneficial to them.

At which time, Mr. Robert Perelli a shareholder asked the board to speak.

A discussion ensued on whether or not Mr. Perelli could speak on behalf of the Homeowners Association.

Mr. Greenwood suggested to Mr. Perelli to send someone with a letter in writing saying they officially represent Woodcrest Gardens and to discuss the application with the board.

Mr. Perelli stated we will do whatever we have to.

Mr. Gary stated if you are going to represent the shareholders you need to get it in writing.

Mr. Perelli stated will do.

Mr. Greenwood moved to table his original motion to the next meeting. Ms. Kounine moved to table her second to the next meeting with all in favor.

#### **UPPER LAKE SUBDIVISION – 47 UPPER LAKE ROAD – TM – 42.-1-57 – SKETCH PLAN**

Mr. Carnazza had no comments.

Mr. Gainer had no comments.

Mr. Cleary stated all planning comments have been addressed and could move towards a public hearing.

Mr. Gary said to schedule a public hearing.

**ST. JOHN THE EVANGELIST & TEMPLE BETH SHALOM – TM – 65.17-1-50 & 65.17-1-43 – 1<sup>ST</sup> EXTENSION OF APPROVAL**

The consultants had no objection to the extension.

Mr. Greenwood moved to grant a 6 month extension of approval. The motion was seconded by Ms. Kounine with all in favor.

**OLD FORGE ESTATES – BALDWIN PLACE RD – TM – 75.15-1-9-40 – 2<sup>ND</sup> EXTENSION OF FINAL SUBDIVISION APPROVAL**

The consultants had no objection to the extension.

Mr. Greenwood moved to extend the extension to the full year allowed by code which will make it 6 months from today. The motion was seconded by Mr. Meyer with all in favor except for Mr. Gary and Ms. Kounine who were opposed.

The extension was granted.

**PULTE HOMES – TERRACE DRIVE – TM – 55.14-1-11.2 – DISCUSSION REGARDING REC FEES & LITIGATION**

Mr. Joseph Charbonneau, ESQ, planning board attorney addressed the board and stated we need to continue to discuss the recreation fees. I would like everyone to review again the 2005 recreation fee study that was submitted as part of the original subdivision plan. I request everyone to read through it and in two weeks, we will have an executive session to again discuss the parameters of the Courts Appellate Division decision. I would like then to have a discussion in public with respect to the imposition of those recreation fees in light of the evidence before the board previously.

Mr. Gary asked to go into executive decision on another issue, which may involve an action of potential litigation.

Mr. Greenwood moved to go into Executive Session at 8:45 p.m. The motion was seconded by Mr. Molloy with all in favor.

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

Rose Trombetta