

**CALL TO ORDER:** Chairman Shivas called the meeting to order at 7:30 p.m.

**ROLL CALL:** Mayor Rubenstein, Ms. Raffay, Messrs. Morytko, Smith, Walsh, Chairman Shivas

*Members Absent:* Messrs. Proctor, McElroy, and Serrilli

*Also Present:* Engineer Cory Stoner, Attorney Alyse Hubbard, Secretary Caitlin Phillips

**OPENING STATEMENT:** Adequate notice of this meeting has been published specifying the time and place in compliance with the provisions of the Open Public Meetings Act.

**FLAG SALUTE:** led by Chairman Shivas

**MINUTES:** May 16, 2024. Ms. Raffay motioned to approve the minutes, seconded by Mr. Morytko.

*Ayes:* Ms. Raffay, Messrs. Morytko, Smith, Walsh and Chairman Shivas

*Abstaining:* Mayor Rubenstein

*Absent:* Messrs. Proctor, McElroy, and Serrilli

None opposed. Motion carried.

## RESOLUTIONS

SP1-2024 Byram Waterloo LLC (Starbucks of Byram), 33 Route 206, Block 36 Lot 40, VB Zone

*Application for preliminary and final site plan for development of Starbucks coffeehouse with drive-through*

Ms. Hubbard said during the last hearing there was an issue with the freestanding sign. She distributed a memo that explains what was discovered between the hearing and when the resolution was drafted. Records were included that shows previous banks at that location. There were various approvals for that sign, mainly for the face of it, and for the relocation during the road-widening. At the last hearing, the sign was bifurcated from the application. The applicant's attorney asked the Board to consider if they need to come back to the Board for the sign. If they include the word "Drive Through," it is a content variance. Looking through the minutes, there were comments about the size of the sign. Ms. Hubbard noted the Board has the right to bring them back to the Board because the sign is part of the overall site plan which was bifurcated; the applicant is asking if they change the face of the sign, if they can go through the zoning process.

Chairman Shivas said once they agreed to bifurcate the application, they now need to come back to the Board. Ms. Raffay feels the intent of the conversation was that in order to not hold up an approval, they would take the sign off the application because they heard the Board having issues with it. Ms. Hubbard noted they also said they'd work with the town, which was unclear. The other part of this is they didn't have this information that was part of the research documents, so weren't sure about previous approvals. Mr. Smith said part of the discussion was if the Board could determine if it was pre-existing. He asked if the sign is still pre-existing if they remove the building. Ms. Hubbard said the sign is a separate structure. The decision is if in bifurcating the application, the intent was to come back to the Board. The sign would typically be part of the conversation, but it wasn't because the applicant asked to remove the sign from the discussion. Knowing the sign has prior approvals, could they just go through zoning? Mr. Walsh said the request was made to bifurcate the application—he asked if they could undo that decision. Ms. Hubbard noted they retain jurisdiction of the sign. Mayor Rubenstein asked what bifurcating something does to that component. Ms. Hubbard said the most common type of bifurcating is a use variance and site plan, but for this application, the site plan was approved, and the sign hasn't gone away. Mayor Rubenstein asked Chairman Shivas if the applicant said they're not coming back for the sign, what is the status of the sign—would they need to take it down? Chairman Shivas agreed, and said the application had a sign on it. They wanted the application approved that night, and they didn't have any proofs for the sign. They decided to remove the sign from the application and talk about it later. Since they have all the new information, they could come back and ask for the sign to be re-added. Right now, the sign is not approved as part of the application. To him, they need to come back and ask for approval. Mayor Rubenstein confirmed with Chairman Shivas that in bifurcating the sign, they waived their legal right to the sign. Ms. Hubbard noted they have pre-existing rights to the sign. Mr. Walsh asked if it's pre-existing and there legally, and don't need any variances, what is the Board approving? Ms. Hubbard noted how would Mr. Stoner sign off on resolution compliance. Mr. Morytko said they set it aside specifically, and it wasn't addressed, and they should come back and talk about it. Mr. Stoner noted testimony wasn't provided for the Board to make the determination. He confirmed with Ms. Hubbard that they need to present their proofs to the Board, rather than the Board making a legal decision for them. Ms. Hubbard said the applicants added proposed changes to the resolution draft, about the pre-existing non-conforming sign; she didn't want to make the legal decision because that's the role of the Board. Mayor Rubenstein said the sign received approvals multiple times. Ms. Raffay said during the hearing the Board wanted more information. Mayor Rubenstein said the sign has been there for 30 years and received approvals, and doesn't like that if they don't come back they have to tear it down. Ms. Raffay said they should have had a sign ready for the meeting for the Board to look at. Mr. Smith said they didn't know the information that have now. Mr. Morytko said this could have been part of the original application, and they could have chosen not to bifurcate. Mr. Walsh said had they done this work prior to the meeting, and had the background documentation and presented it, they could have allowed the Board to make the determination. They weren't prepared to do that, and since then, documents were researched on their behalf, and now they can come in and demonstrate that the contents of the memo are accurate. Mr. Smith said they made a specific request—can they vote on that request. Ms. Raffay noted the public has a right to know about the sign—it's more than the Board talking about it. Ms. Hubbard said if they had the information at the time of the hearing, it could be on the site plan, and the public could have heard about the sign. Mr. Walsh noted they're

not imposing something; the applicant requested to go through this process. Mayor Rubenstein noted the records were available to the Board as well; they have looked at prior approvals for applications. Ms. Raffay said that's when they're asked about those records; the applicant came unprepared to address the sign. Mayor Rubenstein said the public knew about the sign, it was on the application. Ms. Hubbard said there was no testimony. Chairman Shivas said they didn't vote on it. Mr. Morytko said it could have been carried and kept open but it's what the applicant chose.

Ms. Hubbard noted in the first hearing, they talked about delivery times, and in the second hearing it was adjusted. They asked for the language to be changed to "after hours" in the resolution. Mr. Smith agreed. Mr. Walsh confirmed they're not contradicting anything.

Mr. Walsh asked if they could hear from the applicant. David Romano and Steve Polhamus were present; they acknowledged they remain under oath. Mr. Polhamus said when the applicant came in front of the Board, they weren't sure if it was a legally pre-existing structure. In an effort to move forward with the application, they asked for the application to be bifurcated, and they could then collect more information, and address it with the Board if it turned out the structure was not legally conforming. They determined, based on the records provided to them, that the sign has been approved. They agree with the memo from the Board attorney. Chairman Shivas confirmed with Mr. Polhamus that they asked for the application to be bifurcated. They're at the point now where they need to come back and explain what they found and that they want the sign active on the application. Right now the approved application doesn't include that sign. Mr. Romano said they asked to bifurcate because they knew they needed to do some research. They appreciate the research that was done, because they were focused on getting the application approved because they have a deadline with Starbucks, and didn't want them to walk away. If they need to come back for the sign, they will. He is concerned that if they demolish the existing building, do they legally lose rights to the sign. They believe the sign is a separate structure; they don't want that to slow down the project. Mr. Stoner said for resolution compliance they're going through the conditions; the resolution bifurcated the sign. They can say when they meet all the conditions, and then can get zoning permits. He's okay with getting zoning permits to start the demo and construction. Ms. Hubbard noted the case law leads to it being two separate structures; they have a right to the sign. Mr. Stoner said they can start resolution compliance, but a zoning permit can't be approved for the sign until the issue is addressed. Mr. Romano said he doesn't want to lose the rights to the sign if they demo the building. Ms. Hubbard said they already submitted everything to the Board—it was part of the original application, so they would revisit that. Chairman Shivas said the sign runs with the property not the building. Mayor Rubenstein asked what happens if they don't come back. Ms. Hubbard said then it would remain as it is. Mr. Walsh and Ms. Raffay agreed that the sign is separate from the building. Mr. Polhamus said the applicant is okay moving forward under that assumption. He asked that something to this effect be listed in the resolution. Mr. Stoner said they could say the sign can stay in the present location until a decision is made with the Board. Mr. Romano said the sign has its rights and the demo of the building does not force the demo of the sign. Ms. Hubbard said they can carry the resolution and make the change. She will share the packet of information with the applicant's attorney.

Mr. Stoner said they are working through conditions of approval. Mr. Romano said they have everything ready to pull a demo permit. They have all the utilities, and they've done the pest control and asbestos. They just need the resolution to be able to hand everything in.

Mr. Walsh motioned to carry the resolution to 06/20, seconded by Mr. Morytko.

*Ayes:* Messrs. Morytko, Smith, Walsh, Chairman Shivas

*Abstaining:* Mayor Rubenstein, Ms. Raffay

*Absent:* Messrs. Proctor, McElroy, and Serrilli

None opposed. Motion carried.

Z07-2024 Dana Taylor, 16 Weaver House Cove Road, Block 109 Lot 2, R-5

*Application for a deck in the side yard*

Mr. Morytko motioned to approve the resolution, seconded by Mr. Walsh.

*Ayes:* Ms. Raffay, Mayor Rubenstein, Messrs. Morytko, Smith, Walsh, Chairman Shivas

*Absent:* Messrs. Proctor, McElroy, and Serrilli

None opposed. Motion carried.

SP2-2024 Raimo of Stanhope, 43 Route 206, Block 35 Lot 36, VB Zone

*Application for amendment to accessory structure and principle building*

Mr. Morytko motioned to approve the resolution, seconded by Ms. Raffay.

*Ayes:* Ms. Raffay, Mayor Rubenstein, Messrs. Morytko, Smith, Walsh, Chairman Shivas

*Absent:* Messrs. Proctor, McElroy, and Serrilli

None opposed. Motion carried.

WOSP-5-2024 Vito Lombardo, 10 Route 206, Block 42 Lot 112, VB Zone

*Application to change uses in retail space and add a garage door to existing building*

Chairman Shivas said this application was denied. Ms. Raffay motioned to approve the resolution, seconded by Mr. Morytko.

*Ayes:* Ms. Raffay, Mayor Rubenstein, Messrs. Morytko, Smith, Walsh, Chairman Shivas

*Absent:* Messrs. Proctor, McElroy, and Serrilli  
None opposed. Motion carried.

## **ANNOUNCEMENT**

### SP6-2023 Tomahawk Lake, 155 Tomahawk Trail, Block 343 Lots 1, 2, and 3, CR Zone

*Application for amended site plan and use variance approval to use Lot 3 for additional parking, reconfigure the overflow parking area and employee parking area, construct a slide and merry-go-round, and modify a ticket office for larger square footage*

Ms. Phillips said they were scheduled for a Subcommittee meeting in April. They noticed for one of the meetings, and the Board carried it to tonight, provided it was deemed complete, to preserve the noticing. Because it wasn't deemed complete, this is a notification for anyone who is interested in the application, so they're aware the Subcommittee meeting is on June 20<sup>th</sup>. Ms. Hubbard added no hearing date has been set.

## **SUBCOMMITTEE MEETING**

### SP4-2024 Cartridge Actuated Devices (CAD), 40 Old Indian Spring Road, Block 362 Lot 4, Block 226 Lot 8.01, R1 Zone

*Application for bringing site into conformance including trailer removal, addition of a new two-story building, and replacement of a building*

Mr. Walsh said there were seven waivers requested, and all of them are either easy to waive or not needed. They need fire protection details in order to hear the application. Significant detail was provided, so they could deem it complete. He motioned to deem the application complete and schedule it for a hearing on 07/18, subject to the fire protection details being submitted at least ten days prior to the hearing date, seconded by Mayor Rubenstein.

*Ayes:* Mayor Rubenstein, Ms. Raffay, Messrs. Morytko, Smith, Walsh, and Chairman Shivas

*Absent:* Messrs. Proctor, McElroy, and Serrilli

None opposed. Motion carried.

### SP5-2024 Gary Niec, 18, 22, and 24 Route 206, Block 41 Lots 90.01, 90.02, 94, VB Zone

*Application for mixed use retail and residential development including a three-story building with up to seven retail spaces and 72 apartments*

Mr. Walsh said this is a bifurcated application. They reviewed the preliminary site plan. They can deem it complete but they're not setting a date because there are three items needed for the professionals to review. They need an Environmental Impact Statement, a traffic impact statement, and line of sight information, particularly for people in the apartments and what they would be looking at, with a residential area to the east. Mr. Stoner said this should be subject to those three items being provided and approved by the Board professionals prior to it being scheduled. They don't want to come back for a completeness hearing. Ms. Phillips asked about the scheduling timeframe. Mr. Stoner said it's deemed complete but the hearing date is pending. Ms. Hubbard said this is a D variance. They need a conditional use, and there's a density variance. Another item is if they consider a gym and meeting room for residents on the second and third floors to be retail, as that could be another conditional use. They would come back for a full site plan. Chairman Shivas asked what happens when this is finished and they come in for a site plan—do they need to come back for completeness? Ms. Hubbard and Mr. Stoner confirmed they'd need to come back. Ms. Hubbard noted they wouldn't come back for site plan if the use variance is denied. Mr. Walsh motioned to deem the application complete, seconded by Ms. Raffay.

*Ayes:* Mayor Rubenstein, Ms. Raffay, Messrs. Morytko, Smith, Walsh, and Chairman Shivas

*Absent:* Messrs. Proctor, McElroy, and Serrilli

None opposed. Motion carried.

## **OLD BUSINESS**

### Z08-2024 Diane and William Carkhuff, 82 South Shore Road, Block 189 Lot 1, R-5 Zone

*Application for construction of a new single-family dwelling*

Ms. Hubbard said they provided significantly different architectural drawings. This triggered a review by the County Health Department for their septic system—they want to get that approval first. Mr. Morytko motioned to carry the application to 09/05, seconded by Mayor Rubenstein.

*Ayes:* Mayor Rubenstein, Messrs. Morytko, Smith, Walsh, Chairman Shivas

*Abstaining:* Ms. Raffay

*Absent:* Messrs. Proctor, McElroy, and Serrilli

None opposed. Motion carried.

## **NEW BUSINESS**

### Z25-2023 Ryan Tiernan, 11 Ranger Trail, Block 300 Lot 2345, R5 Zone

*Application for ex post facto work on driveway*

Ms. Phillips said this application was deemed complete near the end of December, but has been carried multiple times without any noticing being done. She asked about any action that should be taken, in terms of providing a deadline to notice by or dismissing the application. Mr. Stoner noted there are violations for this property. Chairman Shivas said if it were to get moved it'd need a hearing date. Ms. Phillips said it was originally scheduled for January and has been carried since then. Ms. Raffay said the issue with carrying applications, is there are multiple applications and that takes up a spot on the agenda, and that impacts other people. Mr. Smith

confirmed if they dismiss the application, this applicant can submit a new application when/if he is ready. Mayor Rubenstein said this also allows the Zoning Officer to continue with violations. Mayor Rubenstein motioned to dismiss the application without prejudice, seconded by Mr. Smith.  
*Ayes:* Mayor Rubenstein, Ms. Raffay, Messrs. Morytko, Smith, Walsh, Chairman Shivas  
*Absent:* Messrs. Proctor, McElroy, and Serrilli  
None opposed. Motion carried.

## **OLD BUSINESS**

### Z27-2023 Nicco Brancaccio, 22 Adair Street, Block 17 Lot 19, R-5 Zone

#### *Application for shed in the front yard*

Ms. Phillips said this was heard at a hearing in May, and there was discussion of the applicant coming back with a new proposed location for the shed, because the Board decided they were not okay approving it in the proposed location near the street. A revised survey mark-up from the applicant was not received until the day of the meeting. He was told he could come to this meeting to show what he is proposing, to get some feedback, since the Board can't vote on it when it's past the deadline. In a review of the submitted document, it looks as though it's in the same proposed location but with some shrubbery. This mark-up could not be distributed because it's past the submission deadline. If present, he would submit it as an exhibit. Mayor Rubenstein confirmed they have everything for him to have a hearing. Ms. Raffay said he could have been here to present it. Mr. Walsh asked the detriment of carrying the application; Ms. Raffay said it takes up another slot on the agenda. Mr. Smith noted he made an effort by submitting something. Ms. Raffay said he was told multiple times what was needed, and this pushes people back who can't be heard because this takes a spot. Ms. Phillips noted it could be carried, and he be told they can't guarantee it will be heard that night because it'll be at the end of the agenda. Chairman Shivas said they can carry him to the 18<sup>th</sup>; but he must show up because if he doesn't they'll end up denying the application. Ms. Phillips noted the Board also asked for photos to be submitted, which were not provided. Ms. Raffay said if he decides to show up and not provide the information, they can react to what's provided. Chairman Shivas noted this application was also submitted because of violations with the Zoning Office, so if he doesn't show up and gets denied, he will receive fines.

Mr. Smith motioned to carry the application to 07/18, and noted a letter should be sent indicating very clearly that is the deadline, seconded by Mayor Rubenstein. Ms. Hubbard asked if deadlines are imposed with violations; Ms. Phillips said the violations are usually stayed while in front of the Board. As this becomes more of an issue, they've discussed telling applicants they need to be heard by a certain date, coordinating with the Board schedule, so that it's not indefinite.

*Ayes:* Mayor Rubenstein, Ms. Raffay, Messrs. Morytko, Smith, Walsh, Chairman Shivas

*Absent:* Messrs. Proctor, McElroy, and Serrilli

None opposed. Motion carried.

## **REPORTS FROM COMMITTEES**

*Architectural Review Committee:* Mr. Morytko said there's been no meeting. Ms. Phillips asked if the Council talked about this yet. Mayor Rubenstein said no.

*Environmental Commission:* Mr. McElroy was not there.

*Open Space:* Mr. Morytko said there's a meeting Monday. Ms. Phillips said they need to do the deer parcel allocation and discuss what they want to do for forest management.

*Township Council:* Mayor Rubenstein said the Tax Assessor came in with the County Tax Board to explain a reassessment, as they've received an order to do one. They will file for an extension because it's too late to do it this year—they get a one-year extension, so the reassessment is likely to happen in the spring of next year. It'll be due to be completed by November 2025. They discussed how they would do the reassessment; there's a new concept of rolling assessments, where they do 25% of the town continuously on a four-year cycle. There's an equalization process to determine how far off the assessments are, and Byram's dropped to 70% this year, so they are at least 30% off on valuations. This is one of fifteen criteria used by the Tax Board to make an order, and they felt there were several other criteria they were off on. They have to decide if they want to do a rolling assessment. Ms. Raffay confirmed with a rolling assessment you can still use a special budget. She noted maybe the optics are better because it's not once every ten years.

Mayor Rubenstein said two ordinances were passed for Carpenter Road. They introduced a bond ordinance for a fire truck. Chairman Shivas asked about Johnson's fieldhouse, and being able to use a cellphone. Mayor Rubenstein said that is an ongoing conversation with Verizon. There is wifi there now. There is a conversation about doing improvements to the fieldhouse. Chairman Shivas asked if there is still a proposal to move the building. Mayor Rubenstein said the Council doesn't want to—the structure is sound, it just needs renovations.

## **OPEN TO THE PUBLIC**

Chairman Shivas opened and closed to the public.

## **ADJOURNMENT**

A motion to adjourn the meeting was made at 8:50pm by Ms. Raffay, seconded by Mr. Morytko. All were in favor. Motion carried. The meeting was adjourned.

Respectfully submitted by Caitlin Phillips