

**NORTH CASTLE PLANNING BOARD MEETING  
15 BEDFORD ROAD – COURT ROOM  
7:00 p.m.  
May 9, 2011**

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**PLANNING BOARD MEMBERS PRESENT:**

John Delano, Chairman  
Jane Black  
Steve Sauro  
Beata Buhl Tatka  
Guy Mezzancello

**ALSO PRESENT:**

Adam R. Kaufman, AICP  
Director of Planning

Ryan X. Coyne, P.E.  
Kellard Sessions Consulting, P.C.  
Consulting Town Engineers

Roland Baroni, Esq. Town Counsel  
Stephens, Baroni, Reilly & Lewis, LLP

Valerie B. Desimone  
Planning Board Secretary  
Recording Secretary

Conservation Board Representative:

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The meeting was called to order at 7:00 p.m.

**APPROVAL OF MINUTES:**

The minutes from April 25, 2011 were not finalized before tonight's meeting.

**CONTINUING BUSINESS:**

**BENNIS**

**Special Use Permit**

**Section 1, Block 3, Lot 6.B**

**250 East Middle Patent Road**

**Teo Siguenza, Architect PLLC**

**Jerry Barrett, J.D. Barrett & Assoc. LLC**

**Consideration of approving site plan resolution**

Mr. Bennis was present as well as his professionals Jerry Barrett, J.D. Barrett & Associates and Mike Sirignano, attorney.

Present was Todd Mydland and Abbey Simpson representing 32 St. Mary's Church Road and Stan McWiggin, 244 East Middle Patent Road. Also present was Barry Naderman, PE Naderman Land Planning & Engineering representing Mr. Mydland, Ms. Simpson and Mr. McWiggin. Their attorney, Mr. Martabano, was absent due to a death in the family.

Mr. Sirignano stated that the board has the material that Mr. Barrett submitted May 2, 2011 and he is prepared for the board to take action on this application this evening. The public hearing is closed and there is no justification for reopening the public hearing or taking any further oral testimony.

Mr. Delano stated that we do not intend to reopen the public hearing, but we did receive an additional communication, in an untimely manor, in as much as we received it at the last meeting. He would like to err on the side of caution, due to the circumstances surrounding this application and he would like to give the neighbor's professional an opportunity to explain some of the information that they submitted. The board agreed that they would like to hear the information from the neighbor's professionals. Mr. Sirignano asked that Mr. Barret have an opportunity to respond to Mr. Naderman's comments, Mr. Delano agreed.

Mrs. Desimone left the room as this time to run copies of the memo dated May 9, 2011, prepared by Ryan Coyne, Consulting Town Engineer comparing the impacts of the three locations.

Mr. Naderman stated that he has been retained by 32 St. Mary's Church Road LLC to analyze what he believes to be a viable and physical alternative plan. He is present this evening because in February 2011, Mr. Martabano had presented a sketch showing a relationship between the applicant's alternative A-2 and his clients suggestion of moving the garage forward and not in the same location as their plan A-2. In a subsequent submission made by Mr. Martabano in April of 2011, there was an exhibit that showed the actual encroachment of the structure of the applicant's preferred location vs. where we believe a viable alternative is. We make a comparison of those two impacts. Subsequent to that, at the last meeting there was a discussion about whether or not these impacts should be analyzed for our preferred alternative and subsequent to that, the applicant has submitted a plan which quantifies the impacts of the original A-2 location and not the location that we have been suggesting for several months. This is the April 15<sup>th</sup> plan received on April 25. There is a table of wetland buffer impact summary of the

alternative alteration and the proposed site plan.

Mr. Naderman noted that he agreed that one location was not appropriate (he did not mention which plan or alternative he was referring to, he only pointed to the left side of the plan) The then referred to another plan dated April 28, 2011 and stamped in May 3, 2011 which again refuses to consider the impacts to our preferred location but rather modifies the A-2 location which we all agree is not the preferred location. The board is charged with considering the application and if there are considerable and reasonable alternatives which minimize the wetlands and steep slopes disturbance to the greatest extent practical. This most recent submission continues not to address his clients' alternative.

Mr. Naderman has reviewed the April 15<sup>th</sup> plans with the alternatives and comparisons between the two plans and superimposed on the applicants plans where his suggested location should go. This plan does take into consideration certain items that Mr. Barrett did put into his earlier memos like a narrow corridor between the buildings. He has modified the plan to make the corridor 16 feet wide between the building which does slide the garage further over into the regulated steep slopes and wetland buffer. However, even with that slide our wetland and buffer disturbance is limited to 477 square feet, where the applicants proposed plan has a wetland buffer disturbance 2,357 square feet; he is at 20% impact. There would be very little grading at the rear and along the slopes. The alternative plan which is located so far back is destined to fail because it blocks the view of the deck and the windows and would require extensive grading into the slopes. Further more, the applicant suggested that they remove a large portion of the driveway which he was unclear why that was necessary and does not feel that is required.

Mr. Naderman stated that with the garage location he is proposing, the applicant can get out of the garage quite nicely. He then reviewed some of the information provided on Mr. Sequenzo's plan regarding height and spot grades. He has taken that plan, the applicant's preferred plan, plan APL, and put it over his plan, 32 AL plan, 32 St. Mary's Church Road plan, and in this table we have modified this table with these spot grades and for what we see, some of the factors that are used for the height calculations, there is absolutely no change between the mean grade around the building and therefore no change in the mean height of the structure. The code further talks about segments of the building which are greater than six feet below the first floor elevation, in their plan they say there is 77 linear feet or the total 109 feet, which is less than the six feet or 70% of the total perimeter. On our plan, the way the existing grades are we are indicating that we have 83 feet which is less than 6 feet and or 76% and we would have a better scenario, slightly. Another advantage of his clients plan is that a lot of grading would not be required. The back corner of the garage on his client's plan is at grade and if the Bennis's would like to access the rear they can. If they would like to access the side entrance from the back yard, deck area, that would eliminate the rear stair area and reducing it by 150 feet for a new total of 327 square feet which is only 13.8 % impacts. No retaining walls would be required on this plan. Mr. Naderman reviewed all of his points during this presentation at this point.

Mr. Naderman stated that there are some beautiful windows at the rear of the structure which will be screened. In his clients preferred location, the windows would not be covered and you would have a full view to the rear of the property into the woods. The deck could be wider with a bigger view to the woods if built in his clients' location. Cost wise this plan is significantly

less, due to the fact there is less grading. Drainage to the rear is eliminated on this plan and all the screening along the back with the deer fence would not be necessary. He feels this is a viable plan. He then presented a picture of a house in the Town of Bedford at 237 Potanico which was burned down by fire. During the rebuilding, the three bay garage was left and the house was built 16 feet away from the garage. He noted the level was not the same from the garage to the house which Mr. Barrett had mentioned previously as an issue. This plan is similar to his clients plan. This also has a generous turn around plan. The turning templates we use are conservative and not always realistic but we do use them and he can show that they work on his plan.

He noted that as the plan at 237 Potanico exists and is a fine scenario, the comparison of the as built survey to the existing motor court of the applicant's survey, and as generous as the space looks, it is much bigger and it has the same 16 feet space between structures which the house in Bedford uses the 16 feet as a car port, this is a viable plan. This may not be as bad as everyone thinks it would be. If we had an opportunity to speak to the applicant's team, we might have been able to work this out. Mr. Martabano spoke with Mr. Sirignano to sit down and try to work this out and we were never contacted for a meeting. By statute of the code this is a reasonable and viable alternative and is something that significantly reduces the impacts to the wetland and the wetland buffers which is again mandated by your code. The applicant has never considered the impacts associated with something like this. We are asking the board to consider that there is a possible alternative here that is reasonable and practical and works and can be considered.

Mr. Baroni inquired if the car port concept was used as an alternative, there would be no special use permit required. Mr. Kaufman stated that the Building Inspector, in the past, has required that a car port area be a fully enclosed connection. If it just a car port, he may determine that it is still detached. Mr. Baroni inquired if it were a screened in porch. Mr. Kaufman stated that very well may be considered attached. Mr. Baroni stated that is the gray area that we are in. Mr. Naderman stated that even if this is preferred to stay open we believe that this plan as it relates to steep slopes and wetland permits that this is a viable and practical alternative. Already eliminating the septic, that is alone a \$25,000. savings and along with the reduced excavation, reduced landscaping and plantings, he has not done a cost estimate but you are talking about a \$50,000. - \$100,000. savings with his clients plan. This plan does maintain the predominant view from the back deck and from the rear windows of both the kitchen and the bedroom which are the predominant views. He thanked the board for their time.

Mr. Bennis stated that the public hearing notices were sent out as required. The first response that we received from the neighbors was an extraordinarily harsh letter, it was a personal letter and it was attacking, insulting and basically riddled with untruths and simply things that were factually incorrect. It was a very personal attack and despite that, the only thing these neighbors have reached out to was discussions about the plantings. They asked us to plant some additional evergreens in for screening and we agreed to that. There were never any discussions of us meeting with them to go over alternate plans. We have discussed many alternate locations and these locations were discussed with the Conservation Board. When you stand there at the site, you will realize the location that we chose, is preferable to me, not just from aesthetics' point but from a realistic point. The location of the garage is on grass in-between two significant rock ledges and fits in perfectly and the excavation is minimal. Mr. Naderman's plan shows the

garage location on top of rock ledges and boulders and has to be over ten feet high when you walk down the grading. He mentions this because in the first letter from Mr. Martabano he notes the intent and the letter of the regulations. What is the intent of what this challenge has been about? We are proposing significant wetland mitigation and there will be a big impact from blasting all of the rock in the Naderman plan. His application is a significant improvement to the wetlands and we added in a temporary deer fence and made it a permanent deer fence to appease the neighbors and now the fence is a monstrosity. He will maintain the plantings and thanked the board.

Mr. Barrett stated that he has not had a chance to review plans but has few comments. The A-2 location was developed per the request of the Planning Board to find a location outside the wetland buffer; Mr. Bennis never wanted to build in A-2. He then prepared a study to compare the impacts between the preferred location and plan A-2. At the last meeting it was noted by the board that the grading can be tightened up to present a better comparison and that was done which brought the impacts of the two places closer. It has always been our opinion that yes you can get it outside the wetland buffer but once you do all of the appurtenant walls, driveway and grading and such, it was around the same impact and therefore the plan we have we believe is a better plan.

It was noted by Mr. Naderman "why was part of the driveway removed." They were trying to balance out the size of the driveway so they were both the same size on both plans. Mr. Barrett referenced the photo of the plan for the house in Bedford and stated that the elevations of the garage and the house are similar in the house in Bedford and that is not the case at all with the Bennis site. Mr. Barrett stated that Mr. Naderman referred to the average grade around the building, Mr. Naderman had taken his grades from the corner of the building and the code states that you have to go 6 feet out from the corners of the building to the lowest point as it slopes away. Mr. Naderman's numbers need to be looked at, his figures are still workable, but not quite what he said.

Mr. Barrett continued, Mr. Naderman had calculated the impacts at 477 feet and you may have a plan that has less impacts on the surface but that does not necessarily make it a better plan. There are a lot of factors and there are some problems with the plans, we put the turning Radii on and as Mr. Naderman stated these are conservative templates so it probably will work. As Mr. Naderman said but in Mr. Naderman's plan you will have to do a 180 degree turn to exit the site whereas on the applicants preferred plan, you would have to do a 90 degree turn to exit the site.

Mr. Barret stated yes we have more impact but lets be clear about what we are impacting. Presently this is mowed lawn into the wetland buffer, which provides very little protection to the down stream wetlands. It is not like it is a pristine forest with shrubs, under story and ground cover. That is not how the site is presently at all; it is a rocky slope that goes down hill. Extensive mitigation is proposed for this area which includes ground cover, shrubs and trees which will provide a filter strip for the water coming down the hill. Whatever is in the footprint of the building will be picked up by the gutters and the subsurface dry well and all the planting will provide a filtership. Yes the applicant's plan on the surface has less impact when you build it but it is not providing nearly the impacts because all of the mitigation would not be done.

Mr. Barret stated that the letter also indicates that the Conservation Board was never apprised of all four locations and that is not correct, he then reviewed all four locations discussed with the Conservation Board while out in the field. There is a letter in the file from the Conservation Board to the Planning Board dated May 2010 which states we have reviewed four concepts. Mr. Delano clarified for the record that plan A-2 was not drawn on the plan while out in the field. Mr. Barrett stated that it was on the plan prior to the site walk. Mr. Delano asked if that plan was submitted to the conservation Board. Mr. Barret said no it was not, it was discussed in the field at the site walk. Mr. Delano confirmed that plan was not part of the Conservation Board files and was part of the Planning Department files. Mr. Barrett agreed.

Mr. Barret referred to Mr. Naderman's plan regarding the height of the average grade along the side is 4 feet and the back corner if 8-9 feet of the building, there would have to be some sort of grading or it may exceed the height requirement. This is a tall building and will still block some of the sunlight. Mr. Barret stated that you can keep reviewing alternative after alternative. He pointed out the boulders on site and noted that the Conservation Board suggested putting the garage between the boulders. He stated that there are some advantages to the applicant's location but not as many as to his client's location.

Mr. Sirignano stated the plan referenced by Mr. Naderman located within the Town of Bedford. He stated that Mr. Naderman did not state where the kitchen was located in the Bedford house, he suspected in was at the rear center of the house based on the windows in the front of the house. He noted his client's kitchen was all the way to the right when facing the front of the house. He felt the 16 foot ally way between the house and garage would create a very dark and undesirable condition between our kitchen and living space and the garage. This plan has come at the 11<sup>th</sup> hour, 11:59 pm and the public hearing has been closed for a while now. The only plans submitted previously were the Martabano plan who is not an architect or an engineer. Mr. Naderman is now here for the first time at the 11<sup>th</sup> hour and presents this plan. Why wasn't this done while this application was before the Conservation Board or at the public hearing before the Zoning Board of Appeals. Neither board was given the opportunity to review the merits or the demerits of the neighbors' comments. We are not withdrawing our application; we are not going back to the ZBA or the Conservation Board with the neighbors' alternative. Our plan is before the board for a vote this evening, not the neighbor's plans. We politely decline the neighbors suggested location and we request that you respect Mr. Bennis's rights for all the reasons Mr. Barret has documented so well.

Mr. Naderman stated that this submission was so late because his clients asked repetitively for their alternate location to be reviewed and the impacts considered and because it was not reviewed is what forced his client to hire a professional to do the review for them. Given this is a reasonable and viable location which is not perfect in every way but neither is the applicants plan.

Mr. Delano asked for Mr. Coyne's comments at this time. Mr. Coyne stated that his memo compared Mr. Naderman's plan, to the applicant's plan and the applicant's alternative plan. He briefly reviewed his memo. He noted when you step back and look at these three locations from 30,000 feet he did not see too much of a difference between the three plans. The applicant's mitigation plan, more than makes up for any disturbances associated with any of the three

locations. The wetlands consultant reviewed the mitigation plan and is ok with it. In any event, it will be an environmental gain.

Mr. Delano asked the board if they had any comments or questions at this time.

Ms. Black stated that she had a few comments. The Bennis location of the garage makes sense to her from a design perspective. The Bedford house analogy was not really an analogy due to the great difference in height there. While the house in Bedford worked well because it was level, she did not think it would work well at the Bennis site due to the different height levels between the house and garage. Personally if it was her house she would not want the alley way between the garage and the house. There are windows facing the garage and those windows would be blocked. From a design perspective, it was a less optimal choice than the Bennis's made. She agreed with Mr. Barret that you need to determine between a disturbed wetland vs. a pristine wetland. In this case, she lives close by and walks past that house several times a week, the slope has some grass, rocks and dirt and there is virtually no protection to the wetland at the bottom of the slope. The applicant is doing more mitigation than the code requires, like Mr. Coyne said that with the extensive mitigation, it was most likely a positive impact and a gain for the wetland. The ultimate goal of the code is to protect the wetland and not have the absolute minimum disturbance to the wetlands but what will ultimately protect the wetlands and it seemed to her that with all that wetland mitigation, it will protect the wetlands. The St. Mary's church plan has less impact but given the fact that the wetlands will probably benefit in either case we have to weigh the applicant's preferences with the intent of the code and come up with some sort of balance.

Mr. Delano asked if the board members had any other comments at this time, no other comments were made. Mr. Delano suggested that another whereas clause is added to the resolution regarding the amount of stories, height and percent of floor area of the building as compared to the existing structure. He also suggested that the third whereas should reflect proposed structure over 800 feet and the fifth whereas should reference the specific height. After a brief discussion the following condition was added to the resolution "The Applicant shall submit documentation from the New York Natural Heritage Program for any records of rare species or significant natural communities which may be impacted by the project or action. The Applicant shall also comply with any recommendations NYNHP provides to the satisfaction of the Town Planner." The board agreed to these revisions to the resolution.

Mr. Baroni asked for a whereas clause regarding tonight's presentation and the board saw another plan presented by the neighbors. The board agreed to this condition as well.

Mr. Delano asked for a motion to approve the Bennis resolution as amended. Ms. Black made a motion to approve, as amended. It was second by Mr. Mezzancello and approved with four Ayes. Mr. Delano voted nay.

**BYRAM RIDGE ROAD SUBDIVISION**

**Preliminary Subdivision**

**Byram Ridge Road & Hunter Drive**

**Section 2, Block 5C, Lot 10**

**Jim Ryan, RLA Senior Associate, John Meyer Consulting**

**Consideration of approving extension of time preliminary subdivision resolution**

Mr. Delano asked for a motion to approve the extension of time resolution for the preliminary Byram Ridge Road Subdivision resolution. Ms. Black made a motion to approve the extension of time resolution. Mr. Sauro second the motion. It was approved with five Ayes.

**C & H PROPERTIES**

**Preliminary Subdivision**

**Section 1, Block 2, Lot 1**

**336 Bedford Road**

**Brad Schwartz, Esq. Zarin & Steinmetz**

**Peter Gregory, PE, Keane Coppelman Engineers, PC**

**Discussion**

Mr. Gregory stated that he had omitted in this submission, the landscaping plan. Based on the field walk, the board had spoken about the previously disturbed area for the construction of driveway and the proposed house location. The landscaping plan will be proposed regarding enhanced landscaping along the pool location and Bedford Banksville Road. A certificate of appropriateness with conditions has been issued by the Landmarks Preservation Committee. The sight distance regarding the driveway has been less than what the town code requires. We are proposing to remove some more of the ledge rock and remove and replace the existing stone wall, once the improvements are made, the southerly sight lines will meet the code and the Northerly direction will still need to meet the code but will enhance the existing sight lines. Additional information will be provided to Mr. Coyne regarding the SWPPP (stormwater pollution prevention plan). Mr. Gregory will follow up with Westchester County. Mr. Delano stated that the lengths on internal lot lines need to be shown according to the code. He also asked the applicant to verify that there are no issues regarding the road widening strip in relation to the stormwater recharge facility and the asphalt driveway. Mr. Gregory will double check that information. Mr. Delano also asked about the septic system and the expansion capabilities are for the front lot. Where is the system now and do you have 100% expansion capability? Mr. Gregory stated that the cottage was approved for a maximum of 2 bedrooms and 100% expansion area.

At the applicant's request a public hearing was scheduled for May 23, 2011.

**Meeting adjourned at 8:04 p.m.**