

September 14, 2023

Incorporated Village of Westhampton Beach held its Planning Board meeting on Thursday, September 14, 2023 at 5:00 p.m. in the Municipal Building, located at 165 Mill Road, Westhampton Beach, New York.

PRESENT: David Reilly, Chairman  
Ralph Neubauer  
Rocco Logozzo  
Larry Jones  
Michael Schermeyer

Ron Hill, Village Engineer

Anthony C. Pasca, Esq., Village Attorney

Maeghan Mackie, Board Secretary

ABSENT: Britton Bistran, Village Planner  
Brad Hammond, Building & Zoning Administrator

Motion was made by Mr. Reilly to open the meeting and asked for everyone to please stand to salute the flag.

**DECISIONS: NONE**

**PUBLIC HEARING AGENDA:**

**SITE PLAN REVIEW:**

1. 32 MILL LLC-32 MILL ROAD SCTM#905-12-4-50
  - o Continued work session on Modification of Site Plan approval to convert a second floor office to luncheonette seating

Erin Finley appeared on behalf of the application. Mr. Reilly said before we get started because two of the Boards consultants are not here they have provided comments in their absence and he'd like Mr. Neubauer to read their findings in to the record.

Mr. Neubauer said at our July meeting we were charted by an applicant who stated that there was a professional missing and that he could not provide comments and would cause a delay in the processing of the application; in order to mitigate that we have requested comments ahead of time in anyone's absence, and we thank him for bringing that deficiency to our attention. We have received comments from Mr. Hammond and Ms. Bistran and I'll read the same into the record. The first is from Brad Hammond. He went on to read Ms. Bistran's comments into the record.

Mr. Reilly said he would like to offer that there was another memorandum to the Board, and that is from August 30, 2023 and that Ms. Bistran did a prior memo August 23, 2023 which notes that the Village has received notices from Board of Health Waste Water Management and Food Control and as pertinent as it is, in order for the applicant to receive approval from WWM the applicant submitted a Notarized Affidavit stating that the property will not exceed a total seat count of 16 and all exterior seating is to be eliminated. Our consultant's along with the County are mandating 16 seats total on the property and our consultants are recommending that the access way to the deck on the second floor be permanently closed for all purposes and the door is not required by

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the Code and not required for Zoning; there are issues with the door that was changed and the use of the room was changed as Ms. Bistran stated, and they'd like a narrative of how the offices will work together. It has been a long Summer with this application and we have narrowed down the issues to the door, the office functions and the outdoor seating.

Ms. Finley said WWM has said they are waiting on the Village; food service says they are waiting on WWM. I'm not giving up the outdoor seating, and I don't see where we're going to get past the issue. The door is egress and it has been locked since July 13 and no one has used it and it has not been accessible since 2014 and they have not been permitted to and there's no key and right now the lock is on the outside of the door. They don't go in my store room or go in my kitchen door. I'm happy to reverse the lock and I'd rather it be on the inside so we can get out; so to tell me it's not egress it's not state mandated but it's accessible to get downstairs and we stopped advertising it and there's a sign that says private. No one opens the door and it's apparent where you go and they don't access it and I can't imagine people will start opening doors. No one uses my employee bathroom and I have never had an issue in nine years, it's not in use and you sat here and said you were fine with the lock.

Mr. Reilly said I did not say that; I did not have any commentary from my consultants about the Code or planning; we have memorandums from our consultants and we're here to discuss it with you tonight.

Mr. Neubauer said in the minutes you said you would close it permanently.

Ms. Finley said I did not.

Mr. Reilly said as far as the number of seats, there is an overlap; the Village says one thing and it's the County saying to operate your business you cannot exceed 16 seats. If we distill it down, you get 16 seats no matter where they are, you can put them on the lawn, and remove them from the inside but what they are saying in order to get an approval from them you are agreeing not to exceed 16 seats total on the property.

Ms. Finley said the Village cannot supersede the County, and I'm not going to give the outdoor seating up; I'm not giving up my outdoor seating at all. I'm allowed to have it according to the Village Trustees and you will not make an example out of me. Everyone has it, and everyone has 16 seat approval but they all go beyond that. I will not be bringing in any of my outdoor seating.

Mr. Reilly said if the Department of Health comes in; we have to.

Ms. Finley said they are aware this exists and they allow it, they know it helps the businesses and they allow us to have it, and we take it on at our own risk them writing it up for it and that's on our own risk. It's not a mandate by Ms. Bistran to say they cannot allow it.

Mr. Reilly said there is a fog here and it has to be sorted out somehow. The higher up the chain you go the more power they have and we can't tell the County what to do.

Ms. Finley said and they haven't thus far.

Mr. Reilly said they have said 16 seats maximum and you signed an affidavit agreeing to that.

Ms. Finley said that's everyone's permit, but I'm not giving up any of my seats outside.

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Mr. Neubauer said everyone else would have to abide by the same requirements.

Ms. Finley said the Village allows a seasonal outdoor permit and they have since 1997, you're not going to make an example out of me and I'm not bringing in my outdoor seating.

Mr. Reilly said I don't know how this gets sorted out, if the County doesn't enforce it no one has to abide by the requirements, but this applicant signed an affidavit and as part of our review the Board of Health gave a notice with 16 seats maximum.

Ms. Finley said it's a benefit to this community.

Mr. Reilly said the Trustees get the permit, right?

Mr. Neubauer said it's a seasonal renewal to the Trustees? If they choose to ignore the County with regard to seating, that's their choice. All we can do is relay the information from the County, and you signed an affidavit stating you won't exceed 16 seats total on the property.

Mr. Reilly said we try to not overreach and I don't want to get into areas we don't belong in.

Mr. Neubauer said I expect next year when you apply for outdoor seating, you'll likely get it like everyone else if what you're saying is true.

Ms. Finley said as long as it's not in the resolution I will get the outdoor seating next year. It shouldn't be a condition of my approval.

Mr. Pasca asked if the outdoor seating is on the site plan? In some cases it is.

Ms. Finley said hers is not permanent.

Mr. Reilly said he believes the firepit to be part of her site plan, and if it's seasonal is it beyond our purview?

Mr. Pasca said we should move on; if you grant the decision you may not get past the other issue and there's an impasse where the applicant doesn't want to comply with the planning board and if you get past that we can deal with the outdoor seating and draft a resolution in a code compliant way and what happens next year, will be for the Trustees.

Ms. Finley said for July and August the number of people up there, no one opens the door.

Mr. Neubauer said it's simple, why are you fighting this?

Ms. Finley said there is no reason to remove the door to the deck, and it's not accessible. Since 2014 has there been a complaint with the deck in use? I used it in May and June because the Building Inspector didn't think it was an issue and he said I could; now people can wait on my front lawn and he also doesn't think having a party with 35 people is an issue, and they are not upstairs they are my lawn, and every time the police come I ask them to document that the deck is locked and no one is out there. I used the door to go back and forth and if I need to

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bring something it is easier to use the deck but it is not something anyone goes out on and when I can bring in a contractor I will reverse the lock; they physically cannot open the door.

Mr. Schermeyer said trust is a problem; let's put it this way this door has been a problem since 2014 and you do use it and it was used and the neighbors complained and I remember saying to you in 2014 and asked you to get rid of the door and you said no, and all of the noise was on the deck. And why do you have plantings on it if you don't use it.

Ms. Finley said because I thought I could use it.

Mr. Schermeyer said you didn't put any tables out there?

Ms. Finley said there is a table and a sofa.

Mr. Schermeyer said why do you get complaints about the deck.

Ms. Finley said I have not sat on the deck in three years; that's not a valid complaint no one is using it and out on it in 9 years; one time the police came and they could hear us talking. My employees are here, they can tell you they don't use the deck and they aren't allowed to use the deck.

Mr. Pasca said you cannot have a conversation with the people in the public.

Ms. Schermeyer said the deck was a problem.

Ms. Finley said there's no reward for not using it; it's never been a problem.

Ms. Schermeyer asked why they are talking about noise on the deck.

Mr. Reilly opened the meeting for public comment.

MaryBeth Finnegan, Jagger Lane Westhampton said she finds it hard to understand why anybody complains about noise at 6pm or 7pm or 8pm or 9pm at night; and gets attention for those complaints. If I wanted to complain about noise I could start at 6:30 am and we're not in the woods I don't understand the problem unless you don't want to hear noise and if you don't want to why did you move into a Village. There is not loud radios, its people conversing. As far as the door is concerned I think you should welcome every door, every egress there are signs all over telling people to increase the windows for egress and its important for a private home or public building so I don't understand the problem with having egress.

Kim Wulfersdorf, 17 Beach Road. She said she'd like to talk to a few things; they are happy with Ms. Bistran's comments and the BOH comments and to answer the question about the deck we have not made a noise complaint about the deck since the early Summer late Spring and it was being used and no it was not party type noise. The issue is if we can hear your conversations and you can hear ours and it deprives us of privacy and we as neighbors know each other very well and if its open to the public and I can't see them or know who is there; there is a lack of privacy and enjoyment in my home. That room where the door was added was an office and a private office and the public would not be there and now it's labeled as a showroom, and obviously the nature of a showroom is for the public. I can assume party supplies include tables and chairs and that may morph and when

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does that morph into more public space with access to a roof deck and we're back with the same issue. And the rest of the police reports, as we were told by Deputy Mayor Ralph Urban about this operating without permits from the BOH, SLA, and the Village we were told to make the police reports and each report will be prosecuted and he encouraged us to call the police, and it's not about noise the noise stopped, just as Erin said that did stop and it has not been an issue and we do not want it to become one. I would like to see both doors gone because someone will go out there and it will morph, it has changed what was an office became a sushi suite, there is no trust here. It's constantly changing so why can't we take the option away.

Ms. Finley said the party showroom is labeled that way but it's my office, and the TBI office is my daughter's office which is vacant when she was working remotely she used that space. The showroom has a shelf of plates and glassware and it's my office; I literally store linen and change in it and it's not occupied or for rent. The party showroom has been sitting with the stuff for two years and when I took over the sushi suite I moved my desk and office and both are my offices. There are no other tenants; the SAT prep office is the two offices in the front and both are open to one another and were rented last from a financial or title company and before that it was an attorney and it is one tenant and they are my office and if you want that label changed I can do so. The fact that Kim wants the deck gone and sealed up is not her call; she attested that there are no noise complaints and there were no noise complaints founded there's no noise and when I don't have the time I change in the office. We said we wouldn't use it in 2014 and we never did and you asked us to be a good neighbor and we have been. It's not a special exception it's a permissible use and I won't keep paying the penalty for it. If noise is not the complaint what is the problem. If you think this is overused, I'm moving 8 seats I'm not morphing and I've used it exactly as I said I would and I would like to know what has morphed. The outdoor seating is morphed and has enhanced the Village. I have not expanded my use and I've moved 8 seats. If noise is not a problem, why is the door a problem. You said it's a matter of trust, what have I done that I can't be trusted.

Mr. Pasca advised Mr. Schermeyer not to answer that.

Ms. Finley said you want to do what you said you didn't do; you don't plan based on the perceived idea based on a violation in the future.

Mr. Reilly said we plan to mitigate reasonable concerns when the property is being used and the use of that room has changed so that's how we have to look at it and there are issues of mitigation. I am not in favor of closing it completely and I am in favor of making it private and there are ways to encourage that to happen.

Ms. Finley said there are multiple ways and expensive construction for no reason is not a way. There's not a way to access the door, there's nothing that says it has to be removed or remain. It hasn't been used and it won't be. You can't make a decision based on Kim's opinion.

Mr. Pasca said it's not an opinion it's the five Board Members and they are basing their decision based on the Code; it's the Board's call and if you want to close the hearing because you are not going to budge the five members will vote and because you are refusing to accommodate a request of the Board be prepared for a decision based on that. You will have recourse if you don't agree with their decision; it is up to you if you are not willing to budge the Board can close the hearing and render a decision.

Andrew Perel, Esq., attorney for Ms. Finley said he needs clarification and he's trying to understand what we're attempting to do; it was my impression we were whittling the issues to satisfy this Board and there's a cost

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beneficial analysis to moving in a HC area and a residential area; it is my understanding that Mr. Hammond's position, all of the materials with the exception of the door is the single focal point.

Mr. Neubauer said there are questions about the labels of the rooms.

Mr. Perel said assuming that the rooms are labeled is the issue egress? More egress is important and it was my idea to have those ladders for egress and an alarm so it's not accessible by the public.

Mr. Neubauer said more egress was put in without a permit. We have a second door from her office that no one sought permission to install, and you have that exit point.

Mr. Perel said sealing the door off could be an option to consider.

Mr. Reilly said if the deck isn't going to be used, then what is stopping her from closing this door?

Mr. Perel said from her private office, her point is if things change without incurring cost and construction; I am trying to find a balance. With respect to WWM and Food Services they are satisfied and the affidavit has been submitted and I looked at the disposable wine glasses, they are disposable and she signed an Affidavit saying she will not exceed 16 seats so WWM is satisfied.

Mr. Reilly said my issue is how their letter how impacts the Zoning in this Village and I don't know how that interacts in theory, the Board of Trustees can say go ahead and the County can so no, and I want to avoid if we don't have to get entangled in that, I want that avoided.

Mr. Perel said to Ms. Finley's point she proceeds at peril, and she knows that there will be consequences.

Mr. Neubauer said we fully expect the County to be consistent and when they review applications, those decisions require visualization of seating that's when it'll come to a head.

Mr. Perel said he can't argue with the Board.

Mr. Reilly said I don't know if the Village Code has to be looked at to deal with this. The issues have been narrowed; do we close the door and we want a narrative to the rooms.

Mr. Perel said we can provide the narrative and she agrees with that.

Mr. Reilly said that's easy.

Mr. Perel asked for a resolution.

Mr. Reilly said with that being said, at the end of this I will poll the Board and ask each member to say their peace about the door and at that point you will know their feeling and you can decide if you would want to readdress the Board and keep it open or not.

Mr. Perel said they'd like to keep it open.

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Mr. Pasca said if the polling of the Board says the Board wants the door removed we can't send a letter to the BOH because it's a denial if she's not willing to remove the door.

Mr. Perel asked Mr. Pasca to clarify.

Mr. Pasca said there is a process under the old Code the Board does not approve applications before the Board of Health issues the stamp on their plans; but the Board of Health is waiting for something from this Board to say they are okay with the site plan and if there is not a consensus to approve the plans and the applicant is not willing to change the plans we cannot send anything to the Board of Health. The only option the board can do is deny the application.

Mr. Perel said she should be given the opportunity to take it or leave it.

Mr. Pasca said yes she should and that's why we're going to poll the Board. But if they want a decision, it is the applicants call to ask for that vote knowing that. It will be the applicant's decision to make, nothing will be closed over her objection if she wants to keep the option open.

Mr. Perel asked if there were any other questions.

Mr. Reilly said two members want to defer on the poll.

Mr. Schermeyer said he would like to review the minutes from other hearings.

Mr. Jones said he wouldn't mind a window.

Ms. Finley said Mr. Hammond said they cannot install a window.

Mr. Pasca asked Ms. Finley to please not interrupt the Board.

Mr. Reilly said the Board would like to review materials and minutes of prior meetings. I would defer to hold it over to review things of the past and re-confer on September 28.

Mr. Pasca said to please get the narrative that has been requested.

Mr. Perel said after consulting with the client she will remove the door.

Mr. Reilly said okay. They will see on her September 28 to discuss the outdoor seating and the labels of the rooms.

Ms. Mackie said she can submit the narrative and the plans to remove the door by September 22, 2023; the deadline is really September 18 but to help facilitate moving this along she'll extend it to September 22 and provide Ms. Bistran with whatever she submits if she wants to go on the September 28 calendar; submissions made after that she will go to the October 12 calendar.

Ms. Finley said fine, you will have it all by Monday.

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Mr. Reilly asked if there were any other questions or comments. There was no further comments or questions.

**FILL APPLICATION REVIEW: NONE**

**WORK SESSION AGENDA:**

1. STARBUCKS- 193 & 195 MILL ROAD SCTM#905-8-2-23&24
  - o Initial work session to discuss new Site Plan

Anthony Guardino, Esq., appeared on behalf of the application who is proposing a Starbucks this will be a coffee shop 2,345 square feet with 16 seats with no drive through; the main ingress will be Mill Road and there is a secondary entrance off of School Street and there are 17 parking spaces which is two more than required by the Code and the parking will be behind the building and during this process the Engineer pointed out that a drive aisle is located too close to the property line and needs to be setback 10' and shown 3.4' from the Northern line and it otherwise complies with the requirements and we do not want to go to the zoning board and we'll pull it in for the requisite 10'.

Zachary Chaplin, Stonefield Engineering said beyond what was mentioned it is important to note that we will landscape the site and there is a full design prepared and proposed 30 new trees and shrubs and enhance the site and the architecture we provided was a sample and we'd like some feedback on that for the architect to work with and we know that's key.

Mr. Neubauer asked if they've read the Code on HC?

Mr. Chaplin said he hasn't, but the architect will.

Mr. Reilly said I would read the standards and have the architect look around and this might be appropriate around the Western end of Long Island but may not fit in with the character of the Village of Westhampton Beach. Certainly in the HC or downtown area, and the design is not bad but not in keeping with the character of the neighborhood here.

Mr. Hill said ingress and egress will work fine and that into the Village Hall off of the traffic circle is one way in and no one can come out that way and we'll have to add more signage and on Mill Road there is a median so only Eastbound traffic can get in and everyone else has to come around the circle and off of the driveway. Wherever you're going you have to go around the circle which will distribute the traffic. My comment was regarding the buffer on the West side and of course we need the detailed plans and this is suitable for the work session but we'll need more detail and the ARB will comment on the building itself.

Mr. Neubauer asked if you're familiar with the Village? Do you understand the seasonal aspect of the Village, this may be great on Montauk Highway or Old Riverhead Road but I don't understand the location choice.

Mr. Jones asked if these are accurate representations of the building, I think the gables are fine and I don't see any issues with that architecture or design.

Mr. Reilly said I live on Oak Street and my main concern is the traffic and I'd like to see something, will we need a traffic study? I want to make sure we're thinking along the lines of what we have to do the movie theater will



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create traffic and we'll have the corners very busy but I'm trying to look at the big picture and it will be a busy area.

Mr. Jones said the movie theater has a flat roof and it's a little bit out of the norm for a Village.

Mr. Reilly said this will have a lot of in and out of traffic and turnover and I would be concerned with the days and weekends with traffic backed out and on to Mill Road. My personal reaction is that I'd like to see more done to the architecture.

Mr. Logozzo said I don't know if the building represents the neighborhood and that's my position; other than that the parking has its own problems but the building needs to be reworked.

Mr. Guarino said the architect is here and can comment.

Mr. Logozzo said they should look at the neighborhood and the design standards in the Village Code for the HC.

Mr. Jones said you don't have to do beige and white, there is room for color and wiggle room.

Mr. Guarino said he spoke to his client and they wanted to show something and you saw there is a drive through but that's not the case and this is helpful and we'll comply with the architecture.

Mr. Logozzo said in dollars and cents I would come up with a single sheet that fits better with the neighborhood instead of four or five pages of renderings. Everyone has an opinion but I think a single sheet of what you're representing is okay.

Mr. Reilly said if you give us a direction and if we are thinking that's the direction give us options.

Mr. Hill said I think we would like to see traffic and parking data from the locations and compare it with the ITE and I suspect they are different and we want it without the drive through and that may affect the study. We want an idea of what type of traffic it'll generate and whether that needs further review or not.

Mr. Chaplin asked for counts or data?

Mr. Hill said counts or parking demand from other facilities. I want you to tell us what this project will generate.

Mr. Reilly said to use a comparative Starbucks.

Mr. Guarino said the decision to move to a public hearing, is for the Board and we feel confident that we can address the comments we are ready to move forward and we can feed the information ahead of time if you're comfortable.

Mr. Pasca said before you do that; the idea behind the Work Session you can advance things during a work session the Trustees have set up with this Boards input you decide when its ready for public comment and it can progress and its less critical.

Mr. Reilly asked when the site is ready for public comment.

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Mr. Neubauer said we can hear it at this meeting, right?

Mr. Pasca said yes.

Mr. Hill said it should be after everything is submitted and we think we have everything to go there.

Mr. Pasca said we don't think its ready for a public hearing; I would expect to see them saying they are good for a public hearing or not and the application can advance.

Stacy Rubio, Mill Road appeared and said that the applicants really should look at the traffic. She has a video that shows the traffic on Mill Road on 4<sup>th</sup> of July at a complete standstill and she is not in favor of the location because it will cause a backup of traffic on Mill Road.

Mr. Reilly said okay. He asked the applicant if they had anything to add. There was nothing more to discuss and the matter was kept on the agenda as a Work Session for October 12, 2023.

**TRUSTEE REFERRAL: NONE**  
**SUBDIVISION REVIEW: NONE**  
**SITE PLAN REVIEW: NONE**  
**FILL APPLICATION REVIEW: NONE**

**MINUTES:**

1. AUGUST 24, 2023 (Absent: Michael Schermeyer)

Motion was made by Mr. Reilly to adopt the minutes of the August 24, 2023 meeting as written; seconded by Mr. Jones and unanimously carried 4 ayes, 0 nays, 0 absent, 1 abstain.

**HOLDOVERS:**

1. 85 & 105 MONTAUK LLC- 85 &105 MONTAUK HWY SCTM#905-5-1-12, 53.1 &52.2
2. ROGER'S AVENUE ASSOCIATES- ROGER'S AVENUE SCTM#905-3-1-7.1-7.7)
3. PRIME STORAGE- 98 DEPOT ROAD SCTM#905-2-1-19.1
4. 55 OLD RIVERHEAD ROAD LLC- 55 &59 OLD RIVERHEAD ROAD SCTM#905-4-1-7, 9.2, 9.3
5. FIRST DUNES DEVELOPMENT 496 LLC- 496 DUNE ROAD SCTM#905-16-1-19
6. 10 MITCHELL OWNER LLC- 10 MITCHELL ROAD SCTM#905-11-2-3
7. DRL IRREVOCABLE TRUST & CAROL SCHECTER- 12 PONTUNK LANE & 42 STEVEN'S LANE SCTM#905-11-1-3.2 & 7
8. BMB ENTERPRISES INC.- 145 MAIN STREET SCTM#905-11-2-29
9. ROBERT SCHOENTHAL- 22 BAYFIELD LANE SCTM#905-10-6-2
10. WESTHAMPTON COUNTRY CLUB- 35 POTUNK LANE SCTM#905-9-3-23.1
11. WESTHAMPTON INN, LLC, 43 MAIN STREET SCTM#905-11-1-15
12. RICHARD OLIVO-72 SOUTH ROAD SCTM#905-8-1-27
13. SUNSET WEST LLC, 87 SUNSET AVENUE SCTM#905-12-1-49.1
14. WESTHAMPTON PROPERTY MANAGEMENT LLC-141 MONTAUK HWY SCTM#905-5-2-6.1
15. 161 MONTAUK HWY LLC-161 MONTAUK HWY SCTM#905-5-2-12.1
16. THE GABLES OF WESTHAMPTON, LTD (FORMERLY WH EQUITY GROUP, LLC) 12,22,80 MONTAUK HWY & OLD RIVERHEAD ROAD

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Motion was made by Mr. Reilly to adjourn the meeting at **6:45 p.m.**; seconded by Mr. Schermeyer and unanimously carried 5 ayes, 0 nays, 0 absent.