

TOWN OF MOUNT PLEASANT

MINUTES OF THE MEETING OF THE PLANNING BOARD TOWN OF MOUNT PLEASANT WESTCHESTER COUNTY, N.Y. HELD DECEMBER 16, 2024

BUSINESS ITEMS

CONTINUING PUBLIC HEARINGS

- 1. Proposed: 420 Nanny Hagen Road - Proposed one lot into two lot subdivision for the purpose of developing a new single-family dwelling.**

Application: Subdivision # PSD 24-1

Location: 420 Nannyhagen Road, Thornwood

Section/Block/Lot: 107.17-2-16

Zone: R-40

Owner& Applicant: Nannyhagen 420; LLC

Architect: Spearman Architectural Design, PC

Attorney: Philip Grimaldi

Attorney Phil Grimaldi, and property Owner Trevor Spearman appeared before the Board to represent the application

Phil Grimaldi discussed the following items:

- I know the last time we were here we didn't have a quorum and the chairman mentioned there were some issues, but I just want to reiterate to this board that the issues that the neighbors are raising are beyond the power of this board. As far as what was in their submitted letter, there are many legal issues regarding, whether or not, Davidson Drive is a street, whether we have proper frontage, all those issues were decided by the Zoning Board of Appeals back in June. The neighbors had the opportunity to object at that time and they did not. We feel that by issuing the denial letter and granting the variance that those issues were all resolved.
- Now with respect to the claim that we don't have a right to use Davidson Drive because the easement expired or was ever intended to be used by the original subdivider, those issues are legal issues that have to be decided by a court of law.
- I believe that the building inspector had elaborated on the reasons for his denial and you have that in his memo dated November 26th. It's our position, and I have the law to support it, that that is not a new interpretation. The neighbor's attorney has appealed that and I believe it's on the agenda for the February Zoning Board meeting again. And

I want to reiterate that's not relevant here, the law doesn't require this board to stay anything.

- One remaining issue was the placement of our garbage, we have since sent in a rendering of where that would go. Number 5 and 6 Davidson, and I believe number 412 Nanny Hagen place their garbage at the end of Davidson Drive at the corner where it meets Nanny Hagen, we propose the exact same solution. The area is a generous area in front of a split rail fence that is located within the town right of way. We are not proposing, to the chairman's concern, putting any garbage on anyone's property, and it is quite remote at the borderline. The beauty of this spot is it's 145 feet away to the driveway that services number 400 Nanny Hagen. It is also heavily screened with a row of evergreens at the property line, those belonging to 400. In addition, there's an open area and then another wooded area before you can even attempt to get a bird's eye a view of, the house at 400 Nanny Hagen, which is more than 300 feet away. So they don't see any garbage that is here, except for when they are traveling down toward Armonk on Nanny Hagen
- Another remaining issue was the contribution to road maintenance which currently is in the deeds of all who share that road, we would also add that to our deed with the proper proportion of contribution. We propose having in our easement in deed the contributing 25%, we then leave the remaining 75% between the other three owners, it's 1 third, 1 third, 1 third. So it's an equal share.
- Another item was from Mr. Steve Kavee we had a good conversation this morning and we made a small change to a set of drawings where we moved the sewer pump for a lot, closer to the home in order to get it out of the drip line of a large oak tree

Comments from the Public:

1- Michael Sheridan -

My name is Michael Sheridan, I'm an attorney for Gerard and Marion Pachello, who are, neighbors to 420 Nanny Hagen Road. They're here in opposition of the application. So first, I'd like to talk about, the fact that this matter is going to be before the ZBA as, was mentioned previously on February 13th. We, as this board remembers, you, reached out to the town attorney for a, interpretation or, guidance as to a few items.

One of them was property frontage, the response that was given to this board was, with one sentence with regard to frontage of in a 2-sentence email. And that said, Joe Bregante, building inspector, has determined that there is proper frontage. That answer was vague and unsupported, such that any decision based on that would be arbitrary and capricious. So as a result, we sought clarification because we wanted to know exactly how the building inspector made his determination. And he did provide his reasoning on November 26th, very quickly, and we appreciate, Mr. Breganti's quick response, unfortunately, we disagree with his conclusions, and as a result, we appealed to the zoning board of appeals, it's out of this board's purview. You're not here to make a decision based on the law.

Please note that we filed it very timely because we wanted this board to know that there was an appeal to the zoning board appeals prior to you making your decision. And one of the reasons we did that is we wanted to avoid inconsistent adjudication. We don't want you to make a decision, a determination on this application, have the zoning

Board of Appeals in February make a determination, and those be inconsistent Pursuant to, New York State Town Law, 267 b 6, an application to the zoning of our appeals is stayed.

As such, this board must not make a decision tonight as matters stayed and adjourned the matter to we're suggesting March 6th, which is the first meeting of this board after the February 13th ZBA meeting. At that time, this board will know what the decision is, or if it's a decision that hasn't been made yet, that the zoning of appeal is still considering all the legal matters that go into the appeal that we filed. Again, just trying to avoid inconsistent adjudication.

Another reason why this board shouldn't make a determination tonight is there were notifications out to varying agencies. I believe this board received responses from many of those agencies, but we have yet to see response from certain of those agencies, including the fire department. And it is important that this board have confirmation from the fire department that adding additional residents and additional traffic to the right of way easement will not impact their ability to safely access and protect that new residence as well as the existing neighboring properties. It's obviously very important for my clients, and we would like to have determination by the fire department prior to this board making that determination.

Those are the 2 main issues, one other item There's the purpose of the easement, which was clearly created for the 3 lots. As mentioned, it's currently a 3rd, a 3rd, and a 3rd, that's the way the easement was created. The reason why it was created that way is because it was created for those 3 properties, we've provided you with details on that. It should not be approved because traffic will overburden the existing right of way. It should not be approved because the applicant should utilize the rest of the burden right away from the 1833 plat. Again, they have another way to get out to Nanny Hagan Road. They should use it. The only reason why they're not using it, so they claimed, is because they went to the NYC DEP, and the NYC DEP submitted one letter saying, it's not what this easement was intended for. One letter, and that was it. They stopped attempting to utilize that easement. We've had these neighbors come out meeting after meeting, saying the exact same thing. And yet the applicant in this board is proceeding to push this down the neighboring property owners.

Lastly this should not be approved because the lot sizes, again, have varied with each application or with each iteration of the plans. They have lot 2 having less than 1 square foot necessary to be approved and yet there's no survey confirming the lot lines where they are. There's no way to confirm that the lot size that they have is accurate without the updated survey. It should not be approved because now they're seeking to create a nonconforming lot or right of way area, which doesn't conform. And if they're not seeking to create a lot, what they are seeking to do is create frontage on their own existing lot.

So in the end, again, we're asking that the board deny the application, but to the extent that that is not going to happen tonight, I think because of the application in front of the ZBA, which should stay the proceeding

2 – Steven Kavee, Chairman of the CAC -

I did have a conversation, with the applicant, some correspondence, and our concern was the proper documentation of the tree plan for the site itself.

Typically, when we see an application for subdivision, there's a tree plan that identifies all the trees on the site by size and species, and then they are identified, then further identification of those that are being removed. And that's in order to meet the criteria for the, tree density factor that's part of the tree protection part of the code that the town has for tree protection. So we weren't clear about how that information was being transmitted to the town and in this application, because the site plan, there was there was a site plan, but there wasn't the usual single individual site plan that was simply trees only. I did have a conversation with the applicant and some correspondence, and I understand from the letter I received today. I don't know if the planning board was copied on it, but I still need I still just want to clarify for documentation for the proper procedure that the code was followed correctly.

And as I understand it and, Pat, if you can clarify also, the only tree to be removed is the ash tree. In the letter that I received today, it was identified as the only specimen tree to be removed. And I just want to be clear that the code doesn't only require identification of specimen trees, it requires identification of all trees to be removed. So if that's just a an error in content, then they we're fine.

The sum of it is, when the CAC went to review the application, we saw an aerial view of the of the of the site. It appeared to be wooded from above. When I spoke to the applicant, it was then further described as really just a lot of scrub and brush. And so I took a ride out there and viewed the site from the roadway that the applicant is interested in using for access. It didn't appear to be a heavily wooded site, But again, I didn't have a tree plan to rely on where I could actually see the site plan and see all trees identified. But if this board is comfortable with the information that's been provided and if the applicant is attesting to the fact that the only tree to be removed from this plan is the ash tree, then I suppose we could say that the criteria has been met. It's not in the fashion in which we typically see, and it's not the way in which we would prefer to see applications going forward. We really prefer to see a site plan that identifies trees That's the trees. Specifically on a single page, not embedded into another element with all various other indications on there. Chairman Collins commented that's actually a good point because that really should come at a step before us, at a meeting with staff, if there's a mechanism in place, Pat, then we need to put that mechanism in place before.

Steven Kavee continued, if we're accepting the fact that the documentation that the applicant has provided is accurate and complete, if there actually are sub substantial numbers of other trees on the site then fine. But I can't tell that because I don't have an actual tree plan, I only have the narrative description and the single tree identified on the site plan to be removed. And if in fact, there is only that one tree being removed, then we are okay with it. I think they probably are meeting the criteria, but it's a probably as opposed to a clarity.

Trevor Spearman made the following comments - I have a couple of documents including some of the planning board, tree codes that I can reference. Our trees are indicated with species of the all the ones we're saving. We're actually saving and

protecting way more than is necessary. We're not clear cutting at all. We actually have 15 credits to use to even take down a few more trees if needed. We don't want to. We're actually and we had a good conversation this morning about, we've got some old oak trees, 33 and a 36 inch, I think, that we're looking to both have a licensed arborist come in, and we can have that as part of the resolution, to salvage and best keep in best health possible all of these, mature trees that we're saving. Now there are no trees in the middle of this entire lot. It's a wide-open acre, on our sheet, Site 2, we've identified the one removal which is right in the heart almost exactly in the dead center of the house to be removed. This is a big open wide area and we have tree protection here and here.

Per Mr. Kavee's really good comment about the sewer pump station we were proposing for lot 2 we agreed to move that closer to the home.

Patrick Cleary commented, I have to clarify 2 things. For a land development application, the inventory is of specimen trees, protected trees, or specimen tree stands, not every tree. So typically, we look at the area of disturbance so that we're actually getting reforestation of the area. If you took the cumulative area of all the trees in the perimeter that aren't being touched, we'd never get the trees coming back.

Steven Kavee continued, the tree code is fairly generous when it comes to clear cutting even with the tree density factor calculation. I think it's important that the review is done to the best way we can properly preserve and protect the resources. We're not oppositional on this thing, it's simply clarification, and I appreciate the applicants being clear about it, and also they're agreeing to move the utility line.

So I will say I'm a moment of silence for the ash that's being lost because it's probably one of the last ash we'll see, in the town because of the infestation of emerald ash borer.

----- End of Public Comments -----

Phil Grimaldi - One of the comments the council made was that there's a mandatory stay,
I discussed that with Darius, there is no mandatory stay.

Chairman Collins - We know the jurisdiction of the board, and we also know we are not a legal entity. We have to make some decisions here tonight, we have a public hearing open.

Motion was made by John Piazza to close the Public Hearing, seconded by Joan Lederman, all members present voted in favor.

Motion was made by Joan Lederman to instruct the consultant draft a resolution of approval, seconded by John Piazza, all members present voted in favor.

NEW PUBLIC HEARINGS

2. Proposed: DEP KEC Contract 2- Kensico - Development of subsurface downtake shaft and tunnel, rock excavation, and vent structure

Application: Site Plan # PSP 24-9

Location: Westlake Drive, Valhalla

Section/Block/Lot: 117.11-3-1

Zone: R-40

Owner & Applicant: New York City Department of Environmental Protection

Engineer: Ove Arup and Partners

John Piazza recused himself from this application.

Motion was made by Joan to waive the reading of the Public Notice and open the Public Hearing.

Justin Rivalino of DEP appeared to present this application. Justin Rivalino gave an overview of the entire Kensico Eastview Connection (KEC) development project which will stretch over approximately 10 years, and is required under a federal consent decree. The KEC tunnel itself is a new water conveyance tunnel that will connect Kensico to Eastview, It's a 2-mile tunnel, and most of the work will happen in 2 locations, one being Eastview campus and the other being Kensico, which is why we are here today. It connects Kensico reservoir to our Cat Del Ultraviolet Disinfection facility over at Eastview.

The first contract was contract 1 that's currently in construction down the road. Right now, we are talking about contract 2. You'll see here that it shows us starting in late 2024. That's what we were hoping for with our schedule. We have slipped a little bit, but we are looking to get our notice to proceed on this contract very early of 2025.

Justin Rivelino and Kevin Ellenwood went through a slide presentation and covered the following points of the application:

- Some of the activities over at Kensico for this particular contract include, construction staging for the work that's going on here. The Kensico site preparation contract really got a lot of the site prepared already.
- We'll be doing some down take shaft excavation, what we're calling shaft 1c over at Kensico, and the KEC screen chamber rock excavation there to prep for the screen chamber that will be built in, the subsequent contract 3
- Deep rock tunnel construction and mining will happen. However, most of that, if not all of it, is out of Eastview.
- Regrading and earthwork, construction wastewater treatment, which I'll go over in a second
- Rock blasting and landscaping will happen here as well. This is a good schematic, highlighting what we're going to be doing over at Kensico. It's mainly in 2 areas, one being the screen chamber, which is the box area there, and then the oval is the down take shaft ,shaft 1c, and that big line running from the screen chamber, is the raw water connection.
- Some staging and grading will happen around the campus as well. Showed details

of the downtake shaft.

- We will be excavating utilizing typical mechanical excavation equipment for the overburden, which is the soil, and then, the controlled blasting of rock once we hit rock. It's lined with cast in place concrete.
- The only above ground structure for this work, really for this whole contract, is a small vent building above the shaft itself. It's totally enclosed. There's no internal access, no doorways whatsoever, 6 feet by 6 feet, 8 feet in height strictly to vent the tunnel. And a portion of several additional tunnels will be modified or constructed under this contract, as we begin some of the connection tunnel work.
- The deep rock tunnel, again, is more for the Eastview site plan application, but I'll just review some of the details because it does tie into this work. It's going to be excavated using the tunnel boring machine, but that is going in and out of Eastview, it will not be at Kensico.
- Rock material for the tunnel excavation will be taken out of Eastview. Rock material for the down take shaft at Kensico will obviously be taken out of Kensico.
- The KC tunnel itself is 2 miles with an inner diameter of 27 feet or a finished diameter of 27 feet, and, it ranges anywhere from 300 to 400 feet below grade.
- The KC tunnel itself is 2 miles with an inner diameter of 27 feet or a finished diameter of 27 feet, and, it ranges anywhere from 300 to 400 feet below grade. So for construction staging, temporary contractor trailers and staging areas are established under the first contract,.
- Trailers will continue to be there or be replaced with new trailers of the same size. We'll let the contractors kind of work that out with us.
- During excavation, truck access will be routed through a temporary access road. We're essentially staging some access roads around Kensico campus to help with the movement of vehicles. And at that time, that campus will be enclosed.
- Existing Westlake Drive will be closed. We'll have the relocated Westlake Drive open. Construction parking will be off of this temporary access road, and temporary trails and construction areas are all to be removed. We'll have the site restored under contract 3. For regrading and earthwork, excavation of rock and soil mainly from the screen chamber and shaft 1 c, that's the bulk of our earthwork here.
- For traffic construction, we have ran various studies on this and estimates. And our peak quarter for this, we believe, is sometime around Q4 2027 during the AM and PM hours. This is for vehicle trips. So this could mean labor force, anyone working on the site coming to and from Kensico. We have about 95 vehicle trips along Columbus Avenue south of the Kensico campus site and then 20 vehicle trips north of Westlake Drive. These are daily estimates. And these impacts are identified at 3 intersections in the PM peak hour, 3 to 4 PM. We are looking to mitigate those impacts.
- Blasting will occur and at the location of the KAC screen chamber, as well as shaft 1 c and some of the connection tunnel work. It would be controlled and it would always meet town code
- Blast monitoring will be implemented as part of our construction. We anticipate blasting up to 3 times a day, though that is very optimistic and highly unlikely. More like, 1 or 2 times a day at best. And town and adjacent owners would be notified ahead of time, will be performed with a blast cover.
- Wastewater and stormwater, it's really just infiltration as we excavate and we're

taking water groundwater out, as well as any type of construction water usage to do dust control or anything like that while we're constructing these tunnels and shafts, we have a wastewater treatment system that we'll be we will be putting in place, to help remove solids prior to discharge. These treated wastewaters will then be pumped to an existing stormwater mantle, with discharge to Clove Brook, where we will be doing testing at various times. We also have our SPDDS Industrial Discharge permit along with our stormwater mitigation plan we are abiding by.

- Regarding Landscaping we have no tree removal at Kensico under this contract. Areas will be replanted with a mix of native trees, shrubs, and appropriate native perennials and ground covers.

- Tree and shrub planting will be done in around 2028, according to our latest schedule. Trees planted will be part of the restoration and restitution for the whole KEC project. This brings us to about 634 1 inch caliber trees planted as part of town code tree replacement requirements. Additional areas of, will be planted with a metal mix, retention basin mix, and mowed turf. And for the overall program, for the Casey program in general, we will engage with the forest mitigation ratio of 2 to 1, enhancing the watersheds habitat.

Board Members Comments:

Chairman Collins: Has any feedback come to the DEP from the community through the Town on the construction process for the KEC Contract 1 thus far, and are there any lessons learned from that feedback which the DEP can think about and improve?

Justin Rivelino responded, we have had some feedback from the town. One example I know is for the construction fencing, we were able to incorporate that comment into our site and accommodate that question. In terms of noise mitigation, I think it's I don't know what I don't want to call it a lesson learned, there was one incident early in construction, where, there was a noise early in the morning, I think it might have been on a Saturday work. So the first thing we do is make sure that the building inspector is aware of all the work we're doing. Thankfully we were notified about that particular complaint and we worked with the contractor. That was a simple solution, we were notified about a fuel delivery so we just had the contractor change their operations. So now instead of getting a fuel delivery, and hearing the back-up alarm early in the morning, they do it at the end of the day. We certainly want to keep having that open door policy, knowing that we should be contacted if the town has a concern or something that they want to express to us regarding our construction. So, we certainly are on alert.

- I'm going to ask you to consider that strongly as you continue to do the work that you're doing. We have people here who sleep, raise their family, we have their kids activities here, and I know you're doing very difficult work and a lot of deep engineering stuff, but we also have to live here.

- Can you cover the traffic and the truck navigation routes as we started discussing at our last meeting? Justin Rivelino put up a slide showing routes and explained Kensico campus is here, and it's really ultimately taking North Broadway to Norwood, essentially getting us to route 9a. This is focused on the two sites, but it's worth noting that we don't plan on bringing excavated material from one site to the other. Eastview and

Kensico will be trucking their respective material off-site, in their own way. We don't want to track separate sets of equipment?

Walter Hickey - Is contract 1 on schedule? Justin Rivelino replied Contract 1 is doing really well, yes, we are on schedule.

Do you have a tentative date as to when the relocated West Lake Drive will be open to the public? Kevin Ellenwood replied, we expect to complete construction of the roadway, sometime in the spring, early summer. There is a regulatory process to actually open the road, and I don't have a good prediction of when that will be, but I would say maybe late summer, early fall of 2025. That's my best guess today

Public Comments:

- Patricia Walker, from Valhalla. From Valhalla, and I have a home on Highland, And the traffic there is it's a really tiny little road. And it's very difficult getting in and out, just normal. If I'm correct understanding, there's 95 trucks going back and forth in 24 hour time. Is that or did I misunderstand vehicles? That's a lot of vehicles, so my question is, is there going to be anything considered like maybe a temporary light so that people can get in and out of these little tiny roads? Chairman Collins replied they're going to collect data on the traffic and based on that data determine if there is a need or not or if it's warranted or not, because to put a traffic light up, there has to be data to support that decision. Okay. Ms. Walker continued, it's a long project. It's not just temporary. So hopefully that data can be collected early on and not late. Kevin Ellenwood added the following comment, we actually already did perform a traffic study that, looked at, those numbers. That's actually how we developed, that estimate. But just to clarify, it's 95 vehicles, so that includes, cars, the staff coming to the site to work for the day in that, 6 o'clock hour, that's a big part of that number. So it's not throughout the day, and that's the peak time, and then also it's not an average for all of construction. It's the peak quarter this being the worst-case scenario. Then also as part of the traffic analysis, we looked at the impacts during construction, and we don't need warrants for installing a traffic light at that intersection. We also looked at traffic impacts post construction, and we don't meet warrants for a traffic light at that intersection either. So we, the city, are not in a position to construct a traffic light. What we've talked about with the town is that the town will observe traffic patterns afterwards, after we open up the new Westlake Drive at Highclere, and if in the future the town feels that we meet warrants for a traffic signal, then we would come back and figure something out. So that's currently where we stand.

- Chris Barzella. I, pretty much live across the street from the construction site. I, I just have one question. They mentioned working hours. What are the proposed working hours for this project? Kevin Ellenwood made the following reply: it's going to vary throughout the course of this contract.. The first phase of work is work on the surface, and that's just one day shift. It's similar to what you see now, it's a 7 AM start. They don't get started exactly at 7 AM, but that's when it starts and it would go to 3:30 or 4:30 or whatever, we coordinate that with the building inspector. Once we get down far enough in the shaft, we would like to talk to the town building inspector about a variance to go to a 2nd shift. Then at that point, if we are approved to go to a 2nd shift,

there's not that much activity on-site. And, of course, this is all contingent. We work at the town's pleasure, so that's contingent on us meeting our noise monitoring mitigation requirements.

- I'm asking about working hours on the weekends, Saturdays in particular. What is our policy on the weekends? Kevin Ellenwood replied, the town code does allow work on Saturdays. For this contract we generally have not been working Saturdays, but there have been occasional Saturdays, like 2 days ago, we were working to catch up from the bad weather. So, similar to that for this next contract, the first phase is the work on the surface, I would expect it would be the same, one shift, Monday to Friday. We may occasionally seek to work on a Saturday. When we start blasting it would be something similar. It's not part of this site plan application, but at the Eastview site, we have the tunnel. And the tunnel, we might be asking to work 3 shifts, but no one is going to notice that. That's the tunnel boring machine going all day. No one hears it. No one's aware of that. But for this site, one shift on the surface, potentially 2 shifts in the shaft.

- So the town code states during the week construction can be begin after 7 AM, but on Saturdays, forecast to begin after 8 AM. This past Saturday work began before 7 AM, so I just want the board to be aware of that. Chairman Collins commented we will take note of that and

I'm going to ask you to do something for us, we can't monitor that as a board, so if you see these types of things happening, make the phone call to the Town Building Department during their open hours and the police department outside of hours.

Patrick Cleary stated it is important that you do that, we need that record.

Chairman Collins stated let the record show there are no additional comments from the public or Board. And we have a public hearing open still. Motion was made by Joan Lederman to close the public hearing, seconded by Eileen McClain, all members present voted in favor.

Joan Lederman made a motion to instruct he consultant to draft a resolution of approval, seconded by Eileen McClain, all members present voted in favor

[MIN_SIGNATURES]

