

APPLICANT: STUYVESANT PLAZA**ADDRESS: 1475 WESTERN AVENUE ALBANY, NY 12203****GRANTED: JUNE 5, 2013**

WHEREAS, a public hearing to consider the applicant's request was duly noticed and held before the Zoning Board of Appeals on several evening to consider:

Special Use Permit Request No. 4375

This is an application by **Stuyvesant Plaza** for a Special Use Permit to allow paved parking for 24 vehicles, the construction of a retaining wall, and an area for trash compactors on Town-owned property pursuant to an Easement granted by the Town Board. The easement area is between the McKownville Reservoir and Stuyvesant Plaza. The property is zoned Local Business.

The Board has considered the factors listed in Zoning Code 280-52(D) for an application for a Special Use Permit and makes the following findings:

(1) This application involves Stuyvesant Plaza's use of Town property. In an Easement filed on November 16, 2009, the Town Board provided Stuyvesant Plaza with easements for ingress and egress, trash storage, and parking on Town property adjacent to a Town park.

(2) Public notice was provided. The Board has received oral and written comments from residents opposing the application and expressing concerns regarding impacts upon the Town park, ingress and egress onto Town property, pedestrian safety, landscaping, the appearance of the rear of the Stuyvesant Plaza, and other site plan issues. The Board has also received written comments in support of the application and Stuyvesant Plaza.

(3) The Board adopted a Negative Declaration under SEQRA for this Unlisted Action.

(4) In a notification dated April 21, 2011, the Albany County Planning Board recommended review of pollution control for Krumkill watershed, including maintenance and inspection forms, and the procedures for post construction practices for the dumpster area and porous pavement.

(5) In a memorandum dated February 5, 2013, the Town Planner stated that the area was confusing and congested with traffic coming from different angles; that accessing the parking area by a left turn could be difficult; that some parking spaces should be reserved for

park use only; questioning whether the Easement was intended to allow traffic flow from the office building; and that the trash area should be screened from the park.

(6) In a Site Plan Review dated February 13, 2013, the Town Planning Board recommended approval with the following conditions:

- (A) Appoint a Town-designated engineer to review the Storm Water Pollution Prevention Plan and proposed circulation plan for parking;
- (B) Indicate on the plans the location and number of trees to be removed and provide a tree protection plan for construction activities;
- (C) Provide a snow removal plan;
- (D) Identify additional green space to replace approximate 0.35 acre proposed for removal, including landscaped end-islands near the front entrance or trail improvements across the parking lot at the west end of the park;
- (E) Modify landscaping plan to provide additional screening for retaining wall;
- (F) Change proposed gravel path on the east side of the park to asphalt/concrete to match existing paved portion path near retaining wall; and
- (G) Provide a lighting plan.

(7) This Board appointed Ken Johnson of Delaware Engineering to provide engineering services, including review of ingress and egress, parking circulation, storm water management, the operations of the compactors, landscaping, renderings of the building, and other site plan issues. Mr. Johnson has provided the Board with written and oral reports with his findings and recommendation.

(8) With the professional assistance of Mr. Johnson, the recommendations and comments provided by the Albany County Planning Board, Town Planning Board, Town Planner, and this Board have been addressed and incorporated into the revised site plans.

(9) The storm water management report and maintenance for the two compactors, including the oil and water separator, have been reviewed and approved by the Town Engineer.

(10) A sanitary sewer plan has been provided and will be reviewed by the Town Water Department.

(11) A grading plan which shows that grading will be limited to the easement area, except for the installation of sidewalk at the east end of the Town park, has been reviewed and approved by the Town Engineer.

(12) The Town Parks Department has reviewed and approved the planned removal of trees, consisting mostly of white pine and scrub trees, in the easement area.

(13) The Town Parks Department has reviewed and approved the landscaping plan for the easement area, including around the retaining wall. The Parks Department has stated that this landscaping should be installed and then, after determining how it adjusts, the Parks Department may supplement this landscaping over time. Stuyvesant Plaza has agreed to a Maintenance Agreement for the trees, shrubs, and retaining wall within the easement area.

(14) A lighting plan, which includes attractively designed and pedestrian sized lampposts, has been reviewed and approved.

(15) The revised site plan shows a 4-bike bicycle rack to be provided by Stuyvesant Plaza and installed by the Town at location chosen by the Town. The site plan also shows the installation of substantial wooden guide rails to protect the Town park on the west end and also notes that the Town will provide a trailhead marker to be installed by Stuyvesant. The revised site plan also shows the surveyed location of walking trails.

(16) The revised site plan shows 24 parking spaces, which is a reduction from the 26 spaces originally requested. The parking plan has three parking spaces reserved for park patrons and handicapped parking space. Stuyvesant Plaza has represented that park patrons may use unreserved spaces on the west end on Stuyvesant's property.

(17) Residents have raised concerns that the application will allow Stuyvesant Plaza to pave a Town park for parking. The Board has been provided with testimony and newspaper clippings and letters which show that the reservoir, which was part of the McKownville Water District, has been used for ice skating and other recreational uses since 1976.

(18) The record contains copies of Town easements granted in 1970 which shows that the Town did not treat all of the former McKownville Water District property in this area as parkland. Those prior easements provided Stuyvesant Plaza with rights for paved parking, surface water drainage facilities, and placement of pipes on Town property near the reservoir.

(19) More importantly, the record contains a Map dated February 6, 2012, with a note, signed by the Town Supervisor, stating that: "The Area highlighted in yellow represents the boundary of the area which constitutes the 'McKownville Reservoir Park'". This Map, which was filed with the New York State Office of Parks, Recreation, and Historic Preservation, has a metes and bounds description for the park which includes the McKownville Reservoir and specifically described adjacent land totaling 4.17 acres. The same Map also shows that the Town owns additional land, outside the boundaries of the McKownville Reservoir Park, including the Town lands that are the subject of the current and prior easements.

(20) In a Memorandum of Understanding and Agreement dated July 8, 2009, the Town and Stuyvesant Plaza agreed that the Stuyvesant would contribute \$123,317 for storm water management, drainage and the proposed Town park. The Agreement provides for easements for ingress and egress, parking, and trash storage on Town property.

(21) The Agreement includes a map which details the area of the proposed easement. The maps attached to the Memorandum of Agreement and the Easement are identical.

(22) The improvement of the McKownville Reservoir Park was also partially funded by a grant totaling \$99,000 from the NYS Office of Parks, Recreation, and Historic Preservation. In a Final On-Site Inspection Report dated April 5, 2011, the State Parks Department determined that the construction of the park pursuant to the grant was properly performed. The Map of the McKownville Reservoir Park, which delineated the park's boundaries, was signed by the Town and filed with the State.

(23) In sum, the Agreement map, Easement map, State Parks map, and related documents demonstrate that the Town property subject to this Easement is not part of the McKownville Reservoir Park.

(24) The next issue is whether the Easement allows Stuyvesant Plaza to pave green space on the east end to provide for access and allow one-way passage across the easement area from east to west. Stuyvesant states that this one-way traffic provides the safest means of accessing the parking area and avoids having garbage truck and delivery vehicles back into the easement from the west end.

(25) Stuyvesant Plaza's use of Town property is limited by the express scope of the Easement. In the Easement Agreement, the Town provided Stuyvesant Plaza with nonexclusive easements for both ingress and egress and parking and an exclusive easement for trash storage, maintenance and handling. The Easement states that the areas subject to each easement are depicted on an attached map.

(26) Attached to the Easement Agreement is a map which outlines the Town property subject to the Easement and delineates the specific land for each of the three easements. On the east end, the Easement map states "Easement for Parking"; in the middle, the map states "Easement for Trash"; on the west end, the map states "Easement for Ingress and Egress." Neither the Easement nor the map allows ingress and egress on the east end. As such, the entrance and exit onto Town property was expressly restricted by the Town Board to the west end of the easement area.

(27) This interpretation is consistent with Stuyvesant Plaza's current uses of Town property. The site plan shows that Town-owned property extends to the back of Stuyvesant Plaza's building. For decades, Stuyvesant has used Town property to place dumpsters and accessed the area on the west end to reach back doors, unregulated parking, and trash removal. The Easement provides Stuyvesant with legal permission for these uses. The Easement also allows for the construction of parking where none previously existed but maintains and restricts ingress and egress to Town property on the west end and does not allow the conversion of green space on the east end to fulfill the Easement's purposes.

(28) Moreover, allowing ingress on the east end would result in the creation of a one-way right of way over Town property. Motor vehicles could pass over Town property without any intention of using the parking or trash storage areas, the stated purposes for the Easement.

Instead, drivers could use this passageway to cross Town land and access the Executive Park Office Building or as an alternative means to reach other parts of the plaza. And while Stuyvesant Plaza claims that signs could limit vehicles access to park patrons and employees, the opening of the access on both ends would enable an east end access that is not allowed and would allow enable passage across Town property. Simply stated, the Easement does not provide Stuyvesant Plaza with the right of way or passage through and over Town property.

(29) In sum, only the Town Board has the legal authority to permit the use of Town property. If Stuyvesant Plaza desires to expand or modify the scope of the Easement, it must seek that relief from the Town Board.

(30) In addition to being inconsistent with the terms of the Easement, the use of Town property as a right of way or passage would be inappropriate. The Town Engineer has expressed his professional opinion that adding a new ingress point is not appropriate, could cause unsafe conditions, and has expressed concerns for pedestrian safety and vehicular circulation if the access was opened on the east end.

(31) The Town Planner has expressed concerns that the area is confusing and congested with traffic coming from different angles and that accessing the parking area by a left turn could be difficult.

(32) Stuyvesant Plaza has stated that the intended users of the parking are employees of the Plaza and park patrons who might opt against parking there if they are required to access the parking on the west end. Stuyvesant and store owners have the ability to instruct or even require employees to access the parking by means of the ingress and egress easement provided by the Town on the west end.

(33) Park patrons' access to McKownville Reservoir Park is not required on the east end. Park patrons arriving by motor vehicle currently access the park and its walking trail on the west end and will be encouraged to park there in the future by placing a trail marker at that location. The site plan also calls for reserving three parking spaces for park patrons in the parking easement area which can be accessed on the existing west end. Park patrons arriving by foot will continue to access the park by using an existing walkway which, under this application, will be improved by Stuyvesant Plaza. Park patrons arriving by bicycle will also be accommodated by a bike-rack provided by Stuyvesant at a location to be determined by the Town Park Department.

(34) Stuyvesant Plaza also contends that allowing access on the east end would allow trucks to pull forward and eliminate the need for garbage trucks and delivery vehicles to back into the easement area. Again, accessing the easement area on the east side is not allowed under the Easement. Moreover, for decades, garbage trucks have serviced a dozen or more dumpsters by only using the west end access. The application will substantially improve the appearance of this area by replacing the dumpsters with two compactors. Stuyvesant has stated that trucks can service the compactors in the early morning before the opening of the Fridays' restaurant and the more likely use of the parking. Similarly, deliveries are often made at the front of the plaza.

Like the garbage truck, deliveries to the back of the plaza have taken place for years by accessing the area only on the west end.

(35) The maintaining of the green space and preventing access on the east end would prevent pass-through traffic from impacting the park and also prevent garbage and delivery trucks from passing near part of the park. Maintaining this status quo would promote the appearance and enjoyment of the McKownville Reservoir Park.

(36) No evidence has been submitted to show that allowing access on the east end would promote traffic flow or circulation. Again, as stated by the Town Planner and Town Engineer, the existing traffic circulation at the main entrance, with multiple traffic movements, is problematic at best.

(37) Eliminating the proposed paved ingress on the east end would further reduce the amount of proposed pavement and preserve green space.

(38) The remaining issue is the appearance of the rear of Stuyvesant Plaza's building which faces Town property and is visible from the Town park. Stuyvesant's plans include the removal of dumpsters which will greatly improve the appearance of the area. Stuyvesant's plans also provide for a repainting of the concrete and painting the façade a uniform beige or tan color or two-tone natural colors. The Board finds that the appearance of the building from the Town park would be improved by reducing the fortress-like appearance of the building by using a two-tone beige or tan color scheme that blends with the park environment. This additional improvement would mitigate, in part, the additional paved surface and loss of green space near McKownville Reservoir Park.

For these reasons, the Board finds that the granting of the special use permit, with appropriate conditions, fulfills the Town's obligations under the Easement and will not negatively impact the character of the neighborhood.

In granting this special use permit, the Board imposes the following conditions:

(A) The submission of a revised site plan, subject to Town Engineer's review and approval, with the following modifications:

- (i) eliminate the paved access on the east end and maintain the green space to the maximum extent possible;
- (ii) if deemed necessary by the McKownville Fire Department, install a concrete grass mat and break-away gate for emergency access on the east end;
- (ii) allow two-way traffic from the west end with appropriate signage for two-way traffic;

(iv) to promote emergency access and traffic circulation, prohibit parking against the building or in any space other than 24 approved parking spaces by placing no parking signs and marking a fire lane against the building.

(B) The submission of a rendering of the rear of the plaza, subject to Board review, showing a two-tone brown color scheme, with darker earth tone on the bottom and a lighter tone on top.

(C) The providing of liability insurance, on terms acceptable to the Town Attorney, for uses allowed by the Easement.

(D) The McKownville Fire Department's approval of the revised site plan for emergency vehicle access and pavement markings.

(E) Town Water Department's approval of the proposed sanitary sewer plan.

(F) The submission of a plan, subject to the Town Engineer's approval, for protecting trees within the easement area during construction that were not approved for removal.

(G) The submission of a maintenance agreement, subject to the Town Engineer's approval, for trees, shrubs, retaining wall, parking area and two-way drive aisle within the easement area.

(H) As stated in the Easement, the parking of motor vehicles in the parking easement area is not limited to Stuyvesant Plaza's uses and extends to the public as a whole, it being noted that the parking area is contiguous to a Town park.

The Zoning Administrator is authorized to issue permits necessary to implement this decision. If this Special Use Permit is not exercised within one year of it's filing, it is revoked in its entirety.

Upon compliance with all other requirements of the Town Law and other applicable laws and regulations, this resolution was adopted by a 5 - 0 vote (Cupoli absent, Ventresca-Cohen alternate) of the Zoning Board of Appeals.

BY ORDER OF THE ZONING BOARD OF APPEALS

Dated: 6/6/13

ATTEST: *Laura Berschinger*
SECRETARY

Phil Fuder
CHAIRMAN