

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



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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

PLANNING BOARD MINUTES MAY 8, 2013

PRESENT: CHAIRMAN, HAROLD GARY, EMMA KOUNINE, CARL GREENWOOD,
JOHN MOLLOY, ANTHONY GIANNICO, JAMES MEYER

ABSENT: VICE-CHAIR, RAYMOND COTE

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>TYPE</u>	<u>ACTION OF THE BOARD</u>
Tompkins Recycling	55.11-1-15	1	Amended Site Plan	Resolution Adopted.
Monzon, Lynne	76.6-1-30	1	Regrading Plan	Resolution Adopted.
Kobu Asian Bistro	75.12-2-5	1-6	Amended Site Plan	Resoluton Adopted as Amended.
NYCDEP – Drewville Rd	66.-2-53	6-7	Site Plan	Referred to ECB.
South Lake Plaza	75.44-1-65-67	7-8	Amended Site Plan	No Board Action.
Empire State Assoc Holding	86.7-1-19	8-10	Site Plan	No Board Action.
VIP Wash & Lube	55.12-2-5	10	Extension	1 Year Extension Granted.
NYCDEP Pumping Station	77.2-2 88.-1-1.1,1.2	10	Extension	1 Year Extension Granted.
Wixon Pond Estates	53.20-1-19	10	Extension	6 Month Extension Granted.
Dewn Holding	53.-2-28	10	Extension	6 Month Extension Granted.
Quis, Michael	55.6-1-40 & 42	11-13	Re-Approval	Planner to Prepare Denial Resoluton.
Minutes – 4/10/2013		13		Heldover.

The meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Rose Trombetta

TOMPKINS RECYCLING – 60 OLD ROUTE 6 – TM – 55.11-1-15 – RESOLUTION

Mr. Carnazza had no comments.

Mr. Gainer had no comments.

Mr. Cleary stated you have a resolution before you.

Mr. Greenwood moved to adopt Resolution #13-10, dated May 8, 2013, Tax Map #55.11-1-15 entitled Tompkins Recycling Amended Final Site Plan Approval. The motion was seconded by Mr. Meyer with all in favor.

MONZON, LYNNE – 21 M & M LANE – TM – 76.6-1-30 – RESOLUTION

Mr. Meyer recused himself and left the podium.

Mr. Carnazza had no comments.

Mr. Gainer read his memo which stated at this point, only the performance bond needs to be established. Based upon the design engineer's quantity take-off of proposed site improvements, the following fees should be posted by the applicant. The bond amount includes an allowance for restoration of the existing common driveway serving the premises upon the completion of work. The performance bond amount is \$129,000.00 and the Engineering fee is \$6,450.00.

Mr. Cleary stated you have a resolution before you.

Mr. Molloy moved to adopt Resolution #13-9, dated May 8, 2013, Tax Map #76.6-1-30 entitled Monzon Regrading Plan Approval. The motion was seconded by Mr. Greenwood with all in favor.

Mr. Meyer returned to the podium.

KOBU ASIAN BISTRO – 903 SOUTH LAKE BLVD – TM – 75.12-2-5 – RESOLUTION

Mr. Gary stated at the last meeting there were some issues raised particularly pertaining to the parking.

Mr. Jack Karell, Engineer for the applicant stated he met with Mr. Carnazza and Mr. Cleary to discuss the handicap parking spaces. We need three spaces and we only had two spaces. We modified the striping in the front of the building to provide the necessary handicap van parking aisle of 8 feet. He said the handicap space in the rear has a 5 foot aisle. We put one way arrows on the drawing and we will have a pavement marking saying one way no right turn. The doors on the dumpster will have bollards in front so the doors can't open into the parking spaces. He said the dumpster is 4½ feet off the property line, so there is plenty of room for someone to walk on the property and not trespass onto the adjacent property. Also, we will take the roof of the back storage area. He said we moved

a couple of the existing spaces shown on the adjacent property to our property. We still have the same number of 56 parking spaces.

Mr. Molloy commented that there still is no sign at the entrance of Lansky's property saying do not exit. That's a problem.

Mr. Gainer read Mr. Carnazza's memo which stated variances were granted by the ZBA on 2/28/13 and are noted on the map. The Engineer must include these requirements on the Site Plan so the current and any future owners are aware that these conditions must be met. The number of seats at each of the four outdoor tables is now included on the plan. Parking spaces 12 and 13 are now fully on the Kobu Property. Parking spaces 14 through 22 are now 20 ft. deep. One way traffic arrows are now provided.

Mr. Gainer read his memo which stated the plans now provide a light spill schematic for a single fixture; however, this is still insufficient to clearly illustrate that no off-site impacts will result. As previously requested, a lighting spill plan illustrating illumination levels within the site, and at the property in all directions from all new lighting being proposed. The Handicap parking proposed in the front of the building do not appear to be in a desirable location, since to access the restaurant patrons must cross the shopping center exit drive. We recommend that the spots be located in the rear, near the other handicap spot being provided. The applicant should provide a quantity take-off of all site improvements planned, so that a performance bond and engineering fee can be established.

At which time a discussion ensued regarding the appropriate location for where the handicap parking spaces should be and the parking spaces from the neighbor which intrude onto Mr. Guo's property.

Mr. Greenwood stated there are no easements or agreements between the two property owners to use someone else's property. How do we deal with that?

Mr. Molloy stated he was told there was an agreement but hasn't seen it.

Mr. Karell said there is an easement for conveyance of traffic through the aisles. There is no cross easements for parking.

Mr. Molloy stated he would like to see the agreement between Mr. Lansky and Mr. Guo.

Mr. Karell stated there is no agreement. It's an easement in the applicant's and Mr. Lansky's deeds. That precedes this application. He said if this doesn't get approved the whole thing will stay the same.

Mr. Molloy asked what prevents Mr. Lansky from building a fence along his property line from Route 6 to the wall in the rear.

Mr. Karell stated nothing but he can't block the aisles.

Mr. Gary stated he does know where it's written, but this property has been in front of our board for 10 years with Mr. Lansky. He has to cross Kobu's property to exit the parking lot because it was dictated by the Engineering department and planning board. The whole arrangement with the entrance, exit and parking has always been an unstable situation. He said originally Miller entered and exited his property and Mr. Lansky did the same which the planning board did not agree with. That's when the planning board and

Engineering office changed it to the way it is now, because the NYSDOT said it was not configured to be a safe entrance. He said this board needs to work with what has been given to us. We could hire an Engineer to figure it out and dictate where the spots should be. What we are not going to do is break an agreement with the D.O.T. to make entrances and exits on both properties.

At which time the board continued to discuss the handicap parking spaces.

Mr. Gary stated he will not sign any map until the whole plan has been re-stripped until everything is in their designated spot. We do not want to depend on Lansky or Kobu doing what they are supposed to do. It should be dictated before the map is signed just how the parking will be and it should all be re-stripped.

Mr. Karell said I don't think it's fair to hold this application.

Mr. Gary said we are not trying to hold it up. It's fair to hold it up until we get the handicap parking resolved.

Mr. Greenwood said what's wrong with what the suggestion I made to put the spots right in front of the entrance. That would be the smartest place to do it and that would solve the issue.

Mr. Karell said we will move the handicap spaces to the front and make it a condition of the resolution.

Mr. Gary asked Mr. Karell if he is willing to put the handicap parking right in the front and have a marked crosswalk and a stop sign at the corner of the building.

Mr. Karell replied that's fine, you could make it a condition of approval.

Mr. Gary asked Mr. Cleary his opinion.

Mr. Cleary said Mr. Guo has a choice of how to deal with Mr. Lansky's spaces on his property. He could either prohibit that or allow some joint sharing of the area and if it is to occur it should be formalized. It should be an easement or some other agreement for that shared space.

Mr. Karell said Mr. Guo could provide authorization for Mr. Lansky to use the two spaces on his property. He said the best scenario would be for Mr. Lansky to give us an agreement to park on his property and for Mr. Guo to give permission to Mr. Lansky to park on his property and leave the striping the way it was, but we can't count on that.

Mr. Gary stated the two spaces are encroaching onto Mr. Guo's property and there is no agreement between the two property owners. Mr. Gary asked Mr. Lansky if he is willing to allow that to happen to make an agreement with Mr. Guo.

Mr. Lansky stated I have no problem with the striping, but the question is whether it fits in terms of the amount of seating.

Mr. Gary interjected and thanked Mr. Lansky for his answer and stated for the record Mr. Lansky has no problem with the agreement.

Mr. Gary asked Mr. Cleary to go over the traffic issues.

Mr. Cleary stated there are revisions which will involve four modifications to the plan.

- Handicap spaces will be moved closer to the entrance of the building.
- Painted crosswalk between the front door and handicap spaces.
- A new handicap ramp will be provided to connect to the front door.

- A stop sign will be added at the corner of the building.

Mr. Cleary stated the question is how do we deal with the angled parking spaces that overlap the property line. He said do you want an agreement between both property owners to allow the overlap to occur.

Mr. Gary said Mr. Lansky stated he didn't have a problem with that.

Mr. Karell suggested that Mr. Lansky provide Mr. Guo with an agreement to leave the spaces the way they are and Mr. Guo would provide his own agreement and leave it the way it is.

Mr. Cleary stated whenever we have an agreement, we ask our planning board attorney to advise the board in terms of the form of the agreement.

Mr. Meyer asked if there may be easement in the deeds and could this have been addressed in the old deeds. He said maybe the answer is already there.

Mr. Karell stated the way it was explained to me by the applicant's attorney, was in the deed there is language that allows for traffic to pass from one lot to the other. There is no parking easement.

Mr. Greenwood stated that's part of the problem, the parking agreement doesn't exist. He said whether it's yours encroaching on his property or his encroaching on your property, you could fix yours, but it doesn't fix his and it is in front of the board and it needs to be addressed.

Mr. Gary asked Mr. Charbonneau at the public hearing it was stated that we could not count the spaces that protruded. Do they still protrude?

Mr. Charbonneau replied no, it's not included in the count. This is the new plan. There are spaces that protrude but they are not in count.

Mr. Molloy said I am in favor of a business in town that serves the community, employs kids and pays taxes and I think it's great that Mr. Guo has a successful business, but the planning board has to ascertain on whether or not this could be done safely. He said the Town has let down the business owners in this part of the town by not providing parking. Also, I am not happy with all the different plans that have come before us. The original plan that was initially signed and denied to the zoning board showed seating for 98 people. He said there is also the noise factor and until something is done with downtown Mahopac, I will vote against this application.

Mr. Gary stated what is in front of us meets all the legal standards to qualify for the seating capacity of the restaurant. He said we have made it as safe as possible to move in and out of that property. The way it was configured is the best we could do. Is it ideal, no, but the board has to deal with what has been before them.

Mr. Meyer agreed with the Chairman. He said it is as good as it's going to get. It's been that way for a long time. He said the plan has the requisite number of spots and with the overlap from next door I don't think we could require easements because the neighboring owner could simply refuse.

Mr. Greenwood stated if the neighboring owner said no it would cost him parking spaces on his site.

At which time a discussion ensued regarding parking code requirements when a restaurant has a full seating capacity, outdoor dining and people waiting to be seated.

Mr. Molloy asked if the parking formula accounted for people who aren't sitting down.

Mr. Carnazza replied no it does not. It's one parking space for every three seats which includes bar stools.

Mr. Giannico stated Mr. Molloy raised some good points, but we have a plan that meets our code. The applicant has done enhancements that will be implemented and it is the best we could present.

Mr. Gary asked Mr. Cleary to repeat what will be outside.

Mr. Cleary said the conditions from the last meeting were the use of the patio must comply with the outdoor dining law requirements. The patio will be restricted to outdoor dining and sushi bar. No entertainment uses shall be permitted on the patio and no alcohol beverages shall be sold or dispensed from the outdoor sushi bar. He said the lighting shall be shielded and directed and shall not exceed 1 foot candle at the property line. And there is a shielding requirement that there be a screen on the west side of the property to prevent noise and light from extending off the sight.

Mr. Molloy stated the parking lot should have lights spilling out into the parking lot.

Mr. Cleary said it didn't apply along the common share property line. He will change that condition.

Mr. Gary said the applicant has agreed to the conditions.

Mr. Cleary stated that's correct. Mr. Cleary reiterated the items to be changed in the resolution.

- Moving handicap spaces
- Crosswalk
- Handicap ramp
- Stop Sign
- Modification to the illumination along the property line.
- Common shared parking spaces to be addressed through an agreement between the property owners to share.

Ms. Kounine asked how do we put the last revision into the resolution as a requirement when you cannot force Mr. Lansky to do that.

Mr. Charbonneau stated you will not be able to bind Mr. Lansky.

Mr. Cleary said we could phrase it that the two property owners make it their best effort to do it.

Ms. Kounine stated this project has proven to have all the parking they need. She said unfortunately, the neighbor may now have a problem with parking. It would behoove the neighbor to make some kind of agreement with the applicant.

Mr. Charbonneau stated it would behoove both parties to have a reciprocal agreement to utilize each other's property for those two parking spots.

Ms. Kounine stated we can't bind Mr. Lansky, but we could bind the applicant to try his best efforts to do it.

Mr. Greenwood said if the best efforts fail, the plan stays the way it is and the spaces get eliminated.

Mr. Molloy asked if there will be an hours of operation conditions in the resolution.

Mr. Cleary replied no, because there are other provisions regarding noise that dealt with that issue.

Mr. Greenwood said based on everything we changed and there could be potential future issues with this, I think it would be in our best interest to make sure of what we are voting on and the maps in front of us should be as complete as possible. He said it would only be a two week delay rather than vote on the resolution tonight.

Mr. Karell stated Mr. Guo would like to get the patio built and it is not usual for the consultants to review the revised maps (they are minor changes) and advise the Chairman to sign them.

Mr. Meyer agreed with Mr. Greenwood and stated two weeks won't make a difference.

Mr. Gary stated I don't disagree with Mr. Greenwood, but said, if you agree with the amended conditions to the resolution, can we agree to give consent to the contents of the resolution?

Mr. Cleary stated my instructions are to modify the existing resolution.

Mr. Gary stated we want everyone on this board to agree with it. He asked Mr. Cleary to modify the resolution to include all the conditions and send it the planning office the next day for circulation to the board members.

Ms. Kounine stated some of us have been on the board long enough and we have approved a resolution that had changes and was voted on. I don't know why this is so different. There are no outstanding major issues.

Ms. Kounine moved to adopt Resolution #13-08 **as amended**, dated May 8, 2013, Tax Map #75.12-2-5 entitled Kobu Asian Bistro Amended Final Site Plan Approval. The motion was seconded by Mr. Giannico.

A roll call vote was taken as follows:

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

NYCDEP – DREWVILLE ROAD – TM – 66.-2-53 – SITE PLAN

Mr. Carnazza had no comments.

Mr. Gainer read his memo which stated the following outside agency permits are required for the work:

- *NYSDEC* -A DEC wetlands permit is required for disturbances planned within the wetlands and adjacent buffer area
- *Putnam County Department of Highways & Facilities*- A Highway work permit will be required for all work proposed within the R.O.W. of Drewville Road

- *Putnam County Department of Planning*- A GML 239(m) referral is required, as the property lies along a county roadway
- *Town ECB*- A Town of Carmel Wetlands permit is required for disturbances proposed with the Town- regulated Wetlands on the property
- The applicant should provide a quantity take-off of all site improvements planned, so that a Performance Bond and Engineering Fee can be established.

Mr. Cleary stated the applicant has addressed all of our issues. This application needs to go to the ECB.

Mr. Todd West of NYCDEP and Ms. Theresa Albanese of Gannett Fleming displayed the revised renderings to the board showing the different types of trees from different views and seasons.

Ms. Kounine moved to refer the application to the ECB. The motion was seconded by Mr. Greenwood with all in favor.

SOUTH LAKE PLAZA – SOUTH LAKE BLVD & CLARK PL – TM – 75.44-1-65,66,67 – AMENDED SITE PLAN

Mr. Carnazza read his memo which stated the applicant wishes to convert the second floor over the “West Building” from offices to apartments. Were variances granted for this site in the past? Provide a list. The proposal is for a mixed use. Variance required. Is there an existing license/agreement for the parking spaces to be located partially on and back out onto Rt. 6 R.O.W.? Clark Place? Accessible parking spaces do not meet requirements. Provide detail of trash enclosure. Provide detail of the curb access for wheelchairs. The utility pole on the north side of the parking lot is directly between two spaces.

Mr. Molloy asked Mr. Carnazza if mixed use is permitted anywhere in the Town of Carmel.

Mr. Carnazza replied existing mixed use only.

Mr. Molloy asked if someone wanted to build a mixed use today, could they?

Mr. Carnazza replied no.

Mr. Molloy said you would need a use variance or a town code change from the Town Board.

Mr. Carnazza replied that’s correct, either one is permissible.

Mr. Gainer had no comments.

Mr. Cleary read his memo which stated the site is located in the C – Commercial Zoning District. Multi-Family Residential uses are prohibited in this district. The C – District does allow for pre-existing multi-family residences (the proposed units are new and not pre-existing) and waterfront multi-family dwellings on Lake Mahopac (the site is across South Lake Boulevard from Lake Mahopac, and as such, does not meet the criteria for this use). The C – District also permits multi-family dwellings for the elderly (The applicant is not age restricting the proposed units). As a result, the proposed multi-family use is prohibited, and a use variance would be required to allow for this project to move forward. The provision of 6 new residential apartments requires the provision of 12 off-street parking spaces. If these spaces will replace spaces assigned to the existing office use, they must be located on-site (it is noted that a number of the parking spaces supporting these buildings extend out into the Route 6N and Clark Place right-of-way). Evidence should be supplied documenting the legality of the parking space encroachments into the rights-of-way. If no documentation exists, these encroachments should be legalized at this time (through the issuance of easements or other legal instruments). The site is currently non-conforming with regard to a number of the C – bulk and area regulations. It does not appear that variances were ever obtained for these non-conformities. Subject to the review of the Director of Codes Enforcement, variances would be required. The applicant should document that the proposed residential units would conform to all applicable building and fire code requirements, including egress and ingress, etc.

Mr. Robert Cameron of Putnam Engineering, representing the applicant addressed the board and asked if he needs D.O.T. approval for the parking spaces.

Mr. Cleary stated if this board approves this site plan with parking on someone else's property and there was an accident, it would be a liability issue. It has to be sorted out.

Ms. Kounine stated it is probably in the original approved site plan file if D.O.T. had any comments.

Mr. Cameron said if I find existing documents that would be okay.

Mr. Cleary replied yes, you are not proposing any changes.

Mr. Cameron stated the reason the applicant is before the board is the buildings in the rear don't work as commercial entities and he wants to convert them to apartments.

Ms. Kounine said when you get all your information then come back to the board.

EMPIRE STATE ASSOC HOLDING CO – 270 ROUTE 6 – TM – 86.7-1-19 – SITE PLAN

Mr. Carnazza read his memo which stated the applicant wishes to legalize an addition to the rear of the existing building. In doing so, all requirements of the "New and Used Car Lots" section of the zoning code must be met. Provide an 8 ft. buffer to the Rt. 6 and Mi-Anna Dr. R.O.W.'s and a five ft. buffer on the rear and sides. The balance of the lot can be used for vehicles. New and used car lots shall be permitted provided that:

A. No automobile shall be stored or displayed nearer to the street line right-of-way than eight feet.

[Amended 4-22-1992 by L.L. No. 3-1992]

B. There shall be an eight-foot buffer in the front of the site and five feet on the rear and sides. The balance of the site may be used for the outdoor display or storage of vehicles subject to compliance with all other site plan regulations.

[Amended 4-22-1992 by L.L. No. 3-1992]

C. Repair work, storage and sale of auto parts and accessories shall be conducted in a fully enclosed structure.

D. Buffer planting and fencing at least six feet in height and for a depth of at least 10 feet shall be provided to buffer adjoining residential buildings and zones. The buffer strip shall be densely planted perennials and shall be specified according to type upon submission of a plan.

Mr. Gainer had no comments.

Mr. Cleary read his memo which stated the site is located in the C – Commercial Zoning District. Auto sales and showroom uses are permitted in this district, provided no auto body repair operation is included as a principal use. The applicant must clarify the proposed “workshop.” Will auto body work take place at this site?

- New and used car lots are subject to a series of regulations, as set forth in §156-29:
 - A. *No automobile shall be stored or displayed nearer to the street line right-of-way than eight feet.*

Currently, vehicles are parked right along the Route 6 and Mi-Anna Drive property lines. The 8’ setback is not observed. This is apparent when compared to the adjacent Park Ford site, where the setback is provided.

- B. *There shall be an eight-foot buffer in the front of the site and five feet on the rear and sides. The balance of the site may be used for the outdoor display or storage of vehicles subject to compliance with all other site plan regulations.*

As noted above, no buffers are provided.

- C. *Repair work, storage and sale of auto parts and accessories shall be conducted in a fully enclosed structure.*

The applicant must clarify if any outdoor repair work takes place at this site.

- D. *Buffer planting and fencing at least six feet in height and for a depth of at least 10 feet shall be provided to buffer adjoining residential buildings and zones. The buffer strip shall be densely planted perennials and shall be specified according to type upon submission of a plan.*

The site does not abut a residential zoning district.

- The site plan should be revised to accurately indicate all vehicle parking areas, which should be broken down into vehicle for sale parking, employee parking and customer parking.

- Sufficient area exists on this 49,620 square foot site to properly accommodate the setback and buffer provisions noted above. It is recommended that the parking areas be reconfigured to meet these requirements.
- It is recommended that new landscaping be provided along the site's Route 6 frontage.
- Site lighting details should be provided.
- Stormwater management details should be provided for review by the Town Engineer. Area any special mitigation measures in place to address the extensive vehicular parking (i.e. oil separators, etc.)?

Mr. Willie Besharat of Rayex Design, representing the applicant addressed the board and stated we will address all the comments of the consultants and come back before the board.

VIP WASH & LUBE – 118 OLD ROUTE 6 – TM – 55.12-2-5 – 1ST EXTENSION OF APPROVAL

The consultants had no objection to the extension.

Mr. Giannico moved to grant 1 year extension of site plan approval. The motion was seconded by Ms. Kounine with all in favor.

NYCDEP CROTON FALLS PUMPING STATION – TM – 77.2-2 & 88.-1-1.1,1.2 – 1ST EXTENSION OF APPROVAL

The consultants had no objection to the extension.

Ms. Kounine moved to grant 1 year extension of site plan approval. The motion was seconded by Mr. Greenwood with all in favor.

WIXON POND ESTATES – WIXON POND ROAD – TM 53.20-1-19 – EXTENSION OF PRELIMINARY SUBDIVISION APPROVAL

The consultants had no objection to the extension.

Mr. Greenwood moved to grant 6 month extension of preliminary subdivision approval. The motion was seconded by Mr. Meyer with all in favor.

DEWN HOLDING – MEXICO LANE – TM – 53.-2-28 – EXTENSION OF PRELIMINARY SUBDIVISION APPROVAL

The consultants had no objection to the extension.

Mr. Greenwood moved to grant 6 month extension of preliminary subdivision approval. The motion was seconded by Mr. Giannico with all in favor.

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

Mr. Carnazza stated you have my previous comments from the last meeting. This needs a referral to the ZBA for the updated 2006 code changes.

Mr. Gainer had no comments.

Mr. Cleary had no comments.

Mr. Charbonneau addressed the board and stated this application was the subject of an Article 78 proceeding in which the court annulled the board's decision and summarily granted the extension of approval through March of this year and the applicant has timely requested a further extension. At the last meeting there were a couple of issues that were raised in the court's decision. The first issue was obtaining a performance bond and the other was the financial arrangement involved in a contract due diligence period for the potential sale of the property. He said the applicant has also advised that they are willing to dedicate a portion of the residences to veterans.

Mr. Mike Caruso, Attorney for the applicant addressed the board and stated he brought Mr. Nate Taylor the potential buyer of the property to the meeting. He said Mr. Taylor is in contract with the applicant. We are in the process of the due diligence period. Mr. Taylor has been to the site to drill testing holes. He said we are proceeding further in good faith and he hasn't made a decision yet and is still exploring very much.

Ms. Kounine asked Mr. Charbonneau to repeat the court's decision once more.

Mr. Charbonneau reiterated that the court summarily extended the extension to March 22, 2013.

Ms. Kounine said so as of March 23, 2013 it officially expired.

Mr. Charbonneau stated but they requested a further extension prior to the expiration date and to be clear the applicant is requesting a further extension of the existing approvals which would not require a referral to the zoning board of appeals. He said if the applicant wishes to consider what the building department has said with respect to the 2006 zoning amendment and feels there is sufficient evidence in the record to support the change in zoning as it affects this property then the board could do its analysis with respect to that and choose not grant it.

Ms. Kounine stated this application has no approval, is that correct?

Mr. Charbonneau stated technically, they are still under the extension because they requested it within a timely period to this board. He said this board is aware of their request for an extension and we requested additional information at the last meeting. He said I would caution the board against dismissing it.

Mr. Greenwood stated to clarify we have two options, either grant a re-approval of the old site plan or not.

Mr. Joel Greenberg of Architectural Visions, representing the applicant addressed the board and stated the market has changed considerably since their approval. He said

when the court made their decision in July and we had from July to May, a lot of things has happened. The first few months nothing happened and now we have someone that's in contract and reviewing it. We have done test holes for the prospective buyer to show that the project is buildable and has accepted that. At least now we are getting interest. He said this is good for the community, it's good for the seniors and it will also provide something that is needed in the community. We will also be renting them at reasonable rates.

Mr. Caruso stated the court specifically stated this is not in character of de novo review. Basically, this is character of an extension not a re-grant. We still hold a valid site plan approval up March 22, 2013.

Mr. Gary asked what do you think you are holding now?

Mr. Caruso stated I still think we hold a site plan approval because we applied for an extension before it expired. The issue hasn't been resolved yet.

Mr. Charbonneau stated he disagreed with that interpretation.

Mr. Greenwood asked Mr. Charbonneau what are they in front of us for?

Mr. Charbonneau replied a re-approval.

Mr. Greenwood stated that's the end of the conversation.

Mr. Caruso stated our application was for an extension of site plan approval.

Mr. Carnazza said you can't get two extensions.

Mr. Caruso stated we did cite in our memorandum of law that land use approvals are subject to the board's discretion despite limitations in the code. He said you are able to extend them without limits and in this case our argument has been the economic circumstances and we are asking for another extension as purely discretionary.

Mr. Charbonneau said counsel is not wrong, but we have a unique situation where there were extensions and re-grants in 2007, 2008, 2009, 2010 and a mandated Article 78 decision granting a further extension. There are extenuating circumstances both ways.

Mr. Greenwood moved to go into Executive Session at 9:00 p.m. to discuss with counsel past or potential future litigation with respect to this application. The motion was seconded by Mr. Molloy with all in favor.

Mr. Greenwood moved to come out of Executive Session at 9:10 p.m. The motion was seconded by Mr. Giannico with all in favor.

Mr. Greenwood moved to have the planning board attorney prepare a resolution of denial for the request of an extension of this application. The motion was seconded by Mr. Molloy.

A roll call vote was taken as follows:

Mr. Giannico	For the motion
Mr. Molloy	For the motion
Mr. Greenwood	For the motion
Ms. Kounine	For the motion
Mr. Meyer	For the motion
Mr. Gary	For the motion

MINUTES - 4/10/2013

Heldover.

Ms. Kounine moved to adjourn the meeting at 9:15 p.m. The motion was seconded by Mr. Molloy with all in favor.

Respectfully submitted,

Rose Trombetta