

# APPROVED

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

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

## TOWN OF CARMEL PLANNING BOARD



60 McAlpin Avenue  
Mahopac, New York 10541  
Tel. (845) 628-1500 – Ext.190  
www.carmelny.org

MICHAEL CARNAZZA  
*Director of Codes  
Enforcement*

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

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

### **PLANNING BOARD MINUTES** **APRIL 24, 2013**

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

| <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>                                |
|--|------------------------------|--------------------|--------------------|--|
| Tompkins Recycling                                       | 55.11-1-15                   | 1                  | Amended Site Plan  | Public Hearing Closed & Planner to Prepare Resolution.           |
| Monzon, Lynne  | 76.6-1-30                    | 1                  | Regrading Plan     | Public Hearing Closed & Planner to Prepare Resolution.           |
| Nejame & Sons  | 44.9-1-16                    | 1-2                | Bond Reduction     | Public Hearing Closed & Bond Reduction Recommended to Town Board |
| Kobu Asian Bistro  | 75.12-2-5                    | 2-10               | Amended Site Plan  | Public Hearing Closed.   |
| McDonald's USA, LLC.                                     | 55.11-1-41                   | 11                 | Amended Site Plan  | Public Hearing Scheduled.  |
| Carmel Centre Senior Housing (Pulte Homes) – Lots #3 & 5 | 55.14-1-11.1<br>55.14-1-11.3 | 11-13              | Amended Site Plan  | Tentative Public Hearing Scheduled.                              |
| ASA Petroleum Co.  | 44.17-1-45                   | 13                 | Extension          | Extension Granted to 12/19/13.                                   |
| Dominger & Lockwood                                      | 44.10-1-1                    | 13                 | Extension          | 6 Months Extension Granted.                                      |
| Quis, Michael  | 55.6-1-40 & 42               | 13-18              | Re-Approval        | No Board Action.   |
| Minutes – 3/27/2013                                      |                              | 18                 |                    | Approved as Corrected.   |

The meeting was adjourned at 10:35 p.m.

Respectfully submitted,

Rose Trombetta

Chairman Harold Gary opened the meeting by acknowledging the death of Peggy Moore, retired secretary to the Planning Board, Zoning Board, Environmental Conservation Board and Architectural Review Board. He said she was one of the most dedicated, honest and hardworking person that he has ever been associated with in the Town of Carmel. He expressed his condolences to Peggy Moore's family and asked for a moment of silence.

**TOMPKINS RECYCLING – 60 OLD ROUTE 6 – TM – 55.11-1-15 – PUBLIC HEARING**

Mr. Carnazza had no comments.

Mr. Gainer had no comments.

Mr. Cleary had no comments.

Mr. Gary addressed the audience and asked if anyone wished to be heard.

Hearing no comments from the audience, Mr. Greenwood moved to close the public hearing. The motion was seconded Mr. Molloy with all in favor.

Mr. Gary asked the Planner to prepare resolution.

**MONZON, LYNNE – 21 M & M LANE – TM – 76.6-1-30 – PUBLIC HEARING**

Mr. Meyer recused himself and left the podium.

Mr. Carnazza had no comments.

Mr. Gainer stated that a performance bond amount remains to be set for the project. We are working with the applicant's engineer to get it resolved.

Mr. Cleary had no comments.

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

Mr. Gary asked the Planner to prepare resolution.

Mr. Meyer returned to the podium.

**NEJAME & SONS – 133 GLENEIDA AVE – TM – 44.9-1-16 – PUBLIC HEARING**

Mr. Carnazza had no comments.

Mr. Gainer stated the board has previously received a memorandum from the Engineering Department and there is a substantial bond being held. Based upon the work that has been completed to date, we recommend that the bond be reduced to \$114,000 to protect the Town's interest.

Mr. Cleary had no comments.

Hearing no comments from the audience, Mr. Molloy moved to close the public hearing. The motion was seconded Mr. Cote with all in favor.

Mr. Molloy moved to recommend the bond reduction to the Town Board. The motion was seconded by Mr. Cote.

Ms. Kounine said as I stated at the last meeting, I think the amount to be held is quite low. I feel it should have been increased, but the Town Engineer did not. That's okay, but I want it on record. I am trying to protect that area and wanted more money withheld.

A roll call vote was taken as follows:

|               |                    |
|---------------|--------------------|
| Mr. Molloy    | For the motion     |
| Mr. Greenwood | For the motion     |
| Mr. Cote      | For the motion     |
| Mr. Meyer     | For the motion     |
| Mr. Giannico  | For the motion     |
| Mr. Gary      | For the motion     |
| Ms. Kounine   | Against the motion |

#### **KOBU ASIAN BISTRO – 903 SOUTH LAKE BLVD – TM – 75.12-2-5 – PUBLIC HEARING**

The consultants had no new comments.

Mr. Gary stated the board asked for a report on parking.

Mr. Gainer addressed the board and stated I met with the applicant's engineer today and didn't have an opportunity to present any hard findings. He said he had the proposed plans as well as an overall site plan of the entire shopping center area and could not observe any changes that he would recommend in terms of the present parking configuration layout and parking aisles. It seems most appropriate for the space that you have.

Mr. John Karell, applicant's engineer stated he agreed with Mr. Gainer. He said it is an existing situation that was approved by the previous board and previous engineer back when it was the Aprea site plan. The present parking configuration on this property and adjacent property was deemed at that time the best available situation.

Mr. Gary asked Mr. Gainer if the parking lines have been changed since the last time the board voted on that.

Mr. Gainer replied the parking has been formalized behind Kobu. Previously the board had recommended and is now striped in front of the shopping center differently from what formerly existed. He said at that time the traffic circulation was reversed. What is out there today is a configuration that the board has previously approved.

Mr. Molloy commented about the diagonal parking next to South Side. He said when you drive in front of South Side and make a right turn, you cannot make a right turn into the diagonal parking. He asked Mr. Gainer if this was most appropriate.

Mr. Gainer stated that's correct. He said it is an odd configuration and is easily accessed coming from the rear of the shopping center. The parking aisle is insufficient to recommend or formerly identify 2 way traffic there, although that is how it operates. He said I could see no benefit in modifying it. The angled parking is actually a very modest. It could actually be angled more to provide a wider aisle.

Mr. Molloy stated what was approved previously, was an entrance by the bank and an exit in front of Kobu. He asked Mr. Gainer if he noticed any cars exiting from the entrance side, because he has seen it quite often.

Mr. Gainer replied he didn't notice it today, but has seen it in the past. He said the configuration that the board has, the bank access is ingress and Kobu access is egress is totally appropriate.

Mr. Gary stated he felt the entrance and exit configuration is proper and said what is needed there is a more defined exit sign. He said maybe the property owner of the shopping center could address that issue.

Mr. Gary addressed the audience and asked if anyone wished to be heard.

Mr. Mark Constantine, Attorney on behalf of several of the property owners in the vicinity of the applicant's property addressed the board and stated one of the concerns is the amended site plan does not reflect the current use of the property. He said the only approval that exists is for an office building. He stated currently what exists there is not something that's ever been subject to any approval that he is aware of. He commented on specific requirements for approval on the outdoor dining use code 156-39.4. He said many of the externalities associated with this type of use is noise, congregating, vehicular traffic and the capacity of the premises as it relates to parking being provided. He said there has been a representation of a maximum of 168 seats; however the seating plan does not cover all of the space within the restaurant. At which time, Mr. Constantine referred to the seating plan with a revised date of April 2, 2013 which indicated several areas of open space that does not depict seating, but should be calculated with regards to the parking requirement, one space for every 40 square feet. These spaces have not been calculated and until then, this application is not complete, and therefore this board should not proceed with an approval or closing the public hearing until it's submitted. He said another issue is we haven't seen a lighting spill plan and until it's submitted the application should be deemed incomplete.

At which time, Mr. Constantine presented photos of Kobu restaurant's hibachi section which showed more than the eight seats depicted on the seating plan. He reiterated to the board about the impacts of this proposal and to diminish the external effects of this type of outdoor dining use. In closing, Mr. Constantine stated the neighbors have made investments in the area and they have a right to be protected and that is why we are here this evening.

Mr. Bart Lansky of Lansky properties addressed the board and discussed the parking lot signs.

He said we have one small sign for the ingress which says do not exit and I have a second sign waiting to be put in. I am waiting for a response from the Engineering Department for the best placement of the sign. He said the traffic along the applicant's property and

Southside should be striped one way because it doesn't meet the code for two way traffic. The drawing should reflect the striping and one way traffic.

Mr. Karell interjected and stated that was approved as two way traffic back when Aprea's building was built and it is 22 feet wide. 24 feet is the normal width.

Mr. Molloy stated the diagonal parking on Route 6N was approved and that's not safe.

Mr. Lansky stated the Aprea site plan does exist and the approval is null and void.

Mr. Carnazza stated it was never built and it never got a building permit. It's null and void.

Mr. Lansky said so there is no approval showing 2 way traffic. He said I would like to see a complete striping and directional plan. He said as far as he is concerned, the Aprea plan no longer exists and the Miller site plan for an office building does exist. There is no amendment. We have a fresh plan which should be subject to all the rigors of this process.

Mr. Carnazza replied that is incorrect. When you amend a site plan for a change in use, it is considered an amended site plan by definition.

Mr. Lansky continued to speak and referred back to the photos that were presented earlier. He said the photo was taken to show the hibachi, sushi, and alcohol bar as a hard surface and you just can't take seats away from hard surfaces and if your seating plan shows otherwise, we have an issue.

Mr. Greenwood stated the only thing we could go by is the plan that is put in front of us and what is presented to the Town. What you are talking about is a compliance issue with the building department.

Mr. Carnazza stated that's correct and if they move seats from one table and move them to a different area, you still have the total number for the restaurant. You cannot exceed that number. He said if there is anything over that number to call him.

Mr. Lansky stated part of the process is to have some integrity. He said you have a zoning board application that suggests 98 seats and now you have a planning board application that suggests 168 seats.

Mr. Molloy also questioned the seating plan and referred back to the photos that were taken by Mr. Lansky showing seats being moved from one area to another.

Mr. Greenwood again stated we are not a compliance board. That is the building department's job and asked Mr. Carnazza if he verified the seating.

Mr. Carnazza replied yes.

Mr. Molloy said respectfully, our job is to ensure safety also and that is probably the most important part of our job. He said I haven't seen this seating chart, but it shows two tables in the middle of the aisle leading to the front door.

Mr. Meyer asked Mr. Lansky if he was in favor of one way traffic going behind your building and in front of the bakery and you don't want cars making the right turn at the end by Southside.

Mr. Lansky replied yes, that's correct.

Mr. Lansky was also concerned with the sewer tap and should be part of the planning board process. He also stated the applicant's garbage bin is directly on the property line which is accessed from his property and has caused damage to a couple cars when the gate is being opened. He said it wouldn't happen if wasn't right on the property line.

Mr. Mark Anthony addressed the board and stated he is one of the owners of the Southside Inn and has been there for 13 years. One of his concerns is the parking. He said Kobu has been a burden on our parking especially on Friday and Saturday nights. He stated the sushi bar shown on the plan looks to be a "bar" where you could serve anything. He said my feeling is that it will be a double usage situation which will impact the parking because of the standing capacity not the seating capacity. He was concerned that the outdoor patio will become a lounge area with music and a hangout area staying open to 3:00 am which is the NYS law and create a tremendous amount of standing room only. He said there is a trend in Asian Bistros, they go from sushi/hibachi family type restaurant and after a certain hour they become a lounge/nightclub party scene like Wild Fusion in Mohegan Lake. He feels that this will occur at Kobu, especially on Thursday, Friday and Saturday nights and there will be a fight for parking in that plaza. He said lastly, the Southside is an integral part of this town and since we took it over in 2000, I feel we made it more community based then it's ever been. We do a lot with the local community, such as fundraisers. This is our livelihood. He said you already have a sushi bar inside why do you need one outside. He asked the board to consider taking out the bar, because that would put it over the top. He thanked the board for hearing him.

Mr. Gary addressed the audience and stated there seems to be an attitude from the people that the board does not know what is proposed. He said we know exactly what has been proposed, but we failed to ask the applicant to explain his application prior to opening the public hearing and I think we need to do that before we go any further.

Mr. Karell stated there is a 5,000 sq. ft. restaurant with 56 parking spaces which allows the restaurant to 168 seats whether they are inside or outside. The applicant is proposing an outside covered patio that will have an additional 13 seats. Right now there are 155 seats inside. He said there will be eight seats around the hibachi table, maybe nine depending on how busy the restaurant is and will not exceed the maximum capacity. He said this is a process. We went to the Zoning Board, ECB and Planning Board. During that process we made some changes along the way. We added two rain gardens at the request of the ECB. At the request of the neighbors we glassed in the north side of the patio to further reduce any noise and sound. We moved the underground storage area from the north side of the property to under the patio. He said the applicant, Mr. Guo has previously indicated to this Board, the Zoning Board and ECB that he has no intention of having a liquor station at the outside sushi bar. The liquor will come from the bar inside and served outside. He has no intention of making it into a nightclub. He said there was a drawing that showed bottles on a shelf behind the sushi board. Those bottles were never meant to represent liquor bottles. They were just bottles and they were removed from the drawing. He said the applicant has no objection to making the driveway coming from behind the plaza one way traffic.

Mr. Gary said he wanted to clear up some of the statements that were made earlier about it looking like a bar. He asked Mr. Carnazza if it was going to be a bar.

Mr. Carnazza stated it is a sushi bar.

Mr. Gary asked Mr. Carnazza what would happen if he is approved for a sushi bar and changes it and serves alcohol.

Mr. Carnazza stated it would be a violation of site plan approval.

Mr. Charbonneau stated the applicant would need permission from the NYS Liquor Authority in order to have a free standing bar. In order for the applicant to do that he would have to amend his application to the State Liquor Authority to have a free standing bar at that location.

Mr. Gary stated so regardless of what it looks like; he cannot mix or sell alcoholic beverages outside.

Mr. Carnazza replied that's correct.

Mr. Molloy asked Mr. Charbonneau to explain what a free standing bar is.

Mr. Charbonneau stated a free standing bar would be a location where there was a bartender.

Mr. Molloy stated so they could have a bar where people order drinks as long as the waiter brings them from the customer side of the bar.

Mr. Charbonneau replied yes, they could have a sushi bar where alcohol is consumed.

Mr. Karell stated no one is denying that.

Mr. Meyer asked if there were any cross easements with regards to the parking or just a gentlemen's agreement.

Mr. Karell said there is a cross easement for traffic access and none for parking. The applicant has 56 parking spaces on his property which meets the requirements of the Town Code based on the seating.

Mr. Meyer asked if the spaces included the spots diagonally against Southside Inn.

Mr. Karell replied yes they do according to the survey.

Mr. Cote said we should seriously consider the offer of making it one way traffic coming from the back towards the front.

Mr. Carnazza stated it has to be one way, it's only 22½ feet.

Mr. Karell said we have no objection to that and will modify the plan.

Mr. Gary Cutson a resident of Mahopac Point addressed the board and stated his principal concern relates to the potential noise from the operations of the facility. Another concern is not necessarily what it is today or tomorrow, but sometime in the future whether a change is made by Kobu or a future operator or lessee.

Mr. Cutson asked the board to consider putting restrictions into the site plan approval that would apply to the current and future owners.

- Prohibit or limit the hours of operation of any activities associated with the outdoor dining facility.
- Include in the board's approval restrictions that prohibit outdoor entertainment and an outdoor sound system.
- Prohibit the usage of the large grassy area outside the patio by customers and railings not be permitted.
- The hours of operation cut off time of 10:00 p.m. should be established for the outdoor dining area.

Mr. Cutson continued and stated the requirements of three accessible spaces must be provided where the total parking is from 51 spaces to 75 spaces. The applicant's plan has only two spaces for the disabled on his site plan, which means Kobu is currently in violation of these requirements. He said the code further provides that an access aisle of at least eight feet be provided. The access aisles of the spaces on Kobu's plans are less than half of that. He said each accessible space must be marked with appropriate signage of a clear height of 60" to 84". Kobu has either no signage or inadequate signage. He said each accessible space must be located at the "shortest accessible route" from the parking to the building entrance. Kobu has both of their spaces in the rear of its property. He said since Kobu re-paved and re-painted its lot in connection with the construction and conversion of an office building is subject to all of these requirements. He said the applicant is currently counting several parking spaces that do not meet the requirements of the town code. The code provides that parking spaces be completely within the applicant's property or a recorded perpetual easement for the use of the space in order to count as a parking space. He said on the applicant's site plan parking spaces #12, 13 and 22 encroach on the adjacent property and accordingly cannot be counted.

Mr. Cutson stated in summary the applicant should be required to bring his parking plan into compliance with accessibility of the town code and state law. The plan should address angled parking, for example parallel spaces may be more appropriate than the angled spaces. The board must exclude from its consideration any of the parking spaces that don't meet the code. Prohibit outdoor entertainment and any form of amplified sound from being used in the outdoor area. Prohibit the use of the grassed area for customer usage. Require changes to the railing to the patio area and signage and other actions to prevent customer usage of that area. Lastly, require that all outdoor operations end by 10:00 p.m.

Mr. Louis Panny addressed the board and stated the board knows what their job is and I don't think it's fair that the applicant can't do what he wants to do on his property when everybody else in that area is doing what they want to do. The applicant owns the property and he should have the right to do whatever he wants to his property. I have been in Southside and parked in Kobu and vice versa. He said I just want everyone to get a fair shake.



Mr. Lansky approached the podium again and commented on the outdoor dining permit which reads outdoor dining in conjunction with any bar or nightclub is specifically prohibited. He said the plan shows a bar and you could define this a couple ways. Outdoor dining could be the seats right next door and the bar could be one on the plans outside. When you look at the code definition the prevalence of alcohol at the bar, though it's coming from inside you look at it that way very specifically, but if you look at the intent of why we don't have nightclubs or bars, you have an issue here. The board has it in their power to shut the operation down at 10:00 p.m.

Mr. Gary stated to Mr. Lansky that what the applicant has proposed and presented to the board is permissible. He said our concern is what impact it will have on the surrounding people. He said do not come up to the podium and say he can't do that. He said though it is permissible, we have to make sure its impact does not affect negatively upon his neighbors.

Mr. Lansky said what we are talking about is if it's permissible, we could get passed it, but the real issue is we are calling it something else then it actually is, we are going to run into long time compliance issues.

Mr. Gary stated when it comes to the legality of what he is doing you have to argue that in court. This board's job is to make sure the applicant follows the zoning codes the town has set forth.

Mr. Lansky stated the site plan that is presented here tonight is different from what was presented at the Zoning Board.

Mr. Carnazza said the number of seats that are in the restaurant is different.

Mr. Lansky said and the parking plan is different.

Mr. Carnazza said the parking is different. He did not have the as built survey that showed that the property line ran along the curb. When he got the as built he amended the map to show that.

Mr. Karell stated we went back to the Zoning Board with the amended map.

Mr. Lansky stated he was also concerned about the noise level and being too close to the residences.

Mr. Martin Greenberg addressed the board and stated he lives on the north side of Kobu. He said one of his residences is approximately 50 feet from the property line. One of my concerns is the dumpster is on the property line at the northeast corner of the property. He said it is being used as a storage facility. He said in the summer it reeks horribly. He asked if that structure requires zoning approval.

Mr. Carnazza said according to what's here no, but I will take a look at the actual structure in the field. He asked if there was a full roof on it.

Mr. Lansky replied it's partially roofed.

Mr. Carnazza said he will take a look at it.

Mr. Molloy asked if there was a setback requirement for a dumpster.

Mr. Carnazza said no for a dumpster enclosure and yes for a structure.

Mr. Greenberg stated his other concern is the seating plan. He said the seating plan is pure fantasy. He said the seating in the restaurant is not consistent with the plan. He asked if the seating is inconsistent if there should be an approval, what will be the mechanism for remedy.

Mr. Greenwood said we answered that previously, it is a compliance issue.

Mr. Carnazza said during business hours to call his office and after business hours call the police department. The police department will call him and he will respond and issue a violation if the applicant is not in compliance.

Mr. Frank Colantonio addressed the board and stated he has been a Mahopac resident since 1962. He said it is pretty obvious that there is a parking problem. There are a lot of good concerns here. He said the applicant is trying to enhance his restaurant. I am glad to see businesses thrive in this town, because businesses come and go. He said Mr. Anthony of Southside has done a great job in keeping the noise level down and I would expect the same thing from Kobu. He said we need to be good neighbors. There has been a lot of negativity and I would like to say something positive. He said I would like everyone to have a fair shake.

Mr. Matt Dietrichs addressed the board and stated he was in support of Kobu. He stated he is a patron of both Kobu and Southside. He would like everyone to work together and to try and come up with a good solution.

Mr. Gary addressed the audience and stated we share your concerns and the applicant's concerns. He said the board will follow the law, whatever the zoning code states is permissible, no more and no less.

Mr. Constantine approached the podium again and asked the board to look beyond the surface of this application and to consider what was said by the public. He said the application is not complete with regards to the traffic flow, parking, seating capacity and the operation of the establishment. And on that basis, we recommend that the board not close the public hearing until the plan is revised.

Mr. Craig Baumgartner, Attorney for the applicant addressed the board and stated a lot of the concerns that have been raised are based upon a misconception of what the applicant is looking to do with this project. The applicant has no intention of operating a bar or nightclub as the code states. He stated while this board is considering this amendment to the site plan, it should also be noted that a further permit must be issued by the building inspector in order for us to have the outdoor dining. That permit is revocable on five days' notice and a hearing before the Town Board. He said if we violate the terms of the provisions of the outdoor dining we are held accountable. We agree with reasonable conditions be placed upon this operation. The applicant did install an expensive sound system, but it was installed inside the premises. There is no plan for outdoor entertainment. He said these are all compliance issues the building inspector will have to deal with if there are any violations.

Mr. Molloy addressed the audience and stated I am not operating under any misconceptions. I know exactly what's going there. He said I am a real estate and negligence lawyer and I try a lot of negligence cases. This application jumps out at me as covering everything I do in life. He said a property owner has rights to use his property as long as it's consistent with the zoning code, but there's more. The planning board is given the obligation to decide the impacts on other people. He said an externality is an impact good or bad on a third party. Kobu is trying to improve his business, your job is to protect your business and our job is to protect the safety of the people. He said we want businesses to succeed. The government in many towns provides municipal parking. There is no municipal parking in our downtown. He said if there is a dangerous situation, we shouldn't allow it to continue, but we certainly shouldn't allow it to get worse. It is dangerous, there aren't enough parking spaces. He said I am against this application because it negatively impacts the safety of the people driving when they get there and when they leave. The safety in the parking lot is already bad, why would we make it worse.

Mr. Gary addressed the audience and stated I don't think there is one member sitting on this board that does not have safety on their minds. Our job is to minimize the impacts it would have on the surrounding area and upon its neighbor. He said just the mere presence of Kobu restaurant will most definitely have an impact on the other business in the entire town and well as your businesses having impacts on others in town. He said the board considers three things as impacts, sewer, water and traffic. He said I did not hear at any time from the consultants, with regards to those impacts. The issues that have been raised, such as parking spaces not being legal, this board will not pass anything that is not legal. We will address those concerns. This board will review what was heard and in my opinion keeping this public hearing opened and going over the same situations again will make it any better or worse.

Mr. Molloy stated closing the public hearing starts the clock and gives us a limited time to act and we should check the parking spaces and whether or not there is a need for a third handicapped space. He said I respectfully request that we keep the hearing open.

Mr. Gary stated I have been here since 1978 and in no time have I ever seen the Engineering Department fail to come up with the proper recommendations on parking in the town. He said I want the town engineer and the applicant's engineer to do some research on the parking, the entrance and the legality of the parking spaces.

Ms. Kounine moved to close the public hearing. The motion was seconded by Mr. Meyer.

A roll call vote was taken as follows:

|               |                    |
|---------------|--------------------|
| Mr. Molloy    | Against the motion |
| Mr. Greenwood | For the motion     |
| Ms. Kounine   | For the motion     |
| Mr. Cote      | For the motion     |
| Mr. Meyer     | For the motion     |
| Mr. Giannico  | For the motion     |
| Mr. Gary      | For the motion     |

**MCDONALDS USA, LLC – 1931 ROUTE 6 – TM 55.11-1-41 – AMENDED SITE PLAN**

Mr. Carnazza stated all the necessary variances were granted and are noted on the plan.

Mr. Gainer had no comments.

Mr. Cleary stated the applicant has made a number of revisions to the site plan to address the comments of the Planning Board. The ZBA and ECB approvals have been put in place. The applicant also received comments from the NYSDOT, and the plans have been revised as follows: The grades on Route 6 have been slightly modified. The curb along the NYSDOT right-of-way have been extended to meet the gas station curbing. The applicant has satisfactorily addressed all of the outstanding site planning issues. He said the next step is a public hearing for this application.

Mr. Gary said to schedule the public hearing.

**CARMEL CENTRE SENIOR HOUSING (PULTE HOMES) – LOTS 3 & 5 – TERRACE DR. – TM – 55.14-1-11.1&11.3 AMENDED SITE PLAN**

Mr. Carnazza stated he had no new written comments at this time.

Mr. Gainer stated as the board is aware we have been trying to work with the applicant and residents to come up with a plan with regards to the landscaping issues. He said we hope to reach some consensus in a couple of weeks that can be reviewed by both sides.

Mr. Cleary stated the primary application before you is the revision of Lots 3 & 5, a reduction of units and the primary concern we had was comparing that to the initial review and the environmental thresholds that were established in the SEQR approval. He said none of the proposed site plan amendments would exceed any of the SEQR thresholds. He said the issue that Mr. Gainer and I have been working with is the center lot and landscaping issues that need to be addressed. Progress is being made and I am optimistic that we are moving in the right direction, which is a separate issue from what's before the board, lots 3 & 5, the reduction of units. Procedurally, the next step is a public hearing.

Mr. Gary stated we all know there is an issue with landscaping. He said we need to have a public hearing and once that public hearing is over we will never see the applicant again. He said what we want is what the board originally passed for lot 4.

Mr. Jim Mullen of Pulte Homes, Mr. Mike Caruso, Attorney for the applicant and Paul Lynch of Putnam Engineering appeared before the board.

Mr. Mullen stated the landscaping plan that has been approved by this board has been installed. What we are talking about is enhancing that plan and we have had a number of meetings with the ADHOC Landscape Committee as well as the entire community to discuss the enhancement of the plan. He said we have gone through at least four different plans and on April 1<sup>st</sup> we met with the ADHOC Committee, Mr. Cleary and Mr. Gainer to talk about the plan and we will meet at least one more time to try and resolve it.

Mr. Gary said we need something fiscally that could be left with the Town.

Mr. Mullen said on April 4<sup>th</sup> a letter was written to the ADHOC Committee, Mr. Gainer and Mr. Carnazza saying \$50,000 was put on the table for them to do whatever they want in terms of landscaping.

Mr. Gary stated that won't cover it. We will need some kind of bond or something fiscally that we could depend on, so we don't have to chase you for 15 years.

Mr. Gainer stated as the applicant just indicated they came through with a proposal in March with a revised landscaping plan. We met with the ADHOC Committee and applicant and discussed that plan and did not come to any fruitful outcome. Mr. Cleary and I took it upon ourselves to see if we could advance a modified plan by working directly with the landscaping contractor. I am expecting to see a modified plan within the next two weeks.

Mr. Gary stated the board wants to help the residents of lot 4, but we will not get into negotiations for them. We want to make sure we have the fiscal finances from Pulte homes to bring lot 4 to the original plan. He asked Mr. Gainer if any proposal has been made.

Mr. Gainer stated once we get a plan to show the enhanced landscaping of the areas that have been impacted, we will then get the contractor to price it.

Mr. Greenwood said the last time the applicant was in front of the board, we determined areas that were not compliant on the site plan with the buffer zones and landscaping. He said I thought at the end of that meeting we requested that the applicant come back with a landscaping plan to meet the issues.

Mr. Gary said that request is under the table and buried. He said now we need to get something that is going to be fruitful.

Mr. Caruso stated we have had discussions outside the planning board meetings. Mr. Mullen has made quite a few efforts to meet with the ADHOC Committee. It appears we are moving in the right direction with respect to the landscaping issues. He said the best forum to do that is to participate and cooperate with the ADHOC Committee and the Town's departments to arrive at what you are looking for.

Mr. Gary stated we need to sit down and talk with Pulte.

Mr. Gainer said the revised landscaping that was presented at the April meeting did address the intrusions in the conservation areas as well as enhancement along the hillsides. We are trying to get to some enhanced plan from that.

Mr. Gary said we will have a meeting on Monday with Pulte with three board members, consultants and a representative from the nursery to discuss the finances.

Mr. Caruso stated notwithstanding that meeting and the discussions that will ensue, and the progress we hope to achieve, we respectfully request that the board set a public hearing for lots 3 & 5.

Mr. Greenwood said it would behoove us to have the landscape plan complete or as close to complete before the public hearing, because 90% of the comments would be based on that.

Mr. Gary said a public hearing is initially scheduled for two weeks for lots 3 & 5 only not **lot 4**.

**ASA PETROLEUM CO., - 1 FOWLER AVE – TM – 44.17-1-45 – EXTENSION OF SITE PLAN APPROVAL**

Mr. Carnazza stated he did another inspection of the site and it is looking a lot better. The building is down.

Mr. Gainer had no comments.

Mr. Cleary had no comments.

Mr. Gary also stated it looks better.

Ms. Kounine agreed with the chairman.

Mr. Greenwood move to grant extension of site approval for the remainder of the full year expiring on December 19, 2013. The motion was seconded by Mr. Molloy with all in favor.

**DOMINGER & LOCKWOOD – GLENNA DRIVE – TM – 44.10-1-1 – 1<sup>ST</sup> EXTENSION OF FINAL SUBDIVISION APPROVAL**

The consultants had no objection.

Mr. Cote moved to grant six month extension of final subdivision approval. The motion was seconded by Mr. Greenwood with all in favor.

**QUIS, MICHAEL – 1828 ROUTE 6 – TM – 55.6-1-40 & 42 – RE-APPROVAL**

Mr. Carnazza read his memo which stated a variance is required from the ZBA prior to the re-grant of approval. A Zoning Amendment was implemented on 9-20-2006 by L.L. No. 5-2006, which included an editor's note (*Editor's Note-Section 7 of this local law provided as follows: "All site plan applications filed with the Planning Board on or before July 1, 1998 for approval of senior citizen housing under the sections of the Town Code amended by this local law shall be processed under the sections of the Code as they read prior to the enactment of this law. Furthermore, this local law shall not apply to any existing sites for senior citizen housing that have already received site plan approval from the Planning Board of the Town of Carmel or for which a building permit and/or a renewal(s) thereof have been issued."*). The application is for site plan approval. The previous approval has expired. This is a new application which is subject to the new zoning requirements. Provide a new submission that includes the 2006 Senior Housing criteria. Once this is submitted, I will review the plat for compliance.

Mr. Gainer had no comments.

Mr. Cleary stated their map needs to be updated. The board's action is a request to send them to the Zoning Board of Appeals. He said the denial plan is not the plan that is before you. It needs to be revised and updated.

Mr. Joel Greenberg of Architectural Visions, representing the applicant stated that we appeared before the Zoning Board about a month ago and got extensions on the original variances that were granted. As the board is aware this application went before the court and gave us a deadline of March 22, 2013 to complete everything. He said with the economic situation the project did not proceed as we hoped it would. However, we do have a contract of sale to sell the property and build the project. What we are asking for is a small extension based on the original approval.

Mr. Mike Caruso Attorney for the applicant addressed the board and stated since receiving the extension of site plan approval we have gone into contract with a reputable builder and we are set to close by July 30<sup>th</sup>. The other development since the last extension of site plan approval is that the applicant is looking to reserve at least 25% of their residential units for rent to senior veterans and their widows to generate a little more interest. The applicant has received support from Putnam County Legislature Albano and the County Executive's Office. He said we have had several extension of site plan approval, however, given the economic crash, the extended nature of D.O.T., the negotiation for easements and NYCDEP, we respectfully submit to the Planning Board members that this is a very attractive property and the development project should continue. It is a different character in nature than most of the other facilities in Carmel. It is being offered as a more affordable rental opportunity for senior veterans and seniors. He said with regards to what Mr. Carnazza and Mr. Gainer said with respect to a change in density under the zoning ordinance, the Supreme Court addressed it in their decision and order. In order to be referred back to the Zoning Board would constitute de novo review of that portion of the project and the court has said in their decision the time to do has passed. Legally, we do not reach that issue; there shouldn't be a referral back on that issue. We have zoning approvals, we have a site plan that despite that change in the law is still a valid site plan. In the memorandum of law and affidavit that was submitted, the relevant analysis is whether the physical circumstances on the property have changed since being granted site plan approval. Absolutely nothing has changed. That would be the basis to legally argue. They do not exist here. Also, he said we respectfully request that detail findings be issued as to the money in lieu of recreation land as required by Section 274 a6b of the Town Law. He said I know there has been recreation fees stated but we haven't gotten that requisite fact finding.

Mr. Gary stated this has been a terrible application. In my opinion they should start from scratch again.

Mr. Greenwood stated based on Mr. Caruso's comments, I think we should go into Executive Session and discuss this with our attorney.

Mr. Charbonneau stated there is only one comment I will address. He said the court's decision was very clear, that it previously annulled the decision of the Planning Board and directed the Planning Board to grant the proposed extension to March 22, 2013. He said my inquiry would be, was a building permit taken out. I don't think one was. He said this is expired. He said the consultants' issues with respect to the new law; the board needs to make a determination on what to do with it in light of that.

Mr. Caruso stated addressing that, the application was submitted to the board in advance of the deadline expiring.

Mr. Charbonneau stated there is nothing in the court's decision with respect to a further extension. We both agree on that.

Mr. Caruso replied that's correct.

Mr. Charbonneau stated I don't want you to give the board the impression that there is something in the decision itself regarding criteria for another extension.

Mr. Caruso stated you are correct. I am not representing that. He said there are cases that say despite what's in the zoning ordinance regarding the extension of one year on site plan approvals, if you could show that none of the physical circumstances or conditions on the property have changed, there are no other reasons to deny an extension. I know we have gotten several extensions and we are still here, but the commitment is there.

Mr. Gary asked Mr. Charbonneau to repeat the court's decision.

Mr. Charbonneau said the court granted an extension to March 22, 2013.

Mr. Molloy asked what was the date of the decision.

Ms. Kounine responded July 6, 2012.

Mr. Molloy stated you had from July 2012 to March 2013 to get a building permit.

Mr. Gary asked legally, what happens now.

Mr. Charbonneau stated the same thing that happened prior to the Article 78. He said the board has the opportunity to review this as a new site plan approval.

Mr. Gary asked if they want us to review it, they have to come back with a new site plan.

Mr. Charbonneau replied compliant with the new zoning code.

Mr. Gary said not the 2006. The applicant has to start all over again and that is what the applicant should be doing. We could request him to start over and be in compliance with the present zoning.

Mr. Cleary stated that's correct.

Mr. Charbonneau stated essentially what the board has before them is the applicant telling the board the application itself has no physical change to the lot in question. He said you have Mr. Carnazza's representation which is making the board aware of the change in the existing zoning requirements. The board needs to weigh those issues with respect to the present application. They had the extension by operation of law to March 22, 2013.

Mr. Cleary said they filed the request for a further extension prior to the expiration date of March 22, 2013.



Mr. Cote stated you have a buyer and a closing date.

Mr. Caruso replied yes, we have executed contracts and a tentative closing date of July 30<sup>th</sup>. He said there is a due diligence in the contract.

Mr. Greenwood stated our position has always been consistent throughout; this should go back through the approval process.

Mr. Caruso stated the court has actually spoken to that directly. At which time, he proceeded to read the last page of the court's decision which stated (By parity of reasoning, to the extent this board is now claiming that de novo review of the entire site plan was required and the extension was denied because the project was no longer permitted under the town code, the time for review of such purported issues had long passed well before several of the multiple extension to obtain various approvals were granted to Petitioner). He said that is where we are coming from in terms of the legality issue.

Mr. Charbonneau said one of the issues the court did not discuss was with respect to the change of zoning. He said the board is relying on the representations made by the Building Department with respect to the change in zoning and that may be a material issue to deny the extension. That is up to the board to parse that out and that is what I am hearing from my board.

Mr. Gary stated we need to come up with a decision. He said first we could tell the applicant to submit a new application.

Mr. Charbonneau interjected and said first the board could vote up or down on the request for the extension.

Mr. Gary said or we could tell the applicant to bring their buyer to the next meeting in two weeks.

Mr. Caruso said we will ask him, but we can't get a commitment because he has a due diligence period that extends beyond two weeks.

Mr. Gary stated the board could tell the new buyer to start over again.

Mr. Greenberg stated he is buying it under the circumstances of 22 units not the 5 units under the new code. Why would he buy it if it gets reduced to 5 units.

Mr. Charbonneau asked if the contract is subject to the buyer getting the extension.

Mr. Caruso stated as of now the buyer is taking as is with the site plan we are looking to extend.

Mr. Charbonneau said so if the board votes it down tonight do you still have a valid contract?

Mr. Greenberg replied, I don't think so.

Mr. Caruso said I will have to advise the board of that. He said I haven't looked at those terms specifically. We just recently got the contract.

Mr. Cote suggested that we have a representation with some firm details this time (contract, closing). He said my recommendation would be to give them until maybe the second week of August and hold them to that.

Mr. Greenwood stated we need to be consistent on how we deal with other applications and how the town code is written. We need to look at what the Town Board wrote as code for us to follow on how to deal with extensions and re-approvals which is very clear. We need to be careful. He said we need to be fair with every applicant that comes back for a re-approval, we need to be careful on how we act. That has been my thought process for as long as this applicant has been in front of us with an expired approval.

Mr. Cote stated consistency is important and agreed with Mr. Greenwood. But, we have to take into account the facts we are presented with and make determinations using our best judgment. Personally, I don't see the harm in just taking them on their word and give them until that time and if they don't follow through, then we have a whole new different set of facts.

Mr. Greenberg stated this is the first time we actually have a signed contract.

Mr. Carnazza stated the problem is the code reads an approval is good for 12 months. You are allowed to give one additional 12 month extension by code.

Mr. Gary said all I would give the applicant is two weeks.

Mr. Meyer asked when does the due diligence period end.

Mr. Caruso replied in 30 days.

Mr. Gary said to come back with the buyer or contract.

Mr. Meyer agreed with the Chairman, but would go the extra two weeks. He said to make it 30 days past the due diligence period.

Mr. Gary said in my opinion it goes back on the agenda in two weeks.

Mr. Greenwood stated my problem is there are other statutes put in the new senior housing code that is being eliminated by us creating an extension.

Mr. Gary stated if we vote this down, I guarantee you we will be back in court again.

Mr. Charbonneau stated the court also addressed in its decision, the difficulties the applicant was having obtaining a performance bond. He asked if that still exists.

Mr. Greenberg replied yes with the present owner.

Mr. Caruso said the applicant has indicated it has become very difficult. It was almost impossible with D.O.T. work going on. That has since eased and is not an issue now.

Mr. Charbonneau asked what has the applicant done with respect to bonding companies to secure a bond.

Mr. Caruso said we will advise the board further in writing. We will check with Mr. Shilling who was privy to those discussions.

Mr. Charbonneau stated I would like to know how many bonding companies you made an application to and how many rejected you and the basis for those rejections, because that was an issue with respect to the court's decision. He said these are the types of information that the applicant should be coming to the board with as reasons to further extend this. He said the board is not hearing that. The board is hearing from his consultants that there is a change in the code, not to mention five separate 1 year extensions previously granted by this board. There were additional financial issues the applicant cited as to why the applicant was unable to proceed with respect to this project. I haven't heard those addressed either.

Mr. Caruso said we will get that information from the applicant directly. He is not a development company and is not well capitalized.

Mr. Greenberg said we will respond to Mr. Charbonneau's comments and come back in the second meeting in May with the developer.

Mr. Greenwood said I don't think we should do anything until we get the information Mr. Charbonneau requested.

Mr. Gary said the only way we could do that is to put him on the next agenda.

No Board action taken.

### **MINUTES - 3/27/2013**

Mr. Molloy moved to accept the minutes as corrected. The motion was seconded by Mr. Greenwood with all in favor.

Mr. Molloy moved to adjourn the meeting at 10:35 p.m. The motion was seconded by Mr. Greenwood with all in favor.

Respectfully submitted,

Rose Trombetta