

**TOWN OF NORTH CASTLE**

**PLANNING BOARD MEETING**

15 Bedford Road

Armonk, New York 10504

February 11, 2008

7:00 p.m.

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PLANNING BOARD MEMBERS PRESENT: Peg Michelman, Chairman  
John Delano  
Art Adelman  
Jane Black

PLANNING BOARD MEMBERS ABSENT: Gene Matusow

ALSO PRESENT: Adam Kaufman  
Director of Planning  
  
Roland Baroni, Town Counsel  
Stephens, Baroni, Reilly & Lewis, LLP  
  
Anthony Kunny  
Kellard Engineering & Consulting, P.C.  
Consulting Town Engineers  
  
Valerie Desimone  
Planning Board Secretary  
  
Louise Gantres-Hiromura  
Conservation Board Representative

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

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**APPROVAL OF MINUTES**

January 28, 2008

Ms. Black made a motion to approve the minutes from the January 28<sup>th</sup> meeting, as amended. The motion was seconded by Mr. Delano and unanimously approved.

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**PUBLIC HEARING & NEIGHBOR NOTIFICATION:**

**DI PAOLO**

**Site Plan**

**Section 2, Block 5F, Lot 15**

**Tim Allen, P.E. – Bibbo Associates**

**Discussion**

**Consideration of approving site plan resolution**

Chairman Michelman explained that this application had been postponed due to the applicant's failure to mail the public notice.

**STONE MANORS @ ARMONK, LLC**

**Site Plan**

**Section 1, Block 11, Lot 5A-5 (lot 1)**

**2 Daphne Lane**

**Linda Whitehead, Esq. – McCullough, Goldberger & Staudt LLP**

**Michael Finan, PE – CMX (formerly Schoor DePalma)**

**Discussion**

**Consideration of site plan resolution**

Chairman Michelman read the public notice for the record. She asked if there were any neighbors present for the application. John Fontana of 10 Patriot's Farm Place was present. Ms. Desimone noted that 8 out of 11 cards were returned and that all paperwork was in order.

Ms. Linda Whitehead and Mr. Michael Finan were present on behalf of the applicant. Ms. Whitehead explained that these two lots were part of the Troy Subdivision that was approved several years ago. As a condition of that subdivision, site plan approval was required. Since that subdivision approval, the Code had changed, and requires all homes to receive site plan approval from the Planning Board. The applicant received a wetland permit from this Board about 1.5 years ago to do work in newly found wetlands. At that time, the Board requested that the applicant hold off on the site plan application for the houses until the applicant was able to obtain Health Department approval. Once that approval was received, the applicant came back with detailed site plans for the houses and all proposed improvements. In the interim, the Town passed new laws regarding the lot coverage and gross floor area. Both Stone Manors lots with applications before the Board are slightly above the basic in terms of both lot coverage and floor area, but they are well below the max permitted. In addition to site plan approval, they will require special permits.

Chairman Michelman asked for a presentation for the benefit of the neighbor. Ms. Whitehead explained that the lots would have access from Bedford Banksville Road, off of a new road that was recently constructed, Daphne Lane. There will be a conservation easement in an area that leads up to road. Ms. Whitehead indicated the area of the conservation easement and noted that this was done to protect the pond and the water quality for the Mianus River, and as part of mitigation. The house will be in the front portion of the lot, closer to the road, and they are proposing a pool. The second lot is

right next to lot one, at the end of the cul-de-sac. The house on lot two is located somewhat in the middle, with a pool behind it. Both houses meet the height requirements. There is a wetland and buffer in the rear of the second lot, which will be untouched.

Chairman Michelman asked if the neighbor had any questions. Mr. Fontana said he did not. Chairman Michelman asked if there were any questions from the Board members or the professionals. Neither Mr. Kunny nor Mr. Kaufman had any questions. There were no comments from the Board.

Chairman Michelman asked if the applicant read the resolution. Ms. Whitehead said that she had, and only had one comment, which Mr. Kaufman addressed prior to the meeting.

Mr. Delano moved to close the public hearing for lot one. The motion was seconded by Mr. Adelman and unanimously approved.

Ms. Black moved to approve the resolution as amended. The motion was seconded by Mr. Delano and unanimously approved.

**STONE MANORS @ ARMONK, LLC**

**Site Plan**

**Section 1, Block 11, Lot 5A-6 (lot 2)**

**4 Daphne Lane**

**Linda Whitehead, Esq. – McCullough, Goldberger & Staudt LLP**

**Michael Finan, PE – CMX (formerly Schoor DePalma)**

**Discussion**

**Consideration of site plan resolution**

Chairman Michelman read the public notice for the record. She asked if there were any neighbors present for the application. John Fontana of 10 Patriot's Farm Place was present. Ms. Desimone noted that 12 out of 12 cards were returned and that all paperwork was in order.

Ms. Linda Whitehead and Mr. Michael Finan were present on behalf of the applicant. Ms. Whitehead explained that she addressed the technicalities of this lot when she was discussing lot #1 (above).

Mr. Kunny pointed out that both lots have the same address. Mr. Kaufman agreed, and said this was because the lots did not have E911 addresses yet. Ms. Whitehead explained that they would get Daphne Lane addresses

Louise Gantras-Hiromura, the Conservation Board representative, asked how the buffer / wetland area would be protected on lot two, and whether the applicant would have a conservation easement. Ms. Whitehead said that there would not be a conservation easement, and that the approved plans do not show any disturbance in that area. She noted that it would be up to the Town to ensure the area remained undisturbed. Mr. Kaufman explained that any work within that area would require an additional permit.

Chairman Michelman asked if there were any other comments from the Board or the public. There were none.

Mr. Delano moved to close the public hearing for lot two. Ms. Black seconded the motion and it was unanimously approved.

Mr. Adelman moved to approve the resolution. The motion was seconded by Mr. Delano and unanimously approved.

**CONTINUING BUSINESS:**

**ARMONK SQUARE (formerly known as Pembroke Square and Heritage Square)**

**Site Plan**

**Section 2, Block 14, Lots 3, 8, 9**

**Main Street, Maple Avenue, Bedford Road**

**Mark Miller, Esq. – Veneziano & Associates**

**Discussion**

Chairman Michelman explained that this was strictly a discussion on the draft resolution received from Mr. Kaufman to consider issues or concerns that need to be addressed.

Mr. Mark Miller, Esq., was present on behalf of the applicants. Mr. Miller explained that at the last meeting, the Board directed the Planner to draft a resolution. They have been through it and the applicant has no objections to any of the conditions suggested. Mr. Miller explained that the applicant would like the Board to consider moving some of the conditions to the section requiring completion prior to issuance of building permit. He also thanked Mr. Kaufman for the work he had put into preparing a resolution for what has been a difficult application.

Mr. Kaufman explained that this was just a first draft of a resolution that had not yet been reviewed by the Town Attorney or the Town Engineer, both of whom will have to approve the resolution prior to it being finalized. If the Board could provide some feedback (i.e. that this resolution is heading in right direction and the conditions are in the locations they would like) that would be constructive. This way, at the next meeting, the Board could have a revision to vote on.

Chairman Michelman said that she had several questions. In one section, the resolution talks about the pedestrian access from Main Street and indicated that after hours, deliveries and emergency vehicles would have the ability to come in through Main Street. She said that she understood the access for emergency vehicles, but wondered why the Town should permit deliveries through Main Street, even after hours. She noted that this was a mixed use with residential components.

Mr. Kaufman asked whether the issue was the access from Main Street, or vehicles in the central area. Chairman Michelman felt that it was both. Mr. Kaufman said that the Board could prevent delivery truck access from Main Street, and instead they could enter from the other side. Or, the Board could prevent access for deliveries in the plaza area altogether. Mr. Kaufman said that he had always envisioned that trucks would be permitted entry after hours. Chairman Michelman felt that because of the residential

component, she did not see why any delivery trucks should be permitted. She did not have any problem with access for emergency vehicles.

Mr. Adelman said he felt the same way. He felt that the Board should prohibit deliveries through Main Street. Additionally, he did not want delivery people to get into bad habits and forget that it is restricted during certain hours; he thought that it would be better to restrict access entirely. Ms. Black asked if Mr. Adelman was referring solely to the Main Street access or delivery to the area altogether. Chairman Michelman said that she was only talking about Main Street access. At this point, multiple conversations were had.

Mr. Kaufman asked if the Board wanted to permit the delivery of goods in the pedestrian area after hours. Chairman Michelman said that she did not want them entering through Main Street. Chairman Michelman said that because this also has a residential component, why do they have to deliver through Main Street at all. Mr. Baroni suggested a "whereas" clause be added to state that there is no vehicular access from Main Street except for emergency vehicles. Mr. Kaufman reiterated that the same area could be accessed from internally on the site and asked whether the Board wanted to permit this or not. Chairman Michelman did not want to permit it. She questioned how the Town would be able to enforce the time restrictions. Mr. Delano asked whether there would be drop curbing in the area, and whether it was the intention of the site plan to actually permit vehicles up onto the pedestrian mall. Mr. Kaufman said that it was. Mr. Delano thought that the drop curbing should be eliminated on the Main Street side. Mr. Kaufman said that the drop curbing could be kept for the emergency services vehicles. Mr. Adelman doubted the emergency vehicles would need it because they could get through despite the curbing. Mr. Delano felt that deliveries could be made with a hand truck, regardless of the hours of the day.

Ms. Black agreed that there should not be any vehicular access from Main Street at any time, but she remained undecided about whether there could be deliveries inside the square after hours. Mr. Miller said that the applicant did not contemplate direct access for delivery trucks from Main Street, so the applicant would not have a problem with restricting delivery trucks from Main Street. As for vehicular access inside the square, the applicant always contemplated that after-hours that there would be access.

Mr. Adelman said that he was concerned about after hour deliveries. The backup beeps on the trucks are disturbing, especially to the residents. So, if the Board could find a way to avoid that disturbance, he would not have a problem with after hours delivery.

Chairman Michelman asked how the Board would define after hours, since the site will have a mixed use. She felt the applicant was asking a great deal of drivers to determine what is "after hours." If people are dining, and they walk through the area afterwards, or there is an event in the summer, what is after hours? Mr. Miller said that the applicant conceived after hours to be more towards the early hours of the morning. He recognized that this did not address Mr. Adelman's beeping concern. Chairman Michelman asked how difficult it would be to deliver to the backdoors, just to avoid anything the Town could not enforce. Mr. Miller said that would be acceptable to the applicant. Mr. Kaufmann stated, for clarification, the resolution would be revised to only permit emergency vehicles inside the square.

Chairman Michelman said that she was also concerned about the proposal for the residential overnight parking permits: that the Town would issue one overnight parking permit per residence. She noted that in today's world, couples would probably have more than one car. She said that she would not mind having only one parking permit if there was sufficient alternate parking nearby, but parking in Town is limited. She was concerned that the Board would be eliminating potential tenants. She asked if there was a way to alter that without impacting the overall parking picture the Board has conceived for this project. Mr. Kaufman explained that the Code requires 1.5 spaces per unit, so the Town could have one overnight space per unit and then conduct a lottery for the remaining spaces. His concern with requiring two off-street spaces per unit would impose something more than what the Code requires, and would present a conflict on the weekends, where there would be up to 42 cars parked there.

Chairman Michelman said she understood, but that there is no other parking nearby. Ms. Black asked if there was any nearby parking. Mr. Baroni said that there were a few spaces near the park, but anything the Board did there for overnight spaces would create an inconvenience for another area. To be fair to the rest of downtown, they have to be on site. Chairman Michelman said that was what she was concerned about. Mr. Miller agreed with the Chairman, but thought that it would be appropriate to designate 1.5 spaces per unit, and have some type of lottery. He recognized that there would be some units that only have one car.

Ms. Black said that she liked this idea. The rest of the Board said that they would accept that if there was a practical solution. Mr. Kaufman said that this was a practical solution, and asked if this would fall within the parking district regulations. Mr. Baroni said that he believed it would, if the Town Clerk would be the one to issue permits. Additionally, they would have to obtain permission from all unit owners to have the parking enforcement officer enforce the regulations.

Chairman Michelman asked if there were any other issues. Mr. Adelman asked the status of the bond issue. Chairman Michelman said this was under consideration.

Mr. Baroni stated that there should be a "whereas" clause acknowledging that the applicant has agreed to provide the off-street sidewalks, and it should include a requirement to tie in to the west side of Main Street. Mr. Kaufman said this has been considered, and the applicant was going to be submitting plans. Mr. Kaufman pointed out that this was also noted on the site plan. Mr. Baroni stated that the Board should also address the timing of construction; the Town would not want sidewalks constructed in the busiest shopping periods. There should be significant lead time for process with the DOT. He felt that it should be long prior to the issuance of a C.O. so that the application gets underway as soon as possible. The applicant should make an application before the issuance of the building permit. Mr. Miller agreed.

Mr. Adelman asked if the Board has agreed on a path to resolve the bonding issue. Mr. Baroni explained that he had not found any authorization for the Board to have that type of authority over an application. If the applicant was willing to post some kind of financial assurance, then that would be permissible. In fact, that has happened once before, but that was where the applicant agreed to it. Here, this applicant is not willing to do so, and no authority has been found to require it. Mr. Adelman felt that it was clear that the

Board was not singling out this particular applicant, because they had required it with another applicant. Mr. Adelman said that he would like the Board to request the applicant volunteer to agree to that condition. Mr. Delano explained that the prior applicant with the bond was to secure the property from an aesthetic position. He pointed out that he had alluded to this at the last meeting, i.e. requiring some fencing around the site to screen. Mr. Delano said that the Board has been told repeatedly that they would not legally be able to impose a bond for the entire site.

Mr. Adelman read the language from the prior applicant who posted bond, and to him, this meant that the bond remained in place until all site plan work was completed. Mr. Kaufman said that otherwise, the Town would have released the bond and the construction would have stopped. Mr. Baroni reminded the Board that the earlier applicant had defaulted on his site plan approval, and therefore this Board had a lot more leverage. That applicant had been at the Board's mercy to reinstate the application.

Chairman Michelman suggested staggering the process. The construction could start with buildings A, B and E, the applicant could come back to make sure that progress has been made, and then do buildings C and D. She felt this was something to consider if the Board could not impose a bond requirement.

Mr. Kaufman said that condition 6 on page 17 was his attempt to address Mr. Delano's comment, and asked whether this went far enough. Mr. Delano felt that it addressed the general idea. Mr. Delano said that he recognized what Chairman Michelman and Mr. Adelman were trying to do. Chairman Michelman said that the Board had been told that they cannot do what she had wanted to do, so she was trying to come up with another approach.

Mr. Miller said he understood the Board's concerns, but explained that they had to look at the facts and circumstances on how the Board received that bond on the other application. The facts at hand are significantly different. Here, there were some unsightly buildings on the site, and as soon as this Board completed its environmental review, the applicant removed them. With respect to the condition in the resolution, it talks about a bond or letter of credit with respect to public infrastructure improvements. Additionally, Mr. Miller felt that Mr. Kaufman addressed similar issues very well by requiring the applicant to post a bond for the traffic signal and another bond for sediment and erosion control, and yet another bond for the installation of the sidewalks, all of which the applicant readily concedes are part of the public infrastructure and therefore are appropriately required to be bonded.

Mr. Adelman said that it was his desire to prevent this project from getting into the condition of that other application. He realized that the Board had no authority to force this, and he would like to see this project approved. Clearly the applicant is not willing to post the bond voluntarily, and he hoped that the time would not come where this Board would regret not being able to force them. Mr. Miller said he was confident that this project would be started and completed.

Mr. Miller added that, on a site this small, there is a significant mobilization expense to stagger a project. As a practical matter and for liability purposes, the applicant anticipates bringing the entire site to completion at the same time.

Chairman Michelman asked Mr. Miller which conditions he wanted to move. Mr. Miller said that he would like to move items 11-13 on page 15 to "prior to the issuance of a building permit." With respect to #11, which has to do with final approval from the ARB and the selection of colors, the applicant is faced with a difficulty because in order for the ARB to go beyond conceptual approval and grant final approval, the applicant would need to submit the actual set of working drawings which will be presented to the Building Department. Those plans have to wait until the approval and signing of the site plan so that they know they have an approved plan, which then can form the basis for the working drawings. He recognized that they have to have an approval before they get a building permit, but for the applicant, it is a timing issue. He said the Town is protected, because the applicant could not get a building permit without that final ARB approval. The colors have been moved up a little bit in terms of timing, but not to the point where the applicant would have to have it done before they begin construction. However, when they go to the ARB for the final approval of the working drawings, the applicant will address all open issues with the ARB, including the colors. Mr. Miller noted that the colors would not affect the building permit. Number 12 requires the applicant to confirm that the Town Board has authorized the elimination of the parking spaces on either side of Maple Avenue, and #13 deals with the crosswalk. The applicant has made that application to the Town Board in November, and it was referred to the traffic consultant. Mr. Miller said that they have not heard back on these issues yet. The applicant is not anticipating a problem, but the sooner the applicant could get the site plan signed, the sooner they could move forward with the working drawings. Therefore request these conditions be moved to prior to the issuance of the building permit.

Mr. Kaufman said that he had no problems with moving numbers 12 and 13 to the building permit section. However, Mr. Kaufman explained that typically, #11 would be satisfied prior to the signing of a site plan, but it was ultimately up to the Board and their comfort level. Chairman Michelman said that the ARB was going to wait for final plans before they do anything. Mr. Kaufman agreed. Chairman Michelman asked if the applicant was advising the Board that no final plans would be put into place until the site plan is signed. Mr. Miller said that even if any work had started ahead of time, which he believed it has, it would still take a while to do, and any detail that changed has ripple affects and would hinder the applicant's ability. Once the applicant has the site plan approval for a set of plans, they could move ahead with the construction drawings, which are required for the building permit.

Mr. Delano asked what would prevent the applicant from sending a note indicating the color choices. For example, the Board would sign off on the site plan, the applicant could get the ARB approval and building permit, but this Board still has no idea what the colors would be. Mr. Baroni said that the applicant could not get the building permit until this Board signs off on the colors. Mr. Delano asked if the applicant would be back for a second look even though the Board has already signed the plans. Mr. Miller said that the applicant had agreed to that condition; as soon as they get the ARB approval, they would come back to this Board. Mr. Delano and Ms. Black had no issue with moving #11 in that case.

Mr. Miller also requested that number 15 on page 16 regarding the consent agreement be moved to prior to the issuance of a building permit. He recognized that the applicant needed to provide the agreement, but the DEC was going to want to see the final approved plans so that they are consenting to that which was approved by this Board. Mr. Kaufman said that he would prefer keeping it where it is, but explained that nothing will be built if the condition is moved. Mr. Baroni suggested Mr. Kaufman confirm that the DEC would not sign off on the agreement without the final signed site plan. If that is the case, then the condition would have to be moved. If the DEC would sign off sooner, then the condition could stay where it was.

Mr. Miller said that if the condition was moved to the building permit section, the applicant would have more time. Mr. Kaufman said that if this was about a timing issue, then the Board needed to discuss that. Mr. Miller believed that the building permit would provide the applicant with enough time and he understood that if the DEC was delaying this, then that would delay the building permit. Mr. Kaufman said that it would be safe to assume that if the DEC said that it would execute the consent agreement with the completion of SEQRA as opposed to final site plan, it could still take several months. Mr. Delano said that it would make sense to move it to building permit. Mr. Kaufman explained that if the Board was going to move the condition, then it should be moved now. Chairman Michelman thought that Mr. Kaufman was not comfortable with moving it. Mr. Kaufman said that he was comfortable with moving the condition, and he'd rather that the issue with the DEC be resolved before the Board signs off. Ms. Black pointed out that the applicant still could not build anything without the DEC approval. Mr. Kaufman agreed. Mr. Miller stated that the applicant has been advised that it would take at least two months to get the DEC approval, and hopefully the site plan would be signed within that time, and be progressing to the building permit. Mr. Kaufman said that it is reasonable to assume that they would take two months.

Mr. Baroni asked if everyone was talking about the same definition for building permits; that absolutely no construction could occur without one. Mr. Kaufman said that it was his understanding that no permits for any type of construction could be issued. Mr. Baroni said that if this was the case, then it would not really matter.

Chairman Michelman felt that this would mean the Board would sign a site plan, which left many things to the future, but recognized that it would have to be done one way or another. Mr. Miller said he understood, but the timing would permit the applicant start sooner and finalize the drawings. He recognized that nothing would be built.

The Board had a general consensus that the condition could be moved to before the issuance of a building permit. Chairman Michelman said that she was comfortable with this as long as there would be absolutely no construction without them. Mr. Kunny added that it would mean no construction on the infrastructure at all. Mr. Kaufman agreed and said that he would confirm this with Mr. Fon. Mr. Miller said that this was understood.

Mr. Miller said that he would like to move the second sentence in item #21 to the building permit section because the relocated water line is on the plans. He said that he had no problem with the first sentence remaining where it was. Until such time as the applicant receives site plan approval, there is a possibility that they would move. This way, the

applicant could take a final set of plans to the Water and Sewer Department. Mr. Kaufman explained that the Board has a set of plans that show the Beitzel water line being relocated to another part of the Beitzel property, which would have required an easement. Now the Board has a plan that shows the water line serving the Beitzel property relocated entirely on the Armonk Square property. This has not been approved by Water and Sewer Department or the Town Engineer, so the entire condition needs to remain where it is. Mr. Miller agreed with Mr. Kaufman.

Mr. Miller continued, asking that item #11 on page 18 be moved from prior to the issuance of a building permit to prior to the issuance of a C.O. Mr. Miller explained that this condition has to do with securing easements from adjacent properties for the tree protection protocol. Mr. Miller explained that several months ago, he sent certified letters to the adjacent property owners regarding a request for an easement for tree protection. To date, only St. Stephens Church has responded. Mr. Miller said that he would reach out again, probably on a more personal level, to try and secure easements from the other owners; however, the applicant would like more time to address that. The way the condition is currently written, the applicant would have to come back to the Board to discuss additional screening, which the applicant has no problem with but felt that it was more appropriate to handle as the construction moves forward.

Mr. Kaufman asked if the applicant wanted to move just the second sentence. Mr. Miller said that he wanted both moved. Mr. Kaufman said that the condition could not be moved because some elements of the tree protection plan would need to be implemented prior to construction, which would be prior to the issuance of the building permit. The Town would want the easements in place so that the trees could be protected off site and given that some of the elements need to be in place before construction begins, he did not see how it could be moved until after construction is completed. Mr. Miller agreed. Mr. Kaufman noted that if the owners do not agree to the easements, the Board could put a contingency plan in place.

There were no other comments or questions.

**WEISSMAN**  
**Preliminary Subdivision**  
**Section 2, Block 8, Lot 2B & 2B1**  
**610 & 614 Bedford Road**  
**Sabri Barisser, P.E. – Bibbo Associates**  
**Discussion**

Mr. Weissman was present on behalf of his application. He presented the latest subdivision plan, and explained that it has all the constraints mentioned so far. He asked the Board if they had any questions.

Chairman Michelman noted that this was a difficult piece of property because it is an odd shape with a lot of constraints. It seems that the Board is being asked to squeeze something on the lot that doesn't really fit, like fitting a square peg in a round hole. She did not think this was a positive way to do this. She noted that even the Conservation Board, who carefully walked the site, had concerns, including the distance from the

house to the leech fields. She felt this was impractical. Chairman Michelman did not think the Board could leap forward in good conscience. She said that she did not want to hold up the project, but there is a lot of work to do as a team to ascertain how this could be improved to make it fit better.

Mr. Kaufman said that there are a lot of machinations to attempt to comply with the code and the subdivision regulations. It is a rectangular piece that is longer than it is wide. One could say that the proper way to subdivide it is to have all the frontage on Bedford Banksville Road, but there is not enough frontage to do that, so the applicant is taking advantage of the frontage on Ilana Court. Given the environmental constraints and the shape of the lot, there is only a very, very small piece of the very narrow and deep lot that is within the building envelope. Mr. Kaufman noted that this would be perpendicular to the two houses that are fronting on Bedford Banksville Road. This creates a house footprint that prohibits a deck, and an entrance porch. Additionally, the Board has to deal with the property to the north, where the existing house is. The lot lines had to be contorted in such a way so that the driveway could not be contained on that lot. Instead, the driveway goes on to the proposed lot with the new house, and an easement would be necessary. He explained that this is not good planning. The lot lines being created are not at right angles with Bedford Road and in order to get everything to work, the applicant has skewed that line, which is not something the Code prefers; the Code prefers right angles. Taken together the location of the house to the north, and all the other constraints, in his opinion, the lot to be created is compromised and does not relate well to lots next to it.

Mr. Kunny said that he had many of the same issues as Mr. Kaufman. The new house will not permit a front porch or a deck and the driveway configuration is difficult. He believed that it would be difficult to get into the garage bay; it seems the car would have to cross into oncoming traffic to make the turn. Mr. Kunny said that he had a few other engineering concerns as well.

Mr. Delano noted that there were some inconsistencies. The Board is dealing with two parcels, but they seem to be in two different ownerships. Mr. Weissman explained that a corporation owns the other parcel. Mr. Delano said that the corporation should be a part of the application. Mr. Kaufman said that this was not really part of the application. Mr. Delano said that the area of that lot is included in the application. Mr. Kaufman said that it was, but he wondered why; it may not be necessary.

Mr. Delano said he did not think he agreed with the applicant's engineer's determination as to what is the rear line of lot one. He thought he was measuring the depth to the side line. He thought there were some dimensional issues that needed to be reviewed. Mr. Kaufman said he would look into that.

Mr. Delano also noted that there were issues with zoning conformance numbers on lot one and lot two with respect to width. Also, there seems to be a problem with the depth on lot two Mr. Delano noted that this lot is on a hillside, and wondered if there were any down-gradient wetland issues to the west of the wetland. Mr. Kaufman explained that this had been referred to the Town Wetlands Consultant, but they have not been confirmed yet.

Mr. Weissman said that he had made a suggestion earlier that would make this much easier, although Mr. Kaufman had indicated that it would not work. Mr. Weissman thought they would be able to use Route 684. Mr. Kaufman said that the applicant cannot use Route 684 as frontage because the property cannot be accessed from Route 684. Mr. Weissman said that it was a road on which the house had frontage. Mr. Kaufman reiterated that, although that was technically true, it was a road that could not be used.

Mr. Weissman said that he was open to suggestions and asked where he should go from here.

Ms. Black asked Mr. Kaufman if there were any other viable locations for the house. Mr. Kaufman said that the way the site is configured now, there were no other alternatives, because the building envelope is so small.

Mr. Weissman stated that he is showing a building with two stories that will be 5,600-5,700 sq. ft. It seems possible to provide a detached garage closer to Route 22, which he thought would address most of the concerns. Chairman Michelman suggested the applicant make an appointment with Mr. Kaufman to see if there is a way to work this out. Mr. Weissman said that he would.

**FARERI**  
**Subdivision**  
**69 Round Hill Road**  
**Section 1, Block 9, Lot 4-2**  
**Susan Fasnacht, P.E.**  
**Discussion**

Ms. Susan Fasnacht was present on behalf of the applicant, and presented revised plans to the Board. She explained that this was still the same four-lot subdivision, with minor adjustments to the lot lines to meet all code requirements. She noted that additional information has been included per the Town Planner and Town Engineer's comments.

Ms. Fasnacht said that several of the comments from Mr. Kaufman had to do with the concerns of the Conservation Board and that most of those have been addressed. Ms. Fasnacht explained that they had received a letter from the LPC. Chairman Michelman noted that this may prompt the Board to forward the application to the LPC to see whether this should be a landmark. Chairman Michelman explained that the applicant would have the right to decline such a designation, but the project should be referred. Mr. Kaufman said he'd send a referral letter.

Ms. Fasnacht explained that the Board had requested information regarding the trees and this is in the process of being completed, and will be part of the next submission. There had been an issue regarding the stonewall along the roadway because a portion of the wall is in the right of way, and some portions are not. There had been discussion about setting aside a reserve and how to handle this.

Chairman Michelman said that she was concerned about the need for potential walls in varying height from 6-14' on the property. Even though this is a sloping property, she did not think that the walls should be that high and felt it would change the entire character of the area. Ms. Fasnacht explained that the wall heights would be reduced. The concept plans are still showing houses that are basically rectangles, and not specifically designed for the site. Additionally, the septic systems have all been sized for a conservative percolation rate. She thinks that this would change, and would give them more flexibility. As for the terracing, Ms. Fasnacht felt this too could be addressed. Chairman Michelman thought they should be, because she does not want to defer things like 10'-14' walls to the site plan stage. She understood what the applicant was saying, but this was a huge red flag for the Board. Ms. Fasnacht recognized that and the applicant was fully aware that this would have to be fine-tuned.

The Board also questioned how to resolve the issues of the historic walls on Round Hill Road. Ms. Fasnacht explained that they would have to look at whether they need to set aside a reserve and how to deal with the Town about the portions of the walls in the right-of-way. Mr. Kaufman asked if the walls affected sight distance. Ms. Fasnacht said that they did not, but a comment was made about the wall being in the right-of-way. This is something the applicant will have to work out with the Town. Mr. Baroni explained that the Highway Department would probably have to look at this, and if it determines the walls could remain, there is a formal indemnity agreement to use. If the Town determines that they are possible obstructions, then that could be a problem. Mr. Kaufman felt there should be some communication from the Planning Board to the Highway Department, expressing that the walls should remain if possible.

Mr. Delano pointed out that if the walls are in the right-of-way, they are not the applicant's, but owned by the Town. Mr. Baroni said that it is important to determine whether the walls were original or built by the applicant. Ms. Fasnacht said that parts of the wall are original, although parts have been repaired. Ms. Black said that if the walls are original they should be preserved.

The developer suggested which portions of the wall are in the right of way. Mr. Delano thought that was on the maps now, and the next step should be what the amount of road taking would be.

Ms. Fasnacht stated that they have to establish the property line on the other side and get the 25'. She recognized that she would have to get information as to what was in the right-of-way, and what portions are original, and whether any parts have been reconstructed. That way the Board would have something to refer to the Highway Department.

Ms. Fasnacht said that the Conservation Board had commented on the drainage line and its use. She did not think the Conservation Board understood that it was draining in an area in the back, and that the applicant would be relocating that.

Ms. Fasnacht stated that they talked about stonelining, [inaudible], and the applicant is willing to do that, but not more than the 100' setback. Mr. Delano noted that the environmental constraints map showed a water course setback from the discharge; he

believed the applicant showed 150' watercourse. Ms. Fasnacht said that she did not think it should be classified as a watercourse. Mr. Delano said that the applicant should figure out what is appropriate. Ms. Fasnacht explained that the DEC did not consider this in their flagging of the wetlands.

Ms. Fasnacht stated that "they" asked about maintaining the existing driveway, which the applicant has done. She said that she would have to talk to the Town Engineer about the driveway access.

Ms. Fasnacht said that Mr. Kaufman's comments mentioned this site being a critical environmental area, and considering a conservation subdivision. She recognized that this was discussed at one of the earlier meetings. The conservation area in the rear is about 2 1/4 acres that the applicant will give as a conservation easement. There is not much more the applicant could give as a conservation easement. The houses have been placed so that they are trying to minimize the steep slope disturbance. They are still going to have disturbance for septic systems on the lots, and there is not much more they could do to make it more of a conservation subdivision than they already have. She did not think that going to one acre zoning would make a big difference.

Chairman Michelman felt that the large conservation easement is a big motivator. However, that is an option that Mr. Kaufman presented for this Board to consider. The applicant recognizes that a lot of fine tuning will have to be done. With the property and the development, she said that she goes back to the idea that it has to fit the character of the community in the way the lots are designed and laid out. If those walls are going to be an issue, then the Board will have to look at alternatives.

Ms. Fasnacht asked if the conservation subdivision could be avoided by coming back with something more fine tuned. Mr. Kaufman explained that the conservation subdivision might be a tool to get a better result, because the Board could waive certain requirements. Chairman Michelman said only if the Board needed to.

Mr. Steve Delaurentis, one of the applicant's representatives, explained that the applicant has been doing a lot of work on the plans including grading, details and tables. The applicant is concerned about the Board deciding that it wants a conservation subdivision instead of regular subdivision, and all of the man hours and work that has gone into the plan is a waster. He asked at what point can it be stated that they are taking a specific route. Mr. Delaurentis said that he does not have a problem with addressing the comments from the Board and the professionals. It is a beautiful piece of property, and we want to keep it that way, but felt the applicant did not have enough information to move forward. He did not think it would work for the applicant if the Board decides that this should be reduced to a one acre zone or an FAR for a one acre.

Mr. Kaufman said that they were all working toward the same goal: developing the property with the least environmental impact. They already have a 2 acre conservation easement, they are heading in the right direction. He did not know how much more concentration they would get anyway, and in his opinion, the benefits of a conservation subdivision are minimal, and if the applicant can satisfy the Board's concerns with a conventional subdivision, then it is not an issue. The Board felt that Ms. Fasnacht's

presentation indicated that the concerns could be addressed, so the applicant could work toward conventional subdivision.

Ms. Fasnacht told the Board that by reconfiguring the cul-de-sac, several trees could be saved. She explained that they would have to do additional work; they would like to make it a little smaller, and use asphalt, but would first have to talk to the Fire Department.

Chairman Michelman stated that the applicant was explaining to the Board that they have read all the comments, and they are working toward addressing them. It is important for the applicant to address the comments and come back to the Board with revisions with respect to the subdivision so that the Board is comfortable with the lots as they are going to be laid out could handle the houses, septic and any recreational facilities.

Ms. Fasnacht explained that Mr. Delaurentis had met with the Town Engineer. Chairman Michelman said that she was sure the engineering concerns could be addressed. Ms. Fasnacht said that she wanted to address one of the engineering comments. The applicant would like to keep the existing driveway cut because it gives one of the houses more of its own entrance. Also, there are barns in the area that will remain, and the sight distance is available. Mr. Kaufman asked about the southern most curb cut, and Ms. Fasnacht said that it was going to be removed.

Ms. Black said that the application seemed to be heading in the right direction. The walls concerned her, but that issue was raised.

There were no other comments or questions.

As an aside, Mr. Delaurentis said that the applicant had three pieces of property that abuts the Armonk Square project and is very interested in how the resolution is shaping up. He requested a copy of the resolution as soon as possible. The Board explained that it would be available to the public shortly.

**GODNER / DUTOIT**  
**Section 1, Block 4, Lot 87**  
**70 Windmill Road**  
**Arborscape, Inc.**  
**Discussion**

Mr. Stephan Carlson of Arborscape was present on behalf of the applicant. He explained that they were seeking approval for an amended site plan and special permit for a pool. The 1.5 acre property was renovated a couple of years ago and now the applicant is proposing to install an in ground pool in the rear yard with adjacent patios. Mr. Carlson stated that he had tried to address the Board's concerns. Chairman Michelman thanked Mr. Carlson for addressing the concerns and giving what the Board has asked for.

Mr. Carlson explained that at the last meeting, Mr. Delano asked the applicant to propose alternatives for the pool location. Therefore, the applicant developed five alternatives. Mr. Carlson presented the alternatives to the Board. One of the plans have

the pool relocated to side of the property, however there is a large rock outcropping in that area. Additionally, the pool in that area would pose a nuisance for neighbors, and a possible intrusion into setbacks.

Another alternative proposes the pool closer to the applicant's house in the back yard. Again, this would encroach on the rock, and present issues with trees and steep slopes, and is actually located within the clearing and grading limit line.

The third alternative would intrude on trees. They would have to sacrifice one of the large oaks on the property, and it would creep into the expansion area for septic. The fourth alternative places the pool into the lower portion of the back yard. This too won't work because it is well into clearing and grading limit lines, and massive walls will have to be built.

Mr. Carlson explained that the side and the front of the house are not good options for the pool and therefore the first design is the best option. It tucks the pool in close proximity to house near the patio.

Mr. Carlson stated that he attempted to reduce the impervious surfaces on the property. He explained that the areas shaded in pink on the plan represent a reduction in impervious surface. They are proposing to take out the asphalt that leads to the existing driveway and convert it to gravel. The formalized flagstone walkway will be broken up. The existing walkway from the driveway to the back of the lot does not really serve a purpose, so that would be reverted back to lawn. There is a flagstone patio that acts as a connector area near the house. The applicant never uses that patio and plans to convert it to lawn or a planting area. The impervious surfaces have been reduced by approximately 1,200 sq. ft. from the original application.

Going back to the comment about the six trees that will have to be removed on site to facilitate the new project, there is a great deal of material left on the site that will remain untouched on the property. Additionally, the applicant is proposing some extensive landscaping and replanting of materials, so Mr. Carlson hoped this addressed the Board's concerns.

Chairman Michelman said that the applicant convinced her. Ms. Black said that she appreciated all five options being laid out, and that it made it fairly clear that the original option being the best. She said with the 3:1 mitigation and the planting plan, the first plan was the best. Mr. Kaufman noted that when the applicant was talking about impervious surfaces, gravel still counts toward gross land coverage. Chairman Michelman recognized this, and pointed out that the applicant was still below the maximum.

Mr. Kaufman said he had no real issues with the plan. He said that he did not have a preference for the original plan compared to the alternatives. He said that all the plans have positive and negative qualities. Originally, the plan called to retain the six trees in the rear. However, now the plan proposes to remove them. Mr. Kaufman noted that because of the mitigation plan, it is not inappropriate. Given the alternatives, the original or alternative #3 are the best, but #3 encroaches on expansion area, which would require Health Department approval again.

Mr. Delano stated that the applicant really only proposed one alternative because any alternative that does not comply with the code is not an alternative. Mr. Delano said that he only considered the original and the one viable alternative. He said that alternative #1 was the least disturbing in terms of significant trees and steep slope disturbance. Mr. Delano stated that his preference would be for the other one. Mr. Carlson explained that he heard Mr. Delano's request, but he was trying to be practical and keep with the client's desires. Mr. Delano said that he felt alternative #1 was better.

Mr. Carlson explained that there is another great oak that will remain that is not depicted on the current plan.

Chairman Michelman said that she was concerned that #1 was too close to the neighbors and that was what tipped her in favor of the original. Ms. Black agreed. Mr. Adelman said he was comfortable with the original.

Chairman Michelman asked if Mr. Kunny had any issues. Mr. Kunny said that he did not have any yet. Once the Board decides which plan it prefers, he would work on engineering. Mr. Carlson recognized this.

The Board agreed to schedule public hearing and a resolution for the same night.

**STOBSKY**  
**AMENDED SITE PLAN, SPECIAL USE FAR & GROSS LAND COVERAGE**  
**Section 2, Block 17, Lot 4J01**  
**20 Sterling Road South**  
**Adam & Jonie Stobsky**  
**Discussion**

Chairman Michelman said that the Board was not going to spend a lot of time on this application because there was no information before the Board. She explained that the applicant needed to submit real numbers and real plans that meet all the criteria, including land coverage, FAR etc. Mr. Stobsky said that he submitted all of that information. Chairman Michelman said that the Board does not have any numbers that work but would give the applicant the opportunity to submit the calculations and designs that work.

Chairman Michelman recognized that the applicant rotated the pool as the Board had requested, however the reason the Board made that request in the first place was to relocate the septic slightly, which did not happen. She also noted that the applicant went to ARB and got conceptual approval, but their concerns echoed this Board's concerns. These concerns included landscaping on Mr. Alpert's side of the property and the Cupolla. Mr. Stobsky said that he resolved that issue with the ARB.

Ms. Black wanted to know how that had been resolved. The applicant's representative said that the ARB felt that the original plan with a two-sided gable was too massive and wanted the applicant to try a straight conventional gable. The applicant agreed, and the ARB decided they wanted something that would mimic the pagoda style, and they felt comfortable with that.

Chairman Michelman said that if the applicant had any question about what needed to be included for FAR and gross land coverage calculations, the Building Inspector could provide the applicant with a list. If the applicant submitted the necessary information and came back to the Board with something they could evaluate that fell within the criteria, they might be able to go to public hearing.

Ms. Black added that the Board had asked to see a better description of the landscaping. The applicant's representative interrupted her and said he wanted to have discussion regarding the portico, because that was his main concern. Chairman Michelman said that the Board was not going to have a discussion on the portico, when the applicant's main objection was that he did not agree with what the Board believed to be the criteria. She noted that the Board was not changing, nor judging the criteria, merely looking for the hard facts.

The applicant's representative said that this was a significant architectural element with an open front, and asked why the Board felt it had to be a part of the interior spaces. Mr. Kaufman said that it was not a "feeling" of the Board; the Code says that any porch capable of being enclosed has to be counted. The applicant's representative repeated that it was a significant architectural element and even the ARB said that they could never see a portico like that being enclosed.

Mr. Kaufman explained that it was not that the applicant *would* enclose the portico, it is that it is *capable of being* enclosed. Mr. Kaufman noted that this was a conversation that the applicant needed to have with the Building Inspector, because he was the person who ultimately determines what the Code requires. The applicant's representative thought that was the Planning Board.

Mr. Kaufman explained that the Code wanted to somehow measure the mass, and part of that includes porches that are capable of being enclosed. The calculations for gross land coverage and FAR take into account that houses will have porches that are capable of being enclosed, and whether they are actually enclosed is irrelevant.

Mr. Stobsky said that this was not how all towns arrived at the totals. Mr. Kaufman agreed, and said that all towns would vary in their definitions. Chairman Michelman stated that the applicant was dealing with this town, and had to use their calculations. The applicant's representative said that the ARB would never allow the portico to be enclosed and that it should not be counted.

Ms. Black explained that what Mr. Kaufman was saying is that when the Town came up with the calculations for the FAR, they wanted porticos included. However, although another Town might not include that, the overall figures might be smaller. Mr. Kaufman agreed, and pointed out that North Castle also includes garages in the FAR calculations, recognizing that most homes will have garages, and therefore that square footage was built in. However, other towns might not include garages, and therefore the basic and maximum numbers would be lower, because they did not have those amenities built in.

Mrs. Stobsky said that this Town includes everything. Mr. Delano explained that was the way this Code is written and that was why the applicant had to speak with the Building Inspector. Mr. Delano said that if the Building Inspector agreed with the Stobskys and

provided written confirmation of that to the Board, then the Board would not require that portico to be included. Mr. Delano further explained that if the Building Inspector makes a determination about the portico, and the applicants do not agree, then the applicants have the right to appeal to the ZBA.

Mr. Stobsky said that it would have been nice for Mr. Kaufman to make mention of this in his memo so that he would not have to come before the Board again and spend extra time and money. Mr. Kaufman said that it was in his memo, in comment number two: "the plans and worksheet will need to be revised. Any questions regarding gross floor area should be directed to the Chief Zoning Official." The applicant's representative said that although that comment was in the memo, he did not have any questions, so did not contact the Building Department. He said that he'd been practicing for thirty years, and has never been told in any other town that a portico could be considered a possibility of being enclosed.

Mr. Kaufman asked if the applicant's representative was saying that the portico was not capable of being enclosed. The applicant's representative repeated that it was a significant architectural feature and no one ever includes it in FAR calculations. Mr. Kaufman said that this should be simply addressed by a conversation with the Building Inspector. The applicant's representative said that they would meet with the Building Inspector, and one way or another this would be resolved.

Ms. Black repeated that she was still concerned with the landscaping. The Board had asked for more detail about what it would look like at the end of driveway and asked for a reduced turnaround area so that the buffer could be enlarged. Mrs. Stobsky said that they had a new landscaping plan, and had spoken to Mr. Kaufman, who recommended removing the stepping stones. He had advised Mrs. Stobsky that he was not the final authority, and that she should also speak to the Building Inspector. The Building Inspector told her that they would have to be included, and the applicants decided to remove them. Mrs. Stobsky said that when she brought in the new plans, Mr. Kaufman "was kind enough not to let us insert that into the packet." Chairman Michelman said that Mr. Kaufman was correct to do that.

Chairman Michelman advised the applicant to submit the revised plans. The issue of the calculations needed to be reviewed with the Building Inspector. These codes were written and they change in accordance with the size of the property so that the Board does not overstep its bounds in approving too large a home on a limited piece of property.

Mrs. Stobsky explained that the stepping stones were removed. Chairman Michelman said that she was not asking for an explanation; she was asking for the applicant to deal with the outstanding issues, and submit revised plans. Chairman Michelman advised that if the applicant was over the max for any of these, there is no way the Board would be able to approve it. Mrs. Stobsky recognized that, and said that it was the stepping stones that put them over. Chairman Michelman said that none of that information was before the Board, and that the applicant just needed to get the new plans with the correct numbers.

Mr. Kaufman stated that the plans the Board has show the stones, and the Board has to count that. The applicant understands that and they are going to remove them. Chairman Michelman said that the numbers in her packet were over the maximum.

Mr. Kaufman said that the applicant was not over the max for gross land coverage. With respect to the FAR, the cabana has to be included, and maybe the portico if Mr. Fon directs. If both are included, the applicant would likely be over the maximum. Mrs. Stobsky said that it would only be by approximately 300 sq. ft. so if they were to adjust certain square footage in the attic so that the numbers are exactly as they appear, but swapped, foot for foot. Mr. Kaufman said that would be fine. Chairman Michelman agreed and said that the Board has been asking the applicant to do that for months.

The applicants wanted to know what, aside from those things, they needed to provide for the Board. Chairman Michelman repeated that the applicant needed to get the Board the revised plans and the landscaping plan, with the appropriate calculations for the gross land coverage and the FAR. Mrs. Stobsky said that if she made those adjustments, the numbers before the Board would be accurate, and wanted to know if they still needed to do the calculations. The Board said that they did.

Mr. Baroni asked how soon the Town Board was contemplating acting on the sprinkler law. Mr. Kaufman explained that Mr. Fon attended a recent meeting with the sprinkler committee, and gave him some changes to the draft law the Town Board had seen. Assuming the Town Board will have that soon, they would be going to a public hearing shortly. Mrs. Stobsky asked what Mr. Baroni meant by the new sprinkler law, and Mr. Baroni explained that the law would require entire sprinkler systems in new construction. Mrs. Stobsky asked when that would go into effect. Mr. Baroni said that if the Town Board is ready for a public hearing, it could go into effect as early as one month. The applicant's representative pointed out that this would not have a third floor. Mr. Baroni explained that the law would not be dependent on third floors. Mrs. Stobsky asked if that would exclude this application because they were already in the system. Mr. Baroni explained that as currently drafted, the law would not exclude the applicant.

Mrs. Stobsky asked if there was anything else the Board was going to want to see. Ms. Black asked if the landscape plan would depict the option of the narrower driveway and larger landscape buffer. Mrs. Stobsky said that the revised landscape plan removes many walkways that they felt were unnecessary and enhances the area around the pool because this Board was not comfortable with such a minimal amount of decking around the pool. She explained that they took some square footage from the walkways and added it to around pool.

Mr. Stobsky added that they did rotate the pool as the Board asked, but they did not move the septic because there is only about 25' from the pool's edge to the septic tank and the curtain drain has to go 15' away, so there is less than 10' to work with. He said that perhaps it could be moved a couple of feet. Chairman Michelman advised the applicant not to make it too close. Mr. Stobsky said that was why the 10' buffer would be adequate. Chairman Michelman asked Mr. Kaufman if he would be comfortable with leaving it as is and he said that he did not have an issue with that.

Ms. Black said that the Board had requested a planting plan with a larger buffer area on the side lot line. Mr. Stobsky said that they went through all of that with the ARB; that Board wants a fence, which the applicant agreed to. They also offered to give the neighbor trees for his property. Mr. Stobsky said that they could not provide this on a plan because they could not plant them on someone else's property. However, they could provide a letter. Ms. Black asked if this was something the applicant discussed with the neighbor. Mr. Stobsky said that the neighbor was at the ARB meeting.

Mrs. Stobsky asked if there was anything else the Board wanted. She said that they needed to know because this has been going on for a long time.

Mr. Kunny said that there might be an issue with respect to the buffer in the rear. He asked if the Board was happy with how the applicant was showing it, recognizing that the applicant was saying they could not move the septic. Chairman Michelman wanted to see the plan. Mr. Kunny added that the applicant should refer back to his prior memo regarding the engineering issues.

Mrs. Stobsky asked again if there was anything else the Board needed, because time was now of the essence. Mr. Stobsky asked if there was anyway this could be moved quicker if they assured the Board that they would do whatever the Board required. The Board said they could not; the Board has to see it. Mr. Kaufman believed the only thing the Board would really need to see was the planting plan. Chairman Michelman said that she wanted to see how the numbers worked out. Mr. Adelman repeated what the applicant has to provide: the planting plan, the FAR and gross land coverage calculations, and the outcome of the discussion with Mr. Fon regarding the portico. He added that he would like to see the ARB's letters. Mrs. Stobsky asked if the calculations would be acceptable to the Board if Mr. Fon agreed with the applicant. The Board said that it would be, but they would want a written letter from him.

Mrs. Stobsky said that she had the planting plan with her and asked if the Board wanted to see it. Chairman Michelman asked her to submit them so that everyone had a chance to review it. She asked when the plans would have to be submitted. Ms. Desimone explained that they would have had to be submitted that morning.

Mr. Delano asked if it could be scheduled for a discussion at the next meeting. Chairman Michelman said that they could not be because no plans had been submitted by the deadline. Mr. Adelman asked if there was a way to accelerate this given that there is a possibility the applicant might get hung up with the new sprinkler law. Mr. Baroni said that the Board could permit a late submission. The Board agreed to accept the late submission if the applicant got the requested information submitted within two days.

Mr. Daniel Samuels of 4 Hadley Road was present and wanted to comment on the application. There was a question about whether the Board had closed the public hearing at the last meeting. It was determined that the public hearing remained open. Mr. Samuels said that he lived directly behind the applicant. He said that his concern about elevating the rear yard was a topic that had not been mentioned at this meeting. Mr. Adelman noted that this issue had been addressed by Mr. Samuels at prior meetings. Mr. Samuels said that these particular issues were not raised.

Chairman Michelman explained to the Board that because they did not realize the public hearing was still open, one of the goals of the meeting should be to close it. She said that she would give Mr. Samuels' a chance to speak, and noted that his concerns over engineering have been addressed before. She explained that the Board relies on the Engineering Department to evaluate those concerns. She suggested Mr. Samuels meet with the Town Engineer.

Mr. Samuels said he was concerned about how they would bring in truckloads of fill that will raise the grade by 3-6 feet, which will create a plateau that will sit right above all of the neighbors. He said the runoff would be horrendous and that he has raised this in the past, and received only the perfunctory answer that 'the Engineer will address.' He pointed out that this was an acre of land. Mr. Adelman pointed out that Mr. Samuels just admitted that he had raised this before. He felt it would be appropriate that Mr. Samuels meet with the Town Engineer to satisfy this.

Mr. Samuels said that he also had an issue regarding the wetlands, and that has not been resolved. Mr. Kaufman said that it had been resolved; a letter dated November 6, 2007 from the Wetlands Consultant indicates that the site does not contain any Town-regulated wetlands. Mr. Kaufman said that he would provide a copy to Mr. Samuels.

Mr. Samuels said that he had requested that the applicant permit his own personal consultant to test the site. He said that he has found that hand picked consultants tend to side with the agenda. The Board took exception to that. Chairman Michelman explained that the Board recognizes his concerns, but the Board itself cannot seem to satisfy his concerns. She said that Mr. Samuels is welcome to speak with the Town Engineer, and that meeting may allay some of Mr. Samuels' fears. She added that he might be of assistance to the Town's review. However, none of his concerns would be resolved by repeating the same thing at every meeting. Mr. Kaufman wanted to make sure Mr. Samuels realized that it was not the applicant's wetlands consultant that walked the site, it was the Town's.

Mr. Samuels said that he grew up in the area, and he always used to see swamp cabbage growing in the woods, and that only grows in the wetlands. Mr. Kaufman said that the Town's consultant would not have made a determination if he was unable to do so.

Mr. Samuels said that he was more concerned with the elevation of the back yard. Mr. Adelman said that was why the Board suggested he meet with the Town Engineer. Mr. Samuels said that he had been told in the past, on other projects, that there would be no problem with runoff, and that has not proven to be the case.

Mr. Adelman explained that if Mr. Samuels wanted to meet with the Engineer, it would be his own responsibility to contact the Town Engineer to set up an appointment.

Mr. Bob Elford, of 18 Sterling Road South, asked if Mr. Kaufman received his letter. Mr. Kaufman said that he had, and that it was distributed to the Board.

Chairman Michelman asked if there was any reason not to close the public hearing. Mr. Kaufman explained that the Board did not have plans that conform to the Code, so that

was his only concern. Chairman Michelman said that the Board would not approve any plans that did not conform to the Code.

Mr. Kaufman explained that if the Board closed the public hearing, and the Board does not have an application that can be approved within 62 days, the Board cannot make a decision, and would be a denial.

Mr. Adelman moved to close the public hearing. The motion was seconded by Mr. Delano and unanimously approved.

### **NEW BUSINESS:**

#### **STOP & SHOP**

Ms. Noelle Chrisally, Esq. was present on behalf of the applicant. They are proposing to convert seven parking spaces into cart corrals. Mr. Kaufman said that he would recommend the Board schedule a public hearing if there were no issues. The Board had none. Mr. Kaufman said he had no issues, but would recommend that the applicant convert the spaces into landbanked spaces, and put the cart corrals in those locations. If it is later determined there is a parking problem, the Board could instruct the applicant to construct some or all of the fourteen landbanked spaces, or they could take the cart corrals and revert them back to actual spaces.

Ms. Chrisally pointed out that a referral to the County Planning Board is necessary. Mr. Kaufman said that he would make that referral during the week.

The Board said that a public hearing and a resolution could be scheduled for the next meeting.

#### **ANIKSTEIN (formerly Samit)**

##### **Amended Site Plan**

##### **Section 2, Block 5, Lot 14-6**

##### **12 Leisure Farm Drive**

##### **Discussion**

##### **Nick Pouder – Pouder Design Group**

Mr. Pouder was present on behalf of the applicant. He explained that he was presenting an amended site plan to include a swimming pool on the north side of the lot. Based upon site visit, the primary issue for the Board was the original subdivision clearing and grading limit line. He indicated that area and said that the entire pool project was within the setback. There was also some discussion in the field about the amount of clearing on the site prior to this applicant buying it. Mr. Pouder said that he had a conversation with the former owner who said that as soon as he started the chain saws, the Building Department came to the site and said it was fine. He is trying to get documentation.

Mr. Pouder said that regardless, the applicant plans to add more than 50 trees to the site. The Board talked about moving or shifting the pool, and he indicated a dashed line on the plan that showed one possible configuration. He said that the applicant is more inclined to shift it over. The applicant is happy to consider this and pointed out that it

distances the applicant more from the neighbor. He did not think this would make a big difference in terms of grading.

Mr. Pouder said that the deck would be fairly similar to what it is now. They are fairly close on the amount of lot coverage, adding only a little. This does not take into consideration a deck the applicant is removing. Mr. Pouder explained that they would also need a special permit for the FAR. There is a section of the building is proposed as a new outside porch. There is a side door currently in that area, and they thinking of opening up a window into an open porch, which they have included in the FAR, and adds about 1,200 sq. ft. of FAR. A public hearing will be needed for both. Mr. Pouder said that the applicant would like to move this forward, and they will submit a revised plan that shifts the pool.

Mr. Pouder said that although they will be removing some trees, there is a large row of conifers on top of the plan; also on the right of plan large rows of trees as well. He asked if the Board was comfortable enough with the screening to permit a public hearing.

Mr. Pouder recognized that Mr. Kunny had some engineering issues and they will fix any inconsistencies, get percolation tests, etc. Mr. Kunny said that he did not need this information for a public hearing.

Mr. Baroni pointed out that this was the subdivision that had severe well problems, which prompted the Planning Board to place restrictions regarding water usage. He said that he was not sure if there was a restriction on pools, but that should be checked. Mr. Kaufman said that he would look into this. He added that if the water was a concern, the Board could require the applicant to purchase water for the pool, and not fill it from the well. Mr. Pouder assumed that it would be done that way as well. He added that they would have an automatic cover on the pool, which in addition to safety, cuts down on evaporation.

Mr. Baroni said that at the very least, the Board should require an outside source, but they still needed to check whether there is a restriction. He did not recall any of the other pools in the neighborhood coming to the Board for approval. Mr. Pouder asked if they would be able to get a different permit if there was a restriction on the pools. Mr. Kaufman said that it might be prohibited entirely.

The Board wanted to make this determination before a public hearing was scheduled.

Mr. Pouder said that there were comments that were in both professional memos. Two of the trees slated to be removed are not considered trees under the Town's definition and that is why they are not on the tree removal list.

Mr. Delano said that they should wait to hear back from Mr. Kaufman, and if it is permissible to have a pool on the site, then the applicant should place the pool in the location he wants, and after some comparisons, the Board could then schedule public hearing with a resolution for the same night.

Mr. Kaufman asked if the Board was comfortable with the concept, the clearing and grading limit line, and the revegetation as proposed. The Board said that they were.

**COHEN**

**Site Plan**

**Section 2, Block 2, Lot 5-1.C**

**14 Sunrise Drive**

**Discussion**

**Barry Naderman, P.E. – Naderman Land Planning & Engineering**

Mr. Barry Naderman was present on behalf of the applicant. Mr. Naderman explained that this was a 2.9-acre parcel with an existing residence. The applicant wants to construct an addition to the garage with a connector, along with pool cabana, a pool, walkways, terraces, etc.

There is a driveway leading around to the garage. Mr. Naderman indicated the garage area and the connector. The second floor connection is proposed so that there is access internally to the bedrooms above the garage. There is a cabana with terracing and a spa and pool. They will need to regrade the rear yard to provide more usable areas. He noted that some fill would be required.

Mr. Naderman explained that the project needs site plan approval and special permits for the gross land coverage and the FAR. In order to stay within the maximum allowable on the land coverage, the applicant is proposing to shave away a portion of the existing driveway. There is a drainage system proposed, and the cabana will have drainage into the existing drainage system. The applicant will be providing additional drainage up front to accommodate additional runoff.

Chairman Michelman said that the issue of the number of garage bays was a concern for her, and wanted to know what had changed. Mr. Naderman said that nothing had changed yet. There is an existing two car garage and an existing three car garage, one of which will be connected to the house. The architect was asked to get a letter from the Building Inspector as to whether the code applies to this situation and they are still waiting for that interpretation. If the four garage bays apply, then the applicant will probably seek a variance from the ZBA. If he cannot receive a variance, they will have to revise the plans. It does not make any sense to reduce the garage to only one bay.

Mr. Baroni thought the Building Inspector just ruled on this issue on Meadow Lane. Mr. Kaufman said that Mr. Fon ruled that each building could have a maximum of four bays. The issue here is that based upon his interpretation, the addition, which is connected via a second floor bridge, becomes a part of the principal structure. Therefore there are five garage bays. One of Mr. Kaufman's solutions was to detach the building, have two bays in one, and three in another. Mr. Adelman asked if that would require a special permit. Mr. Kaufman said that it would. Mr. Naderman explained that currently, there is no

ground floor access to the house or second floor from the garage. That addresses the concern as to whether this would become an accessory apartment.

Mr. Lee Hagley, the architect, said that he had not heard back from the Building Inspector on the issue yet. Additionally, the applicant needs clarification from the Building Inspector on the cabana occupancy. He noted that one of Mr. Kaufman's comments was that it would not be used as an accessory dwelling, however the Health Department has approved the plan and does not consider this a bedroom. They will resubmit a revised drawing that reduces the sizes, the height and the total FAR to be below the code requirements. They brought it down by 110' sq. ft. and they lowered the plate to get it below the 15'.

Mr. Hagley explained that the site has an existing six-bedroom house and they plan to deconstruct the sixth bedroom, and turn it to a playroom. The room has a bathroom and a shower. He explained that all of the other bathrooms are locked by bedrooms and do not qualify as hall bathrooms. The bathroom in the playroom will be modified. The shower will be removed, and a urinal will be installed. The applicant has triplet boys, and this would be energy savings.

They would then create a guest suite connected by a bridge. There is no connection to that suite from the downstairs. Additionally, there is no connection to the first floor from the proposed additional garage. Mr. Cohen has several cars, one of which is stored in Katonah. There were only a couple of feasible options to consider a place for the additional garage. The applicant added it to another and set it into the hill. He indicated the pool house, the terraces and the house. He explained that from the front, it would look like a low, two-story house.

Mr. Naderman said that they addressed Mr. Kaufman's concerns regarding the overall height from the lowest point in back. The proposal is just above 36' and 38' is permitted.

Mr. Naderman presented and explained perspective drawings to the Board. Mr. Delano asked what was going under the garage. Mr. Hagley said that it would just be storage and would not be heated. Mr. Kaufman asked what was preventing the applicant from making that a one-car garage, architecturally. Mr. Delano said that it would diminish the two bedroom guest suite. Mr. Kaufman recognized this, but asked if the applicant made it one bay, had one bedroom upstairs, and did not convert the existing bedroom into a play area, would they be in an acceptable position. Mr. Kaufman added that the garage could be made larger than a one bay, it just could not have two spaces. Mr. Hagley said that he did not have enough space upstairs to create the suite.

Mr. Naderman asked if they kept the same width of the structure, but limited the access, if that would be permissible. Mr. Kaufman said that it could be, because the code talks about spaces. Mr. Naderman said that he would have to talk to the client about that. Mr. Delano said that the applicant should speak with the Building Inspector first. Mr. Hagley agreed. He said that he understood the code, but this would function as a detached garage because there is no way that you could access the house without going outside. Mr. Kaufman thought this was a grey area, which Mr. Fon needed to review.

Mr. Kaufman asked if the Board was comfortable with the mass and the size being proposed, because that was the real issue. Chairman Michelman said that it was big. Ms. Black agreed and said that it was below the maximum, but not by much. Mr. Naderman asked if the Board felt that there were negative impacts to the adjoining properties. Chairman Michelman said that as far as basic land coverage, the applicant is pushing the land coverage as much as they could. Additionally, the pool house has always been a concern to the Board. It has a bathroom and shower and air conditioning, along with other amenities. The Board has never been comfortable with this type of structure because of the danger of it being used as an accessory structure. Ms. Black pointed out that the Board has approved a cabana with a modified kitchen. Chairman Michelman said that it was a modified kitchen and no bathroom. Mr. Baroni pointed out that it had a/c or heat in addition to those modifications.

Mr. Hagely asked if the Board would consider the cabana if the applicant was willing to have a legal covenant that would preclude anyone from even asking for a special permit for the cabana. Mr. Baroni said that it is a question of enforcement, not a piece of paper. Mr. Hagely said that it was clearly intended for family use and entertainment. The applicant has no intention of using it as an accessory dwelling. Mr. Baroni explained that the Board looks beyond the current owner. Mr. Hagely said that given the topography of the site, and the fact that the pool is so distant (vertically) from the house, a kitchen in the cabana serves a great function for the client. Mr. Naderman added that there is no privacy in that structure because it is all glass.

Mr. Delano said that this was really a building code issue. Mr. Hagely said that the Health Department does not consider this as an accessory or a bedroom. Mr. Delano repeated that the applicant should talk to the Building Inspector. There are a couple of threshold issues, including the garage and the cabana. Then there are the issues of the mass and the size. Mr. Delano said that it would be helpful to know the comparison to the nearest five houses.

Mr. Naderman asked if there were any other major issues. Mr. Kunny asked if there was an adequate backup area from the host garage. Mr. Naderman said that it would take a few maneuvers, but this was needed in order to comply with the maximum coverage. Mr. Naderman recognized that Mr. Hagely made some reductions in square footage.

## **GIFFORD LAKE ESTATES LOT #2**

### **Site Plan**

### **Section 1, Block 9, Lot 13-11**

### **14 Gifford Lake**

### **Discussion**

### **Tim Allen, P.E. – Bibbo Associates**

Mr. Tim Allen and Mr. Kent Theussan were present on behalf of the applicant. Mr. Allen indicated the lots on the site plan and explained that they were before the Board for a principal residence and an accessory garage with a pool. The pool house is integrated into the garage. Mr. Allen recognized that some things regarding the subdivision were discussed, namely the "building coverage" versus the "dwelling." On the plat, it was clearly stated that the size would not exceed 4,206 ft. and that is the basis of this plan.

With respect to the site overall, there is a large ridgeline in the area. This site is blocked from Mr. Conrad's site. He asked that the Board consider the wordage on the plat and that this is allowable as a principal dwelling, with the garage as an accessory.

Additionally, there had been an issue about the wetland permit. He explained that it was clearly a manmade pond that is used for the nursery on the neighboring property. This was recognized during the subdivision and the fact that they would probably be in the setback for the lot, and clearing and grading limit lines are the same as what was shown on the subdivision. Mr. Allen stated that they would need a public hearing, because they are above the basic but below the maximum threshold for both the land coverage and FAR.

Chairman Michelman felt that the main issue is the applicant's interpretation versus the Board's interpretation about the language limiting the size of the footprint when this subdivision was approved. She said that the Board carefully developed the coverage for the lots. The 4,206 sq. ft. was the building coverage for the first three lots according to the subdivision resolution. Chairman Michelman recognized that the applicant's proposal was creative, but it is above the 4,206 sq. ft. The applicant is taking the house as the total, and the garage as a separate entity, and therefore adding to the 4,206 sq. ft. Mr. Allen agreed that was what the plan showed. Chairman Michelman said that the Board struggled to determine the maximum coverage, and she felt that the Board needed to have a discussion on their intent.

Mr. Adelman said that the point was well taken, but having walked the site, he felt that the land lends itself to what is being proposed. He did not think there was any harm with letting it exceed what the Board had supposed at the subdivision stage.

Mr. Delano asked what the plat said. Mr. Allen said that the plat language read that the "dwelling" size would not exceed the 4,206 sq. ft. Mr. Delano explained that the representation on the plat was that the parking would be provided in the garage that was housed in the dwelling. Although it may say dwelling on the plat, but all the talk in the resolution was of building coverage. He thought that it was clear that it was the intent of the Board that they were getting the maximum building footprint, and some control over the maximum impervious surface. He thought the Board intended to get a fairly tight lock on how this site was developed. He recalled the Board eliminating two lots from the initial application.

Mr. Allen said that much of that discussion had to do with the proximity of lot one to Mr. Feuer and Mr. Conrad's houses. This lot is removed from those houses by a large ridgeline. Mr. Allen said that the Board was talking about the intent and the spirit of the subdivision, but that discussion centered on that issue. Lot three is very well removed. Lot one was the most focal, that was most focused on. The argument that lot one was something the Board took a long hard look at might not be on point.

Chairman Michelman asked what the difference was between lots one and two. Mr. Allen said that lot one is 2.1 acres and lot two is 2.28 acres. Mr. Delano asked what was ultimately approved on lot one. Mr. Allen said that it was 4,206, and they have a permit for that. Mr. Allen said that the wrong footprint was proposed initially, and wanted to discuss it now.

Mr. Delano noted that the pool was rotated, so there is less disturbance in the buffer. Ms. Black asked if the house location was a little bit out of the buffer. Mr. Allen explained that it was pretty much in the same location. Ms. Black said that she tried to compare them, and felt it was more out of the buffer. Mr. Allen said that it may have been a different footprint with a different configuration. Mr. Delano and Mr. Kaufman said that it was. Mr. Allen repeated that the buffer is a result of something that is totally manmade.

Mr. Baroni asked whether the applicant was seeking the amendment of the subdivision resolution. Mr. Allen said that they were not asking for a subdivision resolution amendment, only that the language on the plat be adhered to. Mr. Baroni said that the language on the plat conflicts with the language in the resolution and that cannot happen. The Board would need to reopen the subdivision to make it conform to the plat and Mr. Baroni doubted the applicant would want to do that. Mr. Allen did not know whether that was true, because the plat is a legal filing, filed with the County Clerk. Mr. Baroni said that the signed resolution is just as legal and people relied on the resolution just as much as the plat.

Mr. Baroni said that when the Planning Board negotiated the process with the original developer, this was what was developed. The developer said that they were asked to pick a footprint and they did, but they did not realize they would be limiting themselves in that manner. Mr. Baroni said that the building coverage speaks for itself, and the resolution and the plat cannot be different. The developer said that the way Mr. Baroni was reading it, the coverage would include any building structures and if that was true, why would the plat use the word "dwelling." Mr. Baroni explained that this was because someone else drafted the language on the plat, not the Town's Consultants. He said that from what he was hearing, the Town's Consultants were correct. Although everyone might be acting in good faith, but this is a substantial change, which would require a new public hearing. Mr. Baroni said that this would be a very difficult process. The developer asked if there was an easier way. Mr. Baroni said he was not sure, and that he was just seeing this for the first time, but there did not appear to be an easier way.

Mr. Kaufman asked the size of the footprint of the detached structure. Mr. Allen said that it was less than 800 feet. Mr. Kaufman said that they could reduce the footprint of the house, and keep the detached structure. Mr. Allen said that was not what the applicant was trying to accomplish in terms of marketability, but if they had no other choice, then they would need to consider the situation. He asked if the Board would be willing to reopen the subdivision for this lot. Mr. Baroni pointed out that the applicant would need the consent of all the lot owners. The developer owns all of them, so that is not a problem.

The developer said that lots four and five have a larger footprint, and lot three has a tough spot to build on, so he would never be asking for this on those lots. However, this is a flat piece of property, and he thought what he was trying to do would work well on the site.

Mr. Delano asked how the public part of the process would work. Mr. Baroni explained that the applicant would need to publish a notice, have public hearing, a new resolution would have to be adopted and the applicant would be subjected to a new statute of

limitations. The developer asked if it could be limited to only this lot. Mr. Baroni explained that they would be reopening the process and the only difference would be this lot, but the resolution would apply to all the lots. He advised the applicant to speak with his own counsel.

Mr. Allen said that reopening the subdivision is a risk the applicant has to weigh, if the Board was comfortable with proceeding that way. Mr. Delano said that it was his recollection of the wetland buffer was that there was a man made nursery operation on the next lot. The Board agreed. He also recalled that there is some type of overall stormwater management for the project, as opposed to lot-by-lot; in that case, the applicant would have to substantiate that the designed system could take that increase or revise the system. Although it is clearly not a wetland, it still needed to be dealt with respect to stormwater. Mr. Allen explained that they have already reduced the impervious areas, so he did not think there would be a problem. Additionally, they would provide Kellard-Sessions with proof that it still worked.

Chairman Michelman liked Mr. Kaufman's suggestion to reduce the house footprint by 800 sq. ft. Mr. Delano pointed out that the applicant could get a permit for 4,206 sq. ft. house and then work on the garage issue as they move along. The developer said that most houses now seem to want a four car garage, and he would not be able to have a four-car garage in a building with a 4,206 ft. footprint, and keep all of the desired interior spaces. The developer pointed out that there is a height requirement and then there is a height allowable requirement, and that is why he went to a higher height requirement; it actually makes it look architecturally better. Ms. Black suggested a three-car garage. The developer said that when people buy the houses, they want a four-car garage.

Mr. Allen said that there are three options for the applicant to consider: reduce the house size and make the garage work; revisit the subdivision resolution; or ask for approval of the lot and come back for the garage later. They would consider these options and come back to the Board.

Mr. Allen asked if the Board was going to consider this a wetland, and require a permit. Mr. Kaufman said that he would refer this to the consultant and in the worst-case scenario, the applicant would need a permit and to go to the Conservation Board. he thought it was clear that the Board contemplated this buffer would be disturbed. However on the IPP, it is a minimal amount of impervious surface in the buffer; the location of the house was placed and the pool only skirts the buffer. In this application, there would be much more coverage within the buffer. This would all go back to whether this was a wetland, and if so, the quality of the wetland.

In the interim, Mr. Kaufman will refer the plan to Mr. Sessions.

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The meeting was adjourned at 10:24 p.m.

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