

**NORTH CASTLE PLANNING BOARD MEETING  
15 BEDFORD ROAD – COURT ROOM  
7:00 P.M.  
December 9, 2019**

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PLANNING BOARD MEMBERS: Christopher Carthy – Absent  
Steve Sauro – Acting Chairman  
Michael Pollack  
Jim Jensen  
Lawrence Ruisi

Also Present: Adam R. Kaufman, AICP  
Director of Planning  
  
Joe Cermele, PE  
Kellard Sessions Consulting  
  
Valerie B. Desimone  
Planning Board Secretary  
Recording Secretary  
  
Roland A. Baroni, Esq. Town Counsel  
Stephens, Baroni, Reilly & Lewis, LLP  
  
Conservation Board Representative:

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**PUBIC HEARING:**

**11 WASHINGTON PLACE EAST [17-003]  
11 Washington Place east  
122.12-4-26 & 40  
2<sup>nd</sup> Amended site plan of Mixed Use Commercial/Residential Building  
Frank Della Galla  
Discussion  
Consideration of resolution of approval**

Amended Site plan application for the demolition of the existing garage structures at the rear of the building, construction of a new garage/warehouse building (144 square feet larger than existing structures) and the relocation of the outdoor recreation easement from the rear south side of the building to the front south side of the building.

Mr. Pollack read the affidavit of publication for the record. Mr. Desimone stated that all paperwork was in order for this application and no noticed neighbors were present.

Mr. Della Galla described the application as noted above. He stated this small addition of 144 square feet will square off the garage, there will be three garage doors and

originally when they first purchased the lot it was 12 spaces deficient and now they will only be 5 spaces deficient. The first floor apartment has been eliminated and will be used as office space and the apartments will only be on the second floor.

The board and professionals had no further comments or questions at this time. Mr. Sauro asked the applicant if he had any questions or comments regarding the resolution, Mr. Della Galla reviewed the document and had no comments. Mr. Sauro asked for a motion to close the public hearing. Mr. Ruisi made a motion to close the hearing, it was second by Mr. Pollack and approved with four ayes. Mr. Carthy was not present for the vote. Mr. Jensen made a motion to approve the resolution, it was second by Mr. Pollack and approved with four ayes. Mr. Carthy was not present for the vote.

**KESTEN [19-034]**

**1 Shoemaker Lane**

**Section 101.03, Block 02, Lot 7.1**

**Site Plan**

**Ralph Alfonzetti, PE. Alfonzetti Engineering PC**

**Discussion**

Site plan application associated with the construction of a new 8,604 square foot single-family home on a 2-acre parcel. The project also includes the construction of a driveway, new in-ground pool and associated drainage improvements.

Present for this application was the Builder Frank Madonna and the professionals Mr. Guiliano landscape architect and Ralph Alfonzetti engineer for the applicant.

Mr. Ruisi read the affidavit of publication for the record. Mrs. Desimone noted all paperwork was in order for this application.

Noticed neighbors present were Mr. & Mrs. Ozdoba from 811 Old Mount Kisco Road. Carl Salkin, 30 Sunrise Drive, Barbara and John Walsh at 26 Sunrise Drive.

Mr. Alfonzetti stated that they have been before the board previously and based on those comments the house was lowered four feet and from the original subdivision the house was lowered another five feet. The pool has been tucked into the hill side just below the first floor elevation. They have softened the grading and provided more plantings.

The board started to discuss the draft resolution. In response to comments, in order to lower the house further you would have to cut 12' of fill in the rear and the excess material would be disposed off. The 4' retaining wall would have grading above that. It was noted the basement was lowered 4 feet as well. Mr. Guiliano reviewed all the landscaping around the site and location of the pool and its visibility from other sites. It was noted that the back slope was at a 2:1 ratio and as we lower the house we lose more of the woods and nothing was gained. The limit of disturbance was discussed as

what it looks like today and where should the house go vs. the visibility of the house and pool. There was discussion at the last meeting that the pool could be higher in the backyard. Continued discussion took place regarding the height of the house, pool, wall and how it all relates to one another and how this lot relates to the other lots within this subdivision.

Mr. Salkin stated his home is located above this site and this entire hillside was deforested. He asked why the Planning Board did not bring in town water for this subdivision. He noted that many of his neighbors had to redrill their wells and the natural resources are not protected by the town. Sewers were installed, why not water. He noted his concerns to Barry Reider, counselman. He has paid taxes for 25 years and the town should protect the resources and he does not think the town has done that, he has reviewed many studies about this subdivision but not about water. Mr. Kaufman stated that wells are approved by the Westchester County Board of Health. Mr. Salkin was very concerned about running out of water and felt it was the town's responsibility to maintain the resources on our properties and over half the people in the neighborhood have had to redrill their wells at some point. He referenced a conversation he had with his neighbor Mr. Case at 1 Townsend Court who lives near David Chens and he lost his water and he had 400' well with no water. He also noted that he has been listening to jack hammers for two years now, grinding stones and creating a quarry. He inquired how is it that rock is pounded out and processed on site and no one is really protecting the neighborhood. He inquired is we were in for another six months of pounding because the house is being lowered. This was a nice quiet neighborhood and work is taking place on Saturdays and Sundays.

In response to comments from Mr. Salkin, Mr. Kaufman explained what the negative declaration was and how the board arrived at that conclusion. He also stated that the Board of Health would not sign off on the subdivision map if there were any water issues on site.

Mr. Salkin inquired what can the board do to address the residents' concerns and when people lose water in their homes, will the board put aside money in a bond for people to use if anyone who lives above this development needs a new well to be drilled will have the money to do it. Mr. Baroni stated that typically this would be something addressed during subdivision review. If the neighbors were concerned then about their water then the board would have requested a drawdown test would be performed to see if there was an impact to the surrounding lots. He did not recall him or any of the neighbors bringing that concern up at the subdivision. The board is discussing this evening the siting of this one individual house. Mr. Salkin stated that he understands he is late in the process but still wants to know what is going to be done, why can't water be brought up to his house and the houses in his area, if they lose water, their homes are worth significantly less.

Mrs. Ozdoba stated that she just redid her well two months ago and spoke to the engineer on this application and he said that she would not have any issues. She requested additional screening on the rear property line further up and down the site. She is concerned about headlights going on to her land. She also spoke about the

retention pond and pipes that go under the road and how Mr. Madonna cleaned up the pipes but she was not able to get ahold of anyone from NYS to do it and asked who will maintain that. Mr. Cermele stated that is a state road and the state will have to maintain it.

Mr. Cermele stated that single family homes don't have water analysis and the Board of Health signed off on this site and he can't predict down the road regarding the status of a well.

Mrs. Barbara Walsh, 26 Sunrise drive expressed her concerns about the size of the house on the drawdown. Mr. Kaufman stated that it has to do with the number of bedrooms, not the number of bathrooms or the size of the house. She asked if a drawdown study could be done now to alleviate some of the concerns raised this evening. Mr. Baroni stated that you would not do a drawdown study for a single home, this is done during the subdivision.

Mr. Salkin noted that he did not receive notification by certified mail and received notification by first class mail only and suggested that something of this importance that people should go door to door and if no one is home to tape the notice to the door. Mrs. Desimone stated that the Planning Department has had trouble in the past with timely delivery of certified mailings by the Post Office. That is why we went to certificate of mailing which proves that was mailed first class mail in an envelope with a return address from the Town of North Castle and a big red stamp in the lower left corner that says IMPORTANT MEETING NOTICE in block, bold, red letters so that the notice would be not overlooked and showed a return address from the town with a notice of important meeting notice. This also saves the residents time from having to go to the post office and pick up certified letter when they are not home to sign for it. Mrs. Walsh stated that she was not noticed in the past and wants to know what can be done now, she wants to know what the drawdown test costs, no one had an answer to that question. She noted that if the water was lost no one is accountable and what do we do, she can't afford a new well, she has two kids in college.

Mrs. Walsh inquired why nothing was done for the drawdown study. There was nothing done to satisfy the water concerns. Mr. Kaufman explained when a draw down would be done and why: golf course and water usage.

Mrs. Walsh inquired if more trees were going to be put in. Mr. Alfonzetti pointed out where the trees were removed and what part of the lot was not touched at all and Mr. Guiliano presented the landscaping plan at this time.

Mr. Sauro stated that the applicant does not have ARB approval and the board will not be able to vote on this application this evening. The applicant was asked to provide additional landscaping as requested this evening. Mr. Guiliano will work on that.

Mr. Jensen stated that he compared the two plans from today to two years ago and noted it is substantially larger and the draft resolution shows that there are 28 outstanding conditions to be complied with prior to final signature. He was concerned

if the board is reviewing a plan that is too big for the site.

Mr. Pollack stated that the subdivision was approved two years ago and the Town Board approved the re-zoning two years ago and that is when the developer offered sewer lines for this site and the Planning Board did site plan review for the lots. Mr. Baroni stated that this site was originally shown with an 18 lot subdivision and was reduced to six lots.

The applicant is scheduled to go before the ARB on January 15, 2020. It was noted that this application was compliant regarding zoning and setbacks and the applicant needs ARB approval and a landscaping plan.

Mr. Sauro made a motion to adjourn the public hearing. Mr. Pollack second the motion and it was approved with four ayes. Mr. Carthy was not present for the vote.

The applicant will have time to address the conditions in the draft resolution and resubmit to a future meeting. Mr. Sauro welcomed the neighbors to return to the next public hearing.

**375 MAIN STREET [19-037]**

**375 Main Street**

**101.01-1-6**

**Amended Site Plan**

**Leo Napior, HKP Harfenist Kraut & Perlsten LLP**

**Discussion**

**Consideration of resolution of approval**

Site plan application to restore the site to its prior condition prior to the recent tank replacement project began, utilizing the same fuel dispensers in the same location.

Mr. Jensen read the affidavit of publication for the record. Mrs. Desimone stated that all paper work was in order for this application. The following noticed neighbors were present, Clifford Davis esq. representing 360 Main Street Zeiden Realty Corp. Christopher Levine representing Madone Realty Corp. 360 Main Street; Representing the applicant is Johnathan Kraut from Napior, Harfenist Kraut & Perlsten and Robert Branzino, engineer for the applicant.

Mr. Kraut stated that a gas spill took place in July, 2020 and the UST – underground storage tanks - needed to be replaced. The building permit was issued for the removal and replacement of the UST. The issuance of the permit and application followed a long existing protocol of the town regarding sites such as this one. That policy procedure and precedent resulted us in getting a building permit and by that he meant by not being referred to the Planning Board which would have been the building inspector's opportunity to do so.

At the end of August, 2020 the Building Inspector asked for a modification to the plans to remove a portion of the concrete pad which was over the property line into the easement area. The adjustment to the plan was re-submitted and the field change was appropriately made. He asked the board to keep in mind that the existing business has been operational for a very long time and the application was just to replace the underground storage tanks and replace the lines to the storage tanks which is protocol when replacing the tanks and to take the dispensers and remove them from the islands and re-plum them and to put those very same dispensers back in place. Essentially the building permit was not for something to alter everything on the site, it is just to put everything back the way it was.

It was his understanding, although it was upon information of belief that the competitor across the street or his representatives came into the Building Department seeking to upset the determination that a building permit had been issued. The Building Inspector, relatively new to the town took a slightly different position and issued an amended permit which allows the tanks to be replaced, the lines replaced and the dispensers removed from the islands and put back in the exact same location and to get site plan approval from the Planning Board. While we took exception to that we filed an appeal to the ZBA and as a matter of law, the building inspector should not have referred his client to this board and the application was adjourned. We did this to preserve our client's rights. His client is voluntarily before this board and a lot of paperwork has been submitted over and over that his client did not have Westchester County Department of Health approval for the replacement of the tanks and his client does have the permit for the approval. The tanks were replaced and we submitted an application to this board and met with the professionals who want a more substantial and updated site plan.

This site is no longer owned by Motiva. NY Fuel now owns the site along with the renovation and rejuvenation of the site and has many sites which they have updated and look beautiful. The applicant would like to return with an updated site plan to go with all the other improvements over the last decade in town. As this board is aware, the site across the street replaced their tank with only a Building Permit and no Planning Board approval. He was happy to answer any questions the board may have on this matter. He stated that he was happy to answer any questions the board had at this time. He also noted that there have been some violations issued and his client is working on resolving the issues. There is an above ground waste oil tank and shed on site. He will return to the Planning Board with a well thought out plan.

Mr. Pollack stated that the scope of the work is leaking motor fuel tank and replaced plumbing lines under the ground as well as reinstalling the existing pumps. Mr. Kraut stated that It would look the same from above the ground. In response to comments from Mr. Baroni regarding the fill port location on site, Mr. Kraut stated they were moved 5 feet to the north to accommodate the change that was requested of his client.

Mr. Sauro noted receipt of a letter from Keane and Beane dated December 5, 2019 regarding this application.

Clifford Davis stated that Ed Phillips has submitted a previous letter dated November

15, 2019. The professionals have stated in their memos all the items that need to be addressed regarding this application. Mr. Krout stated that he is voluntarily fixing something and it is a lot more complicated than that. Mr. Davis stated he has reviewed the draft resolution and as prepared is contrary to the law. It segments the entire site plan process and eliminates the issues of ingress & egress to the site, turning radius, traffic and safety, sidewalks and truck turns are all not part of this plan and they are trying to box this planning board in so when the applicant returns to address the comments, they may not be able to address those items because they already have done it. When you have a site plan you start with a clean slate. What is the rush that this board will unlawfully segment the entire site plan process and will evade SEQR. The Planner said this was a Type II action. If you look at Section 617.5C18 when it talks about the reuse of a residential commercial structure it is only if it is a permitted use under the applicable zoning law. Mr. Kaufman stated this was not a reuse and inquired why Mr. Davis used the word reuse. Mr. Davis inquired why this application was deemed a Type II action. Mr. Kaufman stated that the property has less than 5,000 square feet of disturbance. Mr. Davis stated that you are segmenting it. Mr. Kaufman did not agree with that comment and stated this was an existing operating business. Mr. Davis stated that the board was absolutely segmenting this application and from looking at this as an entire gas station. Mr. Kaufman did not agree. Mr. Davis stated that this is a gas station and if it is a reuse, it is a non-conforming use which is a prohibited use under the code whether it was grandfathered or not is another matter.

Mr. Davis stated that this is unfair to all applicants that have to go through a full site plan analysis. He was not aware of any process where you can carve up a site plan and return later to finish it. The draft resolution does not even say what the applicant is returning to do, it says it will modernize the site, what does that mean? How will the board give direction to the applicant who says they will return to the board in three or four months and if voluntarily complying. What happened here is that Zaiden realty made an application to the zoning board and within that application it said the whole matter should come before the Planning Board for site plan analysis. This application goes back to 2008 and Mr. Sauro was very concerned at the time if the applicant would ever return to the board or ever update the site. He also stated that Kellard Sessions memo raised some safety issues which he opined should not go on for another day. The issue of segmentation will box this board in. This board in the past has not acted as a rubber stamp and should not act as a rubber stamp now. To segment the planning process will set a terrible precedent.

Mr. Davis handed out a memo from Kellard Sessions dated September 24, 2009 to the Director of Planning for the record and read various parts of the memo into the record and highlighted the lack of sidewalks along Kent Place and Main Street along its frontage and noted this was not a small matter regarding pedestrian safety. He then stated that a 16-year-old girl was hit by a car at 375 Main street and was in serious condition for approximately one year. He referenced an article that was in the Lohud newspaper at the time and handed that to Mr. Kaufman.

Mr. Davis stated that in the minutes from November 10, 2009 Mr. Delano stated he was almost in an accident when exiting onto Kent Place. In the same set of minutes Mr.

Davis read a comment from Mr. Sauro who expressed his concerns about the applicant returning to the Planning Board to do a full site plan review. Mr. Davis then referred back to the Kellard Sessions memo dated 9/24/2009 and their comments at the time regarding all the matters to be addressed on this site. He stated that he did not understand why this application was so limited and all of the issues should be addressed. Mr. Davis referenced the Kellard sessions memo again and their comments that all of the matters referenced in the memo should be addressed on site and read each item from the memo out loud for the boards reference. He noted that every other applicant that was before this board had to provide a sidewalk. This applicant has been before the board for 11-12 years and the turning radius and sidewalks should be addressed. The applicant should not be telling the Planning Board what the sidewalks should look like, the Planning Board should be telling the applicant what the sidewalks should look like. He stated that on September 30, 2009 Ms. Black stated that this was the least attractive site in town. He continued reading from the same set of minutes the comments from Mr. Mandart who was representing the applicant at the time and noted he did not want to put in sidewalks due to the cost and continued reading the comments from Mr. Mandart, Mr. Kaufman and Chairman Michelman at the time. This application has a long history of issues over the years and did not begin in the middle of 2019.

The draft resolution should have a new site plan to modernize the site that is very vague and unenforceable. The applicant says they will diligently pursue this application – what does that mean? The resolution should be updated to clearly state exactly what the applicant has to come back before the board and do. What happens if the applicant is diligently working on this application and the board turns it down, is the applicant still allowed to continue to operate, this document is totally unclear. The resolution should state that if the applicant does not comply then the certificate of compliance will be revoked and the business ceases. The applicant understands if they don't do the work that the business will be closed. His engineer Mr. Lepine will present all of the issues to be reviewed for the site. Mr. Davis stated that the site plan is unlawful to segment. He reminded the board that Mr. Sauro was concerned over 10 years ago what if the applicant did not return and that is exactly what happened. Mr. Davis stated that the Public Hearing should be kept open so the board can do some more analysis and make sure the applicant is clear on every matter that needs to be addressed to make the town happy and avoid any other pedestrians getting injured while walking along the site.

Mr. Baroni asked the board if they would like to go over all of the legal issues before going into the engineering issues. Mr. Kraut stated that this was a type II action because this application is for a replacement in kind and case law supports that. He also acknowledged Mr. Kaufman's response as well and agreed with it. He deferred comments regarding the resolution to Mr. Baroni. He will address the rest of the comments at the end.

In response to comments from Mr. Sauro, Mr. Lepine stated that he does not represent the applicant and he would like to go over all off the site plan and engineering issues to be addressed on site. Mr. Sauro stated that he would like the applicant to highlight the issues but when the board does a full site plan review, all of that detail will be reviewed and discussed at the time.

Christopher Lepine introduced himself from the Chase company and is a licensed engineer with 23 years of experience. He was retained by Sedan Realty Corporation and would like to provide some engineering comments regarding 375 Main Street. He asked to present his comments this evening and the board can then ask the planner or engineer any comments regarding his comments.

Mr. Lepine handed out some materials at this time. He stated there are a lot of issues on this site to be addressed like the lack of conforming loading and parking spaces, conforming aisle widths, encroachment from the neighboring property, lack of generator, defined driveway curb cuts, traffic circulation, sidewalks, turning radius, frontage along Kent Place and Main Street without curbing, lack of access drives and lack of sidewalks, fuel delivery trucks routing regarding access and egress on site and how that will work, parking and access to the pumps and how the site encroaches onto Kent Place and how parking and the access drives are not defined on the site. He presented an Ariel photo and noted the applicant is parking in the right of way on Kent Place and Main Street. He referenced the section of the code regarding parking spaces and when not compliant a CO will not be issued. He continued reading the code regarding parking on site and pointed out how the site was not compliant.

Mr. Pollack stated that the site is legally non-conforming and the board is aware of that and asked if Mr. Lepine was citing specific instances of that. Mr. Baroni stated that he agrees that this is a type II action and it is not being segmented. What you are attempting to do is create a baseline site plan approval for this site because there is not one for this site. The applicant agreed to return to the board within 90 days for a complete site plan review to redevelop the entire property. The one thing that no one is mentioning is that there is a time clock running. The time clock is that this applicant has to reopen and pump gas within a certain specified period of time to reopen or he loses the non-conformity. The competitor is well aware of that, wouldn't you like to be the only gas station in Armonk? Going through this exercise is not beneficial, we are trying to preserve a business in town which has been here for a long time. We are taking the applicant at its word that it is going to follow through with what it was committed to. This board also has an option to request a bond.

Mr. Pollack stated he did not see a bond in the resolution. Mr. Baroni stated that was something that the board could consider this evening and add to the resolution.

Mr. Pollack asked the applicant if there was something else other than chapter and verse that they would like to discuss this evening. Mr. Lepine stated that he would like to finish his presentation. Mr. Pollack stated that the board understands the site is non-conforming and does not feel it was productive to site chapter and verse at this time. Mr. Lepine offered to discuss the engineering issues. Mr. Baroni stated that he does not see what it accomplishes, we all know the site is deficient, the property owner knows it is deficient. This is treated as a place holder until the real plan comes in and then Mr. Lepine can speak to the site plan and engineering issues all that he wants. Wouldn't that be more productive? Mr. Lepine stated that it would not be, the board is allowing the use to take place in regards to the pump islands without looking at the

other impacts to the pump islands are. Mr. Kaufman stated that they are going in the exact same place as they were previously. We all recognize this is a substandard lot that does not conform to site plan standards. The competitor is acting like the applicant is making a presentation for a whole new site plan application and that is not the case, this is an established gas station. The issue we are dealing with is the replacement of the underground tanks.

Mr. Ruisi stated that if counsel states this is appropriate and we can do this then we should proceed and let the applicant return in 90 days and the competitor can present all of its comments at that time. Mr. Lepine stated the location of the pumps impacts the circulation of cars into the site and maneuvering on site. This was not corrected in 2009 and once you put into place the pump islands you no longer have the opportunity to address the access issues along main street because you have two pumps that are already in place. Mr. Sauro stated this will be addressed at site plan review. Mr. Baroni stated that the Planning Board has not waived any of its rights for this site.

Mr. Lepine stated that NYSDOT should have been notified about this application. Dave Heidecorn, NY Fuel Company has lived in Armonk for 25 years and he has worked with Jim Weil for the last 8 years. He highlighted the importance of opening the station. The current eyesore will be eliminated; the Armonk residents will have a second station in town so that better pricing can be established. He has spoken to numerous residents in town and they all would like to see the station open. There is not a viable or logical reason for the station not to open asap. NY Fuel Co. oversees 80 gas stations in Westchester County, Fairfield County and Long Island. Jim Weil is a respected business man and has been extremely successful and highly regarded in the Shell organization and I as the director of NY Fuel Co can commit to you on behalf of the company that we will be back before the Planning Board as promised within 90 days with a comprehensive site plan.

Mr. Kraut stated that Keane & Beane the other law firm hired by the competitor across the street besides Mr. Davis has already reached out to NYSDOT regarding this application and they are aware of it. He feels the board saw it for what it is a transparent attempt to eliminate the competition and keep the gas prices high. Why else would a competitor across the street who replaced their tanks with only a building permit hire 2 big law firms and big engineering firm make all this fuss. He is amendable to any changes the board and would like to make to the resolution regarding the wording or incorporating a bond but he would like the board to close the public hearing and put this to a vote.

The board discussed the bond at this time. Mr. Baroni stated that at the last meeting regarding the gas station in NWP a \$50,000 bond was put into place. The board inquired what if the applicant does not return. Mr. Baroni stated that this site plan if approved would fail and he loses his certificate of occupancy. The board summarized that the applicant would be out of business, Mr. Baroni agreed. Mr. Pollack asked if the applicant returns in 90 days and does not get an approval, where does that leave the board. What if he says we are not doing curbing and sidewalks? Mr. Baroni stated that

this is a sophisticated developer and the communities they do work in require sidewalks, landscaping, plantings and curbing.

The board discussed all of the items raised this evening: landscaping, curb cuts, lighting, plantings, truck turning radius, sidewalks, islands, proper turning radius, ingress and egress to the site. The board then discussed what would be acceptable at a minimum. The board concluded that at an absolute minimum the board will absolutely need the applicant to submit is a revised site plan including curb cuts, landscaping and sidewalks and asked that the resolution be updated with that information.

Mr. Sauro asked if anyone else had any comments to make at this time. No comments were made. Mr. Sauro made a motion to close the public hearing. Mr. Ruisi second the motion and it was approved with four ayes. Mr. Carthy was not present for the vote.

Mr. Pollack made a motion to approve the resolution as amended. Mr. Sauro second the motion and it was approved with four ayes. Mr. Carthy was not present for the vote.

### **CONTINUING BUSINES:**

#### **SAINT STEPHENS CHURCH [19-030]**

**50 Bedford Road**

**108.03-1-13 & 108.03-1-14**

**Amended Site Plan**

**Lucille Munz, RLA JMC Planning Engineering**

**Discussion**

Ms. Munz stated that she has received ZBA approval and has reviewed the engineer and town planner memos. She noted she is still working on her submissions to go before the Landmarks Preservation Committee (LPC) and the Conservation Board. She briefly reviewed the plan for the boards reference. She noted that she met with the light professional this morning on site and the professional suggested keeping the poles and changing the light heads and using LED lights. A proposal will be prepared and submitted to the church, they are looking to keep the costs at a minimum with updates being practical and functional. In response to comments, the poles are the same as the ones across the street in the park. Mr, Kaufman stated that if the lights are working in the evenings that is the only requirement for safety purposes and may be a cost saving option if the applicant deemed it appropriate.

The board and professionals had further discussion of the lights. The applicant will submit documentation regarding the lights. The applicant suggested replacing the lights with LED lights to address the safety issues around the lot. The applicant will submit the documentation regarding the details of the light. The applicant will remove the shrubs at the corner of Maple Avenue and Bedford Road and will be planted further back onto the site out of the right of way and will be no taller than 18 – 24 inches. The

pond edge will be mapped off at the pond across the street so that the NYSDEC can sign off on that. The existing parking lot will not be dug up due to the cost and a new dense top course will be added to the parking lot and will be leveled out and this is what was recommended by both professionals.

This applicant would like to schedule a public hearing once they are done with the Conservation Board and Landmarks Preservation Committee. The board agreed to schedule the hearing as soon as the applicant had their remaining approvals.

**SINGER [08-071]**

**1 Quarter Mile Road**

**107.04-1- 25**

**Paul R. Sysak, RLA, ASLA, John Meyer Consulting, PC**

**Discussion**

**Consideration of extension of time resolution**

Mr. Singer stated this application was originally approved prior to the crash in 2008. The project was then delayed a number of years and finally last year he has completed the first half of the project which was an expansion of the house and he has received a CO for that and is now looking to get a building permit for the second half of the approval which is a breezeway and garage. Mr. Singer stated that the Assessor's office suggested getting a CO so they could assess the house which they did but he did not realize that he building permit was good for two years and if he had left it open he would not be before the board this evening for the extension of time. Mr. Sauro confirmed that an extension could be granted if only part of the approval was built, Mr. Kaufman stated the board can do that. The alternative is that this would expire and the applicant would return to the Planning Board for another approval of the oversized structure.

Mr. Pollack asked the applicant when he intended to begin the second part of the construction. Mr. Singer stated that he was in the process of reviewing his finances and was hoping to do it this year but it is expensive. Mr. Pollack stated that he has said in the past and will again tonight that extension of times are not a rite of passage indefinitely. There are reasons for expiration dates of extensions, he understands the applicant's reasons and that is why we asked you to come in and represent yourself. He did not feel it was right to keep granting extension after extension with no intention to build was not a good idea.

Mr. Singer stated that his intention was to build the second half of the project this spring and if he had left his building permit open which was good for two years he would not need the extension right now. He closed out his permit and received his CO on the first half of the project 5 – 6 months ago and if he had left his permit open he would not need this extension today. He did not see a down side of requesting an extension of time resolution as the time. He reminded the board that if he did not close out the Building Permit which was at the request of the Assessor's office, his building permit would still be active and he would not be before the board this evening for an extension of time.

The board was clear regarding the circumstances of the request.

Mr. Sauro made a motion to approve the extension of time resolution. Mr. Ruisi second the motion and it was approved with four ayes. Mr. Carthy was not present for the vote.

Mr. Sauro thanked the applicant for coming in this evening.

## **BTD T PROPERTIES**

**18 Carolyn Place**

**100.04-1-5**

**Site Plan**

**Ralph Mastromonaco, PE PC**

**Frank Guiliano, Landscape Architect**

**Tim Miller Associates, Inc.**

**Jacob Amir, Esq. DDWWW LLP**

**Discussion of bond release**

Present for this application was the applicant Kirk Scuderi and his attorney Jacob Amir and landscape architect Frank Guiliano.

In accordance with Condition No. 7 of the Resolution, the plan included a 2.5 year maintenance and monitoring period to insure the wetland mitigation / restoration plant survival. Prior to partial release of the bond, the Town should be provided with a mitigation monitoring report, certified by Frank Giuliano, indicating the current status of the mitigation plantings, their survival rate and the need (or not) to supplement, replace or otherwise modify the plantings previously installed.

Mr. Amir described the application as noted above and stated that the bond was to be released after 30 months and it has been 32 months. Mr. Guiliano stated that he went on to the abutting town lot through the adjacent property to inspect the sight since he was not permitted to go on 18 Carolyn place. Mr. Guiliano has inspected the site to the best of his ability without being able to physically go on the site. Mr. Amir stated that there was a scheduling of releasing parts of the bond and that was never adhered too and now his client is looking to get one lump sum 32 months later.

In response to comments, Mr. Cermele stated that he has been asking for these reports as referenced above throughout the 30-month duration but has not been given any; therefore, he was not in a position to recommend a partial bond reduction. He has received the report from Mr. Guiliano back in November, 2019 that the plantings were done according to the plan and Mr. Cermele has not been able to access the site and was only able to view it from a neighboring site and he is not going to prepare a report without going on the site.

In response to comments Mr. Guiliano came to the podium and stated that he was not given permission to go on site and he was granted permission on the neighboring site which then gave him access to the sliver of town property between this lot and the lake to look at this site. He stated that two dead pines had been

replaced, there was no erosion, the deciduous trees were blooming and everything looked to be in good order. Mr. Amir stated that the applicant, Mr. Kirk Scuderi also reviewed the site from the neighboring property and came to the same conclusion that Mr. Guiliano did. Mr. Sauro noted that Mr. Guiliano is a trusted and well respected professional but what level of comfort does this board need in order to move forward. Mr. Jensen inquired if something like this has ever happened before. Mr. Baroni stated that this has been a particularly litigious situation and there have been some problems with the owner of the property and the town and possibly the builder – he was not sure. The Town is in litigation with the property owner regarding a property issue. Being that Mr. Cermele represents the town, he may not be granted access to the site. Mr. Cermele stated that he has been requesting reports all along and has not received any and now with the new property owner he did not think that he will get access. Mr. Baroni stated that the bond has no merit, even if there was a dead tree or plant, the property owner will not let anyone on his property to replant. The board continued discussing the matter and the best way to proceed.

Mr. Pollack inquired if it was customary for the town engineer to see the site, Mr. Cermele agreed that it was. Mr. Giuliano stated that you can see the site from across Wampus Lake. Mr. Pollack stated that the comments in the resolution are to the satisfaction of the Town Engineer, he asked Mr. Cermele if he was satisfied, Mr. Cermele stated that he has not been on the property to do an inspection and he has a signed and sealed letter from a licensed professional Mr. Guiliano that all of the planting were installed according to the plan. Mr. Pollack stated that it did not sound like it was to the satisfaction of the town engineer and it sounds like a stretch to say the criteria has been met.

Mr. Sauro stated that even if Mr. Cermele wanted some landscaping or trees replaced, there is no access to the site to do it. Mr. Kaufman stated that if it got to that point the Building Department could issue a violation or summons for not being in compliance with the site plan approval. This is a different avenue than the bond. Mr. Amir stated that the language is left open for what would satisfy the Town Engineer. Mr. Kaufman stated that If the applicant had submitted the required long term reports as requested all along this 30 month process, this would not be so complicated, Mr. Cermele agreed. Mr. Pollack noted there was non-compliance on the applicant part as well. Mr. Amir reminded everyone even if these reports were done we don't have access to the site to replace any of the dead plants or trees, the new owner purchased the house over two years ago.

In response to comments from Mr. Ruisi, Mr. Cermele stated that this was wetland mitigation for the site.

Mr. Baroni suggested taking pictures of the site, Mr. Guiliano stated that he will not navigate that hill again, he has done it twice. Mr. Baroni stated that he does not expect the Town Engineer to navigate that hill either. He suggested writing a letter to the Town Board stating that the Town Engineer is not able to confirm the results of the landscape architect observations and the bond is lost since the property owner won't allow you access to the site. Present all of the facts and let the Town

Board make a decision. This is an unusual situation; this is the first time Mr. Baroni has seen something like this in all his years of practice. This was a cash bond that was tendered. The board stated that they would like some language crafted that this should be binding on future land owners.

Mr. Sauro made a motion that Adam prepare a letter to the Town Board with all of the details and points of interest noted this evening. Mr. Kaufman will forward the letter to the Town Attorney for his review prior to sending it to the Town Board. Mr. Pollack second the motion and it was approved with four ayes. Mr. Carthy was not present for the vote.

Mr. Sauro made a motion to adjourn the meeting. It was second by Mr. Pollack and approved with four ayes. Mr. Carthy was not present for the vote. Meeting adjourned at 9:48 p.m.