

**PLANNING BOARD**  
**Town of Kirkwood**  
**70 Crescent Drive**  
**Kirkwood, NY 13795**

**January 13, 2020**  
**Meeting Minutes**

Present:	Jim Bukowski, Member	Bill Graves, Attorney
	Kevin Balachick, Member	Chad Moran, Building & Code Inspector
	Gordie Woolbaugh, Member	Mike Maciak, Associate Member
	Dan Wasson, Member	John Mastronardi, Engineer
	Marchie Diffendorf, Chairman	

Chairman Diffendorf called the meeting to order at 7:00 PM.

**TOWN SUPERVISOR – GORDI KNIFFEN:**

Gordi Kniffen spoke to the Board telling them how much the Town Board appreciates what they do. There are many difficult issues that the Planning Board deals with and the Town Board appreciates their dedication to the Town of Kirkwood.

**APPROVAL OF MINUTES:**

Motion by Jim Bukowski and second by Gordie Woolbaugh to approve the minutes of the December 16, 2019 meeting as submitted.

All voted in favor. Motion Carried.

**SITE PLAN REVIEW – ONTRACK MOTORS, LLC:**

Chairman Diffendorf explained we went through most of it last month. The E.A.F. was passed. The Board wanted more information in regards to the building layout itself.

Ken Ellsworth, Keystone Associates, was present for the applicant.

Mr. Ellsworth explained the last time the building was not coordinated with the elevations. They revised the site plan and the building plan, which the Board had copies of. The building will have three overhead doors in the front left corner and one main door in the front right corner. It is a 50,000 SF building, pole barn structure with a metal skin and a concrete slab.

Mr. Ellsworth went on to say they have some blue spruce at the entrance and they added blue spruce along the front of the parking and they are going to clean up the bank. There was going to be landscaping on the left side of the building but that will be removed and there will be four parking spots there for anyone coming to the building. The use of this building is not necessarily a used car business. The owner buys cars at the auction for specific people, he already has them sold. There will be 27 spots. The utilities, municipal water and sewer come up the driveway and enter the site. They are stubbed now, on the front left corner of the building, both sewer and water come in at that point. The owner does want a floor drain. The Health Department's concern was the floor drain would be connected to the sanitary sewer, which they are. They have added an oil water separator outside the building to collect whatever grit that may be in the floor drains. The reason for the floor

drains is he will be detailing cars in there.

Mr. Ellsworth went on to say the owner would prefer, unless the Planning Board chooses otherwise, to keep the shed that is there. It is like a cargo container. The reason is he will slowly move what is in there into the building but wants to keep it for now. The back part of the bank will be cleaned up. The parking area is millings now and eventually the owner will probably pave that.

Mr. Ellsworth explained that the County had mentioned a Spill Prevention Plan and he looked up the requirement for the DEC, which is if there is storage of over 1320 gallons of hazardous material they want a Spill Prevention Plan. The owner has no intention of storing any fuel or anything else. There will be no dumpster. There are no motor vehicle parts, it isn't a repair shop and there won't be any partially dismantled motor vehicles. The use of the proposed building will be personal storage for the owner. He will use the building for detailing also. The exterior lighting on the building will be down lights. The signage is on the building. There is no pole sign or a pedestal sign. Loading and unloading areas are in the front of the building. There is no fencing. The ground cover is millings and grass.

Chairman Diffendorf asked no vehicle maintenance repair, just detailing and Mr. Ellsworth explained that someone may want a hood reflector installed. There is no mechanical work. Mr. Graves asked if those things could be fairly mechanical and Mr. Ellsworth explained when he says mechanical he refers to anything that would have automotive fluid. This is dry good stuff, nothing that would be a contaminate.

Chairman Diffendorf asked if there was a timeframe for the container that is there to be removed and Mr. Ellsworth explained he doesn't know but the owner wants to get started in the spring and he has things in that container now. It is up to the Board if they want to set a timeframe on that. Chairman Diffendorf commented that if it is going to be left there on the lot for a long period of time landscaping should be put around it, to try to cover it. Mr. Ellsworth was agreeable to that.

Mr. Graves commented he thinks detailing is cleaning, vacuuming, and washing, not installing after-market parts to vehicles, even if not mechanical components. An example, in a B2 a permitted use is an auto repair and garage establishment which is not under this district. The idea of installing after-market parts to the vehicles was not in the original site plan. This is new. He wanted to tell the Board when making their decision understand that if this is going to be part of it you need to consider whether that is going to be allowable here and consider those activities as part of the site plan application because it was not in the original submission. Mr. Ellsworth asked if putting on mud flaps is allowed or not allowed and Mr. Graves explained the zoning regulations don't specifically say putting on mud flaps, can't make that specific determination. The question is are these types of activities something that are more appropriate in auto repair and garage establishment where you are doing these things or is this appropriate in a warehouse. Chairman Diffendorf commented we have businesses now that are in the industrial zone that actually do maintenance on equipment. It is a lot more extensive that adding after-market parts. Mr. Graves stated he is bringing it up so that when you make the decision you understand it is a bit different than the original site plan stated.

Chad Moran commented that Justin (the owner) would own these cars so he would be putting mud flaps on his own vehicle, not getting paid to put mud flaps on the vehicle in order to prep them for someone else and Mr. Ellsworth agreed and commented it is his own vehicle, you would think he would be able to add mud flaps.

Duane Travis commented in the Town Law he believes storage containers are only allowed by permit, for a 6 month period but you can get additional time. There was a discussion as to whether there was a shipping container or a shed on the property. It was determined that it was a shed.

Mr. Graves stated for the purposes of establishing this record you can read those conditions from the previous meeting unless there are any that are not applicable now. He went on to say that just to reiterate the Board has already done a SEQR Determination and found a Negative Declaration at the previous meeting and what the Board is saying is that this meeting does not change that SEQR Determination.

Chairman Diffendorf reviewed the conditions from the last meeting as follows:

1. Prohibiting outdoor storage of tires.
2. No unscreened outdoor storage of motor vehicle parts or partially dismantled motor vehicles.
3. Landscaping on Track Drive and the entrance with Blue Spruce and cleaning up the front and the back.
4. No vehicle maintenance or repair.
5. Removal of existing building/unit that is there, to be determined by Chad what the structure is.
6. Floor drains in the building will be connected to the sanitary sewer.
7. No onsite auctions.
8. The maximum number of vehicles that can be stored is 27.

The Spill Prevention Plan and the dumpster were removed from the list of conditions.

Motion by Dan Wasson and second by Jim Bukowski to approve the site plan with the above conditions.

Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Dan Wasson	Yes
	Chairman Diffendorf	Yes

Motion Carried.

### **REZONING – 50 FRANCIS STREET:**

Chairman Diffendorf explained we have an application for a Request for Change in Zoning from the Town Board. The Town Board is asking for a recommendation from the Planning Board if 50 Francis Street should be rezoned from PUD to B1.

Mr. Ken Ellsworth was present for the applicant.

Mr. Ellsworth explained now the paperwork is lined up in the correct manner. Last time the Planning Board made a recommendation to the Town Board to rezone but Mr. Seidel did not own a piece of the property. Currently they have a deed where Mr. Seidel owns the property. It is not registered by the county yet but the closing took place November 6, 2019.

Chairman Diffendorf stated that one issue that keeps coming up is the house on the property. He asked if they could rezone that property and make it a non-conforming use, change to a B1 with a residential property on it and Mr. Graves stated there is nothing stopping the Town Board from creating a non-conforming use. Most rezonings tend to create a non-conforming use because generally there is a particular use there at the time then a

property is rezoned and if that use remains you have created a lawful pre-existing non-conforming use. There is nothing illegal about that, no reason the Town can't do that. The Town needs to consider the effects of doing that. An important thing to keep in mind is you see these re-zonings and creating non-conforming use become a problem when you are rezoning to a more intensive use of land. You create a non-conforming use but there is nothing that says the Town can't do that.

Chairman Diffendorf asked if we change it to B1 and there is already an office there and the house do they need to separate those lots with the intent of putting storage units in and can the storage units go anywhere on the property and Mr. Graves stated they would have to comply with setbacks. We need to consider all potential uses of the property. What they plan to do is ok with setbacks based on where they plan to put the storage unit and Chad agreed saying if they get the approval the next step would be to subdivide the property. When the storage units go on with that garage/office it will adhere to the setbacks and the house will be non-conforming on its own lot. If he does well he will tear the house down and put in another storage unit and make it all one lot.

Motion by Kevin Balachick and second by Jim Bukowski to recommend to the Town Board to rezone from PUD to B1.

Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Dan Wasson	Yes
	Chairman Diffendorf	Yes

Motion Carried.

#### **E.A.F. DETERMINATION – CANOPY GROWTH:**

Mr. Robert Switala from Bergman and Mike Carr and John Engel from Canopy Growth were present.

Chairman Diffendorf had asked John Mastronardi, Town Engineer to assist in the Full Environmental Assessment Form and also the SWPPP. At this point the Planning Board reviewed Part 1 of the Full Environmental Assessment Form. Changes/corrections/additions that were made to the form are included in the file.

Mr. Graves reviewed with the Board Part 2 – Identification of Potential Project Impacts on Full Environmental Assessment Form, which is included in the file.

The Planning Board reviewed Part 3 – Evaluation of the Magnitude and Importance of Project Impacts and Determination of Significance of the Full Environmental Assessment Form and determined that the Determination of Significance is an Unlisted Action.

The digital recording of the meeting will be kept permanently in the case file. As a reference point the discussions regarding the Full E.A.F. started at approximately 33:48 on the digital recording.

Motion by Gordie Woolbaugh and second by Kevin Balachick that the Planning Board, as lead agency in this Unlisted Action, declare a negative declaration for the purpose of SEQR, since based on the review of the long form EAF and the updated site plan, the proposed action will not result in any significant adverse environmental impact in the Town of Kirkwood.

Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Dan Wasson	Yes
	Chairman Diffendorf	Yes

Motion Carried.

### **SITE PLAN REVIEW – CANOPY GROWTH:**

Mr. Robert Switala from Bergmann Associates, explained that the site plan hasn't changed since the last time he was here. He wanted to go through the comments from Broome County from their January 8, 2020 letter. Mr. Switala explained that none of the site project area is within the 100 year flood plain. There is a small piece of the parcel to the east that is but nothing within the project area. Mr. Switala showed the Board on the drawing a small area that is zoned B and that is between the 100 year and the 500 year of flood events. There are a few other pockets of areas. It is a small area they are looking to do, not in the 100 year flood plain. He doesn't see any impacts.

Mr. Switala explained that the manufacturing process, potentially down the road, isn't going to be at the level they initially thought it was. There isn't going to be a lot of waste product associated with it. It is going to be your typical sanitary type waste, everything is going into the sanitary system. There is no heavy waste, nothing that is going to need treatment, nothing that is going to be banned from the wastewater treatment plant. At this point it is domestic waste. Even when they advance to manufacturing the floor drains will be for cleaning equipment. All the heavy chemicals and hazardous stuff went away with eliminating the extraction tower. If they do get into that they will be back before the Planning Board. He doesn't see any issues with the Aquifer Protection. Per the Town Code they will be seeking administrative approval of the Aquifer Protection District from the Town Board to change the ownership of the existing permit.

Mr. Switala explained that BMTS did comment on adding a pedestrian access route from the parking lot into the building. They do have a pedestrian access from the parking lot to the building. They also commented about having a bike rack and they will add that.

Mr. Switala explained that in terms of parking overall, they have 321 parking spaces. There are 312 spots in the employee lot and the remainder are the visitor parking. As far as landscaping they have the new patio area that they will be landscaping. There are a lot of landscaped areas already which they are not proposing to change. All the original landscaping will remain. The visitor entrance will be cleaned up as well. Chairman Diffendorf asked if they would be eliminating the invasive species recommended by NYSDOT and Mr. Switala stated yes.

Mr. Switala stated there is no NWI Wetlands in the project area. He showed the Board where the small ponds were on the parcel. He commented that DOT didn't require the traffic study based on the additional information.

Chairman Diffendorf stated that one other comment was regarding "Getthere", available transportation to work programs. Mr. Switala stated they would look into that.

Mr. Graves stated that the one thing we need to be very clear about, if there is any approval on the site plan, is what exactly are you being approved to do. The larger site plan that we received is your full 100% operations of manufacturing, storage, office space. He doesn't think it makes sense for the Planning Board to approve that use if that is not the immediate proposed use especially since you said that given the state of the market you are not exactly sure what you will be doing. At this point in time you are planning on using the building for storage and office space and that should be what is to be considered for approval tonight. If you decide to expand that use in the future then you would be back before the Planning Board.

Mr. Graves went on to say he discussed this with the Town Board Attorney and the Planning Board can do what they like but they think it is neater if we understand what the use is going to be so we can approve that use and not approve an anticipated use of the property. The Planning Board is free to take or leave that advice but that is what he suggests. Mr. Switala stated that manufacturing is the goal. In terms of timing they don't know that. It could be weeks or it could be a year. They are invested in that. It is a permitted use and that is ultimately the end goal. They don't want to have to come back if they don't have to. The manufacturing that is proposed is light in terms of manufacturing. If they get to the point of doing hemp extraction or other heavy manufacturing they will be back anyways. The jump from warehouse and office to manufacturing they are proposing isn't a big jump but a rather small process. It gives Canopy flexibility to be able to go when the market says go. Mr. Graves stated he understands the concern and the site plan application that was submitted but there are still questions that the sponsors were not able to answer with respect to can they do this according to the FDA regulation, is CBD approved for human consumption, do we have the NYS licensure from Ag and Markets. There are a lot of unknowns here for the Planning Board to be approving a use which requires these things to be in place with the State and Federal government but you are saying the market is as such that you are not planning on doing those things yet so you aren't able to answer whether they are permitted or whether you have those licenses. It makes sense if you plan to do those things you will get the proper approvals and licenses which the Planning Board will probably want to see anyways.

Mr. Switala commented that manufacturing could be building boxes. He doesn't want to box them into a specific use when manufacturing may look different than outside of FDA approvals. Mr. Graves stated that is fine but the Planning Board needs to know what you are planning to manufacture. You can't just say we are doing manufacturing and then you are making hand grenades. We need to know what the manufacturing activity is. Mr. Engel stated natural health products. He stated they do have an FDA license in New York. They have already been growing and harvesting. Mr. Graves asked if it was an Ags & Market license and Mr. Engel stated yes. Mr. Graves asked if there is a separate license for things other than growing, such as extraction and the manufacture of goods that use CBD and Mr. Engel stated to a point, it is not defined yet in the state and federal regulations, which is their holdup. They have been working closely with Chuck Schumer to make sure that license is in hand when they are ready to do. Mr. Graves stated if it is in a state of uncertainty you are asking the Planning Board to approve something you don't know for sure you can do. Mr. Engel stated they will be able to manufacture the CBD goods. Mr. Graves stated with licensure from NYS and Mr. Engel stated yes, with FDA and USDA approvals. They will be able to manufacture natural health products that have CBA in them. Mr. Graves stated once you obtain the proper approvals and Mr. Engel stated yes.

Kevin Balachick asked can't we consider that as their intent knowing that the conditions are they must meet the other approval requirements and Mr. Graves stated you can make that a condition to approval, compliance with all federal and state laws, rules and regulations. That would cover these issues. We know what they are planning to do and you can approve that and that is what you should do, however you are free to approve the larger site plan they submitted with the conditions as well. Chairman Diffendorf stated once they get those approvals and permits they can come back and do another site plan review. Mr. Switala asked even if nothing is changing with the site. Chairman Diffendorf asked can we make it a condition of approval that once they get

all the permits then they can go ahead and manufacture. Jim Bukowski asked if they got the approval today and you anticipate doing manufacturing how soon do you think the permits will come through, what timeframe does Chuck Schumer give you and Mr. Engel stated quickly, as fast as we can be ready to go. Jim Bukowski asked do you have any information that you can start manufacturing on a particular date, any timeframe you have been given that NYS is going to come through with these approvals and Mr. Engel stated no because we have to apply for what we are manufacturing.

Chairman Diffendorf asked do we know how many permits are required and Mr. Graves stated he knows what laws are currently out there, which become effective in March. You have to have a license and you have to have a separate license if you are going to do any extraction, which they are not doing or manufacturing of products that contain CBD. At the same time, even though the 2018 Farm Bill has approved and said the states can approve industrial hemp and make laws about that and removed it as a controlled substance the FDA has not approved CBD for human consumption. They are correct when they say pharmaceutical consumption and a dietary supplement are different things. The FDA, as recently as November, issued 12-15 warning letters to different companies that are advertising and selling products containing CBD because the FDA is saying we haven't approved this yet. New York State and probably other states are working with the FDA to speed up the review so they can make this happen nationally. But as it stands there are a lot of questions that the FDA is raising with tension between the FDA and the states. Jim Bukowski asked if he could process CBD right now and Mr. Graves stated you can process under NYS law. Whether you put them into something that is going to be ingested by humans the FDA has not decided yet. Mr. Engel stated they are to market with CBD products in NYS. Mr. Engel explained that the letters that were issued were for improper LOC and permits for harvesting and where the hemp came from. They are tracked from seed to finish. They don't have any issues with that. It is a very stringent tracking process.

Mr. Switala stated when they do make a modification they will be submitting a set of drawings for the changes to Code. They will provide those applicable documents that will show the ability to do what they are proposing. That is a condition they would be fine with come time for manufacturing. When they submit permit drawings they will provide all applicable outside agencies, federal, state and local approvals. Chairman Diffendorf stated we know what permits are required and we can make that a condition.

John Mastronardi explained that before the Town can grant and execute the MS4 SWPPP acceptance form a few things need to happen. The NOI, the owner operator certification needs to be signed. He reviewed with Mr. Switala the changes that needed to be made. Mr. Switala will provide an updated SWPPP. Chairman Diffendorf stated that could be a condition that the revised SWPPP be approved by John Mastronardi.

Motion by Kevin Balachick and second by Dan Wasson to approve the Site Plan Review with the following conditions:

1. Satisfactory response from SHPO.
2. Complying with all Federal and State laws, rules and regulations.
3. Providing all licenses, permits, and approvals from any NYS or Federal agency, which are required, as they become required because they aren't set in stone.
4. Updated SWPPP to John Mastronardi, which needs to be approved by John.
5. Aquifer Permit through the Code Department.
6. Bike rack installed.

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Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Dan Wasson	Yes
	Chairman Diffendorf	Yes

Motion Carried.

Motion by Gordie Woolbaugh and second by Kevin Balachick to adjourn the meeting. The meeting was adjourned at 9:06 pm.

Respectfully Submitted,

Mary Kay Sullivan  
Secretary, Kirkwood Planning Board

cc:	Planning Board Members	Dan Griffiths
	Gayle Diffendorf	Scott Snyder
	John Finch, Jr.	William Graves
	Katie Legg	Code Department