

**TOWN OF NORTH CASTLE
PLANNING BOARD MEETING
15 Bedford Road
Armonk, New York 10504
October 6, 2008
7:00 p.m.**

PLANNING BOARD MEMBERS PRESENT:

Peg Michelman, Chairman
John Delano
Gene Matusow
Jane Black
Steve Sauro

ALSO PRESENT:

Adam Kaufman
Town Planner

Roland A. Baroni, Jr., Town Counsel
Stephens, Baroni, Reilly & Lewis, LLP

Tony Kunny
Kellard Sessions Consulting, P.C.
Consulting Town Engineers

Valerie Desimone
Planning Board Secretary

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

APPROVAL OF MINUTES – SEPTEMBER 22, 2008

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

PUBLIC HEARING & NEIGHBOR NOTIFICATION:

**CRONIN
Special Use & Accessory Apartment
Section 1, Block 9, Lot 17-2
481 Bedford Road
Peter Gregory, P.E. – Keane Coppelman Engineers, P.C.**

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 16 out of 20 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present. Mr. and Mrs. Wayne of 7 Banksville Road, Mr. and Mrs. Schuler of 483 Bedford Road and Mr. Cavalero of 479 Bedford Road were present.

Mr. Dan Hollis was present on behalf of the applicant along with Mr. Peter Gregory, Mr. Lopez and Mr. Cronin. Mr. Hollis explained the applicant was seeking special use permits for (1) gross land coverage, (2) FAR and (3) an accessory apartment.

Chairman Michelman asked the applicant to explain the application as planned for the benefit of the neighbors present. Mr. Hollis explained that the Town code sets forth criteria for special use permits. There is no special condition for any of the three items being sought by the applicant. The criteria they need to meet are the generic criteria. He presented a Google Earth photo to the Board. He indicated the locations of Route 22 and the proposed house. They had moved the house 8' to the south and lowered the height by 2'. There will be fencing on both sides of the property to make the house as unobtrusive as possible. The gross land coverage permit wouldn't be necessary if they weren't planning to keep the building that will contain the accessory apartment. The proposed house will line up with the other houses along Route 22.

Mr. Gregory explained that the application proposes the removal of a portion of the existing dwelling in the front portion of the property. The portion being removed will bring the house back to more of a historical character, which was built in early 1700s. The applicant is also proposing to bring the new driveway to the mid portion of the property where the home will be. The idea behind the driveway is to preserve certain large specimen trees in the area. The applicant was also trying to preserve the wooded area along the rear portion of the property. There will be a new septic system to serve the four-bedroom dwelling and a new well. There is an existing tennis court that will be removed and additional screening and fencing is proposed on both sides.

Chairman Michelman asked if the applicant had any of the plans previously shown to the Board and Mr. Gregory said he did. He showed the existing survey and indicated all of the main points. He indicated the rock outcroppings as well. Dr. Matusow asked if the plan was an accurate depiction of the location of the house that is shown to the north and Mr. Gregory said that it was. Mr. Gregory showed the site plan and explained that the curb cut will pass in front of the new footprint for the renovated cottage. As the driveway comes up, it respects the septic area and the tree canopy. He added that they tried to limit the areas of disturbance. Mr. Gregory explained that there is currently an existing septic system located in an easement to the south that serves the cottage.

Chairman Michelman asked if neighbors had any questions or comments, and invited them to come closer to view the plans. Mrs. Schuler wanted to know where her house was in relation to the new house. Mr. Gregory explained the locations to her satisfaction. Mrs. Schuler also asked about the setbacks, and Mr. Gregory said that at the closest point it is approximately 38' away. She asked where the fence would be located, and Mr. Gregory explained that it would go from where the fence is for the tennis courts and continue to the back. The neighbors wanted to see the fence and Mr. Lopez presented a rendering. One neighbor asked how high the fence was and Mr. Lopez said that it would be 6' high and supplemented with evergreens to assist in screening.

Mr. Schuler asked if the plans were to scale and Mr. Lopez said that they were. He explained that the house was two-stories from the point he was referring to. Mr. Schuler asked the height of the main dwelling and the garage. Mr. Gregory said that he was not sure of the exact figure, but knew that it would not exceed code. Mr. Schuler thought that the garage looked like it would stick up much higher than the 6' fence.

Mr. Cavalero said that he opposed the application. The new plan with the screening shows the house 8' closer to him. He said that his house was originally part of this property and that his driveway comes to the very edge of the property. He said that he would see the applicant's very large house when he looked in his backyard and no screening would suffice. Mr. Cavalero said the applicant was also removing a number of town-regulated trees and he did not believe a 6' fence would do much. Additionally, he explained that he is the neighbor with the septic for the cottage on his property. He submitted date stamped photos reflecting the septic overflowing onto his yard. Dr. Matusow asked who was responsible for the maintenance of that system, and Mr. Cronin said that he was, and it had been repaired.

Mr. Cavalero referred to the rendering presented by Mr. Lopez and said that he believed that the trees would be bare in the winter and that they are all bare at the bottom. With respect to the Planning Board's sixth request (information relating to easement and what the applicant plans to do with the existing septic) he said that he has not yet seen any information. Mr. Cavalero said that he was concerned about the removal of trees. Chairman Michelman said that no one likes to see trees cut down, but when construction occurs, trees have to be cut and the applicant is trying to save as many significant trees as they can.

Mr. Cavalero asked to see a rendering of his view of the applicant's house because he believed he would be looking at an 85' long 32' high wall (meaning the house). Mr. Lopez showed it to him. Mr. Cavalero said that the aerial doesn't show how sparse the trees are at the bottom. Mr. Lopez stated that the rendering does show the trees with bare branches 15' high. Mr. Cavalero said that it was sparse as high as 20'. Mr. Lopez said he would look into it. Mr. Lopez explained that because of existing trees and the supplemental screening, much of the house would be screened to the neighbor. Mr. Cavalero disagreed and said that the screening would not suffice, especially because the screening Mr. Lopez referred to is further from him. Mr. Cavalero reiterated that the house has been moved 8' closer to his property. He felt that the applicant's house would be in his backyard. Mr. Lopez pointed out that there is an elevation difference as well; Mr. Cavalero drops down 10-15'. Mr. Cavalero said that was only in one location and that in another location, the topography is level. Mr. Lopez said that they are adding additional trees in the area of concern.

Mr. Cavalero asked why the septic was not totally contained on the applicant's property if they are going through the trouble of installing a new septic. He did not see why he had to keep the septic on his property. Mr. Gregory explained that the septic is constrained due to the site conditions and drainage. The new septic system will be limited to four bedrooms. The cottage will be limited to two bedrooms and the strain on the septic on the Cavalero property would be reduced. Mr. Cavalero asked if one of the rooms still had a closet, and Mr. Cronin said that it did not.

Mrs. Schuler, the neighbor at 483 Bedford Road, said that even though the applicant showed the Google Earth aerial, she thought the Board should walk the site. She invited the Board to come onto her property and see the site and the view from her house. She suggested they wait several weeks until the leaves have fallen off the trees. She said she did not want any of her

privacy or the beauty she has seen over the last 22 years to be compromised. Mrs. Schuler said she did not want to look at a fence, or headlights from cars or shrubbery that could die. She wanted to know who would require that any dead shrubs would have to be replaced. She was concerned because she thought she would be able to see house lights from the second story. Mrs. Schuler stated she would like to see the house be pushed further forward. Chairman Michelman explained that the neighbors had to recognize that situations change over time and so do adjacent lots, but that the Board is very sensitive to neighbors and screening.

Mr. Schuler stated that the site on which the house will sit is a solid ledge that extends all the way out. He said he knows this because he had to blast in order to get his house built. He did not believe that any planting or fencing in that area would be able to go in without blasting all the way to the property line. Mr. Gregory explained that he has performed soil testing in that area and they have considered the possibility to plant. Mr. Lopez recognized that they would need to introduce some topsoil (approximately 2 ½ feet) if there isn't enough. As far as fencing, the fence companies drill and then drop the posts into the post holes.

Chairman Michelman asked if the applicant was stating that they would be able to do sufficient planting and Mr. Lopez said yes. Chairman Michelman asked if the Board had the landscaping plan, and Mr. Kaufman said that they did. Mr. Lopez explained that because the ground slopes on both sides, the stormwater will be deflected into those areas so the topsoil will not get too arid.

Mr. Cavalero asked how high anything would grow in 2 ½ of topsoil on top of ledge. Mr. Lopez explained that all of the trees on the back of the property are in the same type of soil. Most trees' roots spread out rather than burrow deep. Mr. Cavalero asked if this was the first time the Board was seeing the house relocated 8' to the south and the Board said no. Mr. Cavalero said that he was in possession of a letter from every surrounding neighbor and submitted a copy to the Board for the record.

Chairman Michelman asked Mr. Cavalero where he would prefer the house, recognizing that the applicant has a right to build on the property that he owns. Mr. Cavalero said that he would like to see the site plan to see where a house would make sense. Chairman Michelman asked if there was some specific situation that would be more appealing or where the house would be satisfactory in Mr. Cavalero's opinion. She cautioned that she was not saying that the Board would accommodate his desires, but wanted to hear what he had to say because she had a feeling that no location would be acceptable to him. Mr. Cavalero said he did not know if any other location has been considered. Chairman Michelman assured him that the board has been looking at this for a while and they have made changes in consideration of the neighbors. She advised him, and the other neighbors that the applicant has a right to build on the property within the town regulations. She said that the applicant was going to build a house, and the Board wants to know if the neighbor has any constructive input.

Mr. Cavalero said he would like to see the house moved forward. He was concerned not only with the exposure of the structure, but the fact that it is on the peak. He would like to have the septic removed from his property. Chairman Michelman explained that septic was legal due to an easement that has been in place for some time and that had nothing to do with this approval. Dr. Matusow explained that relocating that system was not this Board's job; it would be an engineering issue and be an issue between the neighbors. Mr. Cavalero said that he did not think the screening was adequate and now the house was proposed 8' closer to him. Chairman

Michelman pointed out that they are approximately the same distance as the neighbor from the other side.

One other neighbor, who did not identify himself, said that moving it forward would be much better. The property drops approximately 7-8' in that area, and there is sufficient screening. He recognized that there was a problem with the beech tree, but what difference would that make when 26 trees were coming out. Chairman Michelman explained that the applicant was removing those trees in order to construct their home and they have worked hard to save as many trees as possible. She said that the Board was concerned about the 125-year-old beech tree and had asked the applicant to save it.

Ms. Black asked whether there would be sufficient room for the septic system if the house was moved forward and Mr. Gregory said he did not believe there was enough room in the rear for the whole septic.

Mr. Kaufman stated that the major issues were the location of the house and the screening for the neighbors. In his opinion the landscaping plan is reasonable when combined with the fencing. The Board could consider alternatives to the fence, but the area would remain somewhat open due to the existing vegetation and that was why the Board had suggested the fence. He said that the Board has done what they could in terms of screening, but there was no question that the house would be visible to the neighbors.

Chairman Michelman asked what would happen if the house was moved forward. Mr. Kaufman said he did not know how much room the applicant had. Mr. Gregory explained that they could not move it to the rear because of the neighbor's well. Mr. Kaufman asked how many feet the applicant had to move the house forward. Mr. Gregory believed it could be moved 10'-15' closer but pointed out that the beech tree was in that location. Mr. Lopez explained that the beech tree had a very large canopy and drip line and they had to allow room for the construction equipment. Mr. Kaufman said he was operating under the assumption that the tree would be removed. Mr. Lopez explained that they have located the house as far forward as possible without losing the tree. He explained that the beech tree is a very good specimen with a beautiful crown, and in his opinion it is the nicest tree on the property and could live a very long time.

Chairman Michelman asked, hypothetically, where they would be able to move the house if the tree was not there. Mr. Gregory said that if the tree wasn't there, it could possibly be moved another 25' forward (near the tennis court). Chairman Michelman asked how that would affect the neighbors. Mr. Gregory explained that it would make it right in line with the house to the south. Chairman Michelman asked what both of the neighbors would see. Mr. Gregory explained that one neighbor would be looking right into the back yard, but would still see the portion of the house and the pool area; they'd be looking at garage instead of house. The top of the elevation would drop significantly for the other neighbor. Mr. Gregory said that he checked the topography and it would be approximately a 3-4' drop. One neighbor asked the house was being built as large as it could be, and the Board said it was not.

A neighbor, who did not identify himself, noted that the property widens significantly in a particular area. Mr. Gregory explained that the property is wider in the front portion than in the mid portion where the tennis court is. Ms. Black pointed out that the house would be moved into a narrower part of the property. Mr. Gregory agreed and said that the tree would be gone as well. Mr. Delano noted that the change in elevation was only 2'.

Chairman Michelman asked if Mr. Kunny had any issues. Mr. Kunny said that he still needed the stormwater system details and the calculations and the applicant still had to demonstrate that they are not able to keep the septic entirely on their property.

Mr. Delano noted that, in all likelihood, there would not be enough room for the stormwater mitigation. Additionally, with respect to the decking, he thought that the applicant would need more walkways in the rear. There is no egress from the library or the kitchen to the pool deck; it only goes into the lawn. He thought that might cause the ground coverage numbers to increase. Mr. Gregory said they would look at that in relation to the floor plan.

Mr. Delano stated that he was the person who suggested moving the house forward and noted that he actually wanted it moved further forward, but he now saw the concern of the tree root system. He did not know if there was any reason why the house couldn't be rebalanced left to right on the property. He pointed out that the applicant went from being too close to the left setback to all the way on the right setback. Mr. Gregory thought that was a result of the relocation of the pool.

Mr. Hollis pointed out that the public hearing remained open at the town board level, but the LPC made their recommendation that the house be a historic landmark. Dr. Matusow said that he understood that the town board was asking the Planning Board for further guidance about the accessory apartment. If the town board fails to give the designation, it changes the practical ability to get approvals, and the whole residence would have to be razed. The town board was considering whether moving the house forward would be a practical thing to do. He asked how the Board felt about the accessory apartment and whether it would change the ultimate position of this residence if this Board recommended they let the accessory apartment go. He believed that if the accessory apartment was done right, it would be excellent and exactly what the Town is looking for. He did not think it would result in a significant change of the location of the house. Dr. Matusow said that he felt the Board should recommend to the town board that they approve the landmark designation for this property and then let the application move forward and make the accessory apartment conform to the code. He did not see any reasonable alternative to the proposed location, nor did he see a reason for relocation. Dr. Matusow said that he did not see how moving the house forward would really benefit the neighbors. If anything, he thought that it would make the noisiest part of the application (i.e. the pool / patio) closer to the neighbors. He said that he understood the neighbors' concerns, but they have to understand that the adjoining property would some day be developed. He thought that the site was being developed in a reasonable way, and that the only real issue is screening and he thought that can be adequately addressed.

Mr. Hollis said that he asked Mr. Cronin if he cared whether there was a fence or plantings near the Schulers, and Mr. Cronin said that he would be willing to do whatever would make the neighbors happier. The applicant and the professionals have done the best they could do for this site.

With respect to Mr. Kaufman's comment regarding documentation that a variance was granted, Mr. Hollis explained that the accessory apartment structure is within the setback of the side yard. He suspected that the Town either granted a variance or approved a subdivision with a nonconformity. Mr. Hollis said that Mr. Kaufman told him he was going to look into it. Mr. Kaufman said that he had not had a chance to look into that issue yet.

Mr. Delano suggested that item "j" might be more appropriately done during demolition. Mr. Kaufman agreed. Mr. Delano asked if the applicant was going to address the issue of the existing septic with the Health Department and noted that they are going to have a major say in the continuance of the system. Mr. Hollis explained that the applicant has a record of repairs; the issue referred to by Mr. Cavalero was a pipe issue, not a system failure. Mr. Hollis added that the stress on the system would be greatly reduced.

Mr. Hollis explained that it was not likely the applicant would be able to discontinue that system or to find another spot is not feasible because then there would not be enough suitable space for the stormwater mitigation. Mr. Cavalero asked if that has been demonstrated by engineering and Dr. Matusow explained that the Board has asked the applicant to provide that information. Mr. Hollis said that he would provide that information, but the applicant was not under any obligation to relocate the septic because the easement runs with the land in perpetuity.

Ms. Black stated that she spent a lot of time looking this over, in comparison to the prior plans. She thought the applicant could slide the house forward, but she did not see how it could go in the wide area up front. She thought that if it was moved at all, it would cause the loss of the beech tree, and she thought the impact to the neighbors to the south would be worse. Ms. Black said that screening should be reevaluated and discussed with the Schuler's. Dr. Matusow thought they should discuss it with the Cavaleros as well. Mr. Hollis said the applicant would accept a condition that required the screening be to the satisfaction of Mr. Kaufman. Mr. Kaufman suggested the applicant talk to neighbors first. Ms. Black said that the project would save a historic building that the LPC has deemed worthy and would be beneficial for the Town.

Mr. Delano pointed out that the Town Board is looking for something from this Board. Dr. Matusow suggested that the Board not close the public hearing until the Board sees the revised landscaping plan.

Dr. Matusow moved to make a positive recommendation to the Town Board in support of the designation of the structure as a historical landmark. The motion was seconded by Mr. Sauro and unanimously approved. Mr. Kaufman said he would prepare a draft, but he needed to know if the Board wanted to see an alternative plan moving the house forward. The Board said they did not; they only wanted to see a landscaping plan.

Mr. Lopez asked if the revised landscaping plan was to include a solid fence or not and the Board said he should talk to the neighbors about this. The neighbors said they'd be happy to reach out to Mr. Lopez. Mr. Cavalero asked if he could see the landscaping plan and the Board told him that there is one in the Planning office but that the applicant would be modifying the plan.

Dr. Matusow moved to adjourn the public hearing until the applicant submits a revised landscaping plan. The motion was seconded by Mr. Delano and unanimously approved.

OTHER BUSINESS:

ARMONK PROFESSIONAL CENTER
Amended Site Plan
Section 2, Block 11, Lot 7-11
355 Main Street

Bob Davis, Esq. – Shamberg, Marwell, Davis & Hollis, P.C.
Discussion of Engineer's Report

Mr. Hollis was present along with Mrs. Cardyle. He explained that the public hearing was closed at the last meeting. Chairman Michelman believed there were two issues before the Board: either put all of the equipment on the roof or put some of the units on the roof and leave those on the ground on the ground.

Mr. Peter Garville was also present on the applicant's behalf and he did not believe the Chairman's statement was accurate. He said that there are nine units on the roof and they want to add one more there; but the ones that are on the ground would remain on the ground. Chairman Michelman asked if those units would be screened and Mr. Kaufman explained that was a part of the proposal. Mr. Garville explained that the applicant's representative said that it would not be necessary to screen the units on the ground. Chairman Michelman said that the Board was in possession of the representative's letter.

Chairman Michelman asked for comments from the Board and / or the professionals. Dr. Matusow said that this application did not make him happy. He thought that the Board was faced with an applicant that willfully disregarded the approval of the Planning Board in full knowledge of what was happening and that deviation would require review and approval. Then, after illegally relocating the units onto the roof, the applicant had no intention to come for reapproval and if it were not from a citation from the Building Inspector, they would not be here. He said that "it would please him" if the Board decided the a/c units should be moved to the ground with no consideration of the costs. The prior Board made a good faith effort to try and protect neighbors from noise, but all the evidence before the Board now demonstrates that units on the roof, if properly screened would produce less of an auditory impact than the units on the ground. Dr. Matusow thought that if the prior board would have had the same information that this Board had, things might have been different. However, this is simple. If the Board could deal with visual screening, etc., given the facts the situation, he would support an amendment that the units that serve the upper floors be on the roof with the appropriate sound and visual barriers.

Chairman Michelman agreed that the issue is not where the units belong, but the disregard for the approval and the process. She felt that the Board was essentially forced to adjudicate the violation. The violation occurred and they were advised to try and correct the violation by coming to the Planning Board and that is where they've spent all this time. She said that the Board sees this often. An applicant is in violation, but doesn't get a summons and doesn't go to court; they are sent to the Planning Board for adjudication. She said that she had a problem with the process. If the Building Department hadn't taken notice, the violation would still be ongoing. She agreed that the evidence is such that if the prior board had been in possession of it, they would have found that the units should be on the roof. She found the issue difficult here, and thought that the adjudication process of the Town has to be addressed. She added that the Board should approve the plan with 10 units on the roof with the adequate screening.

Ms. Black agreed. The proposal to have 10 units on the roof seems to work the best. She thought that the screening that was portrayed should be part of the approval. She thought that would help even if there were not a lot of noise right now. The neighbors were originally told that the units would be on the ground, and she thought that screening on both the ground and the roof would benefit them.

Mr. Kunny said he had no issues. Mr. Kaufman said he had no issues, but wanted to know what the Board had to say about the color of the screening. Mr. Hollis explained that the ARB preferred beige on top and black on the bottom, although the applicant had been showing all black. Mrs. Cardyle stated that the neighbors didn't like all black. Mr. Delano pointed out that they wouldn't be able to see it. Mr. Hollis agreed and thought the beige and black would be worse. He said that the applicant would be happy to leave it all black. One of the applicant's representatives said that when she visited the neighbors' property, they brought us to an area where they said they could see the roof and said that they were concerned with the white topped roof, and based upon the photos they thought the beige would blend in better than the black. Dr. Matusow thought the Board should give the neighbors what they want. Mr. Hollis said they were fine with that; it will be all beige on the roof and black on the ground.

With respect to alternative #4 of the Garville report (going from 9 units to 10 on the roof). Mr. Hollis explained that there was testimony that the mitigation on the ground would not be effective and that there is no necessity for further buffering. He pointed out that the report indicated that screening in that area might actually make it worse. Chairman Michelman asked what "further buffering" meant if there is nothing there now. Dr. Matusow noted that the testimony was that by placing sound barriers on ground, the noise level on the ground might be lessened, but the sound might be reflected upwards to the neighbors that were complaining. Mr. Hollis agreed with that summation. He presented a photo to the Board that shows the existing conditions. Mr. Kaufman said that he needed to look at the report to see exactly what was proposed; ultimately the applicant needed a revised site plan, but a resolution could be prepared.

COLEMAN
Special Use Permit
Section 2, Block 3, Lot 34
63 Wrights Mill Road
William F. O'Neill, RLA – O'Neill Architects
Discussion

Mr. Bill O'Neill was present for the application. He explained the applicant was seeking permission to construct a pool. The applicant has decided he does not want to build the enclosed pool house so that eliminates one of the special use permits, and that changes some of the numbers. Now, the applicant was proposing a cabana of less than 600'. He said that he had reviewed the memos. Chairman Michelman noted that the 600' cabana and the pool still caused the applicant to exceed the maximum for both FAR and gross land coverage. Mr. O'Neill agreed and pointed out that as the site exists currently, they were already over the maximum.

Dr. Matusow pointed out that since the application could have problems with the ZBA, he thought that this Board should wait to see if the ZBA approves it before they spend time hashing it out. The rest of the Board agreed. Mr. O'Neill said he had a question about Mr. Kaufman's comment regarding the landscaping plan. Chairman Michelman thought the applicant should wait until the ZBA application is granted.

Mr. Baroni asked if the Board had to do SEQRA at this level, and Mr. Kaufman explained that, in the past, the Board has treated it as a Type II action, as if it was a single-family house.

Dr. Matusow moved to refer the application to the ZBA and await their recommendation. The motion was seconded by Ms. Black and unanimously approved.

Mr. Kaufman noted that the applicant was going to decrease the amount of the gross floor area, but was increasing the amount of the gross land coverage by approximately the same. Mr. O'Neill agreed. Mr. Kaufman asked if the applicant really wanted to modify the application in this regard, and Mr. O'Neill said the applicant did, because he was very concerned about the timing, so was one less thing. Dr. Matusow pointed out that modifying the plan would not change the timing at all. Mr. O'Neill asked if the Board would look favorably on the special use permit, assuming that the ZBA approves the application. Dr. Matusow said that, in his opinion, in this particular case, with the pool tucked into the hill, he did not think that this will have a visual impact, and did not have a problem. Mr. Delano agreed.

Mr. O'Neill said that he would speak to his client based upon this conversation, and if the applicant wanted to change his mind again and enclose it, that is what they will present to the ZBA.

The next-door neighbor was present and he wanted the Board to know that he had no problem with either plan.

FRAISER
Special Use Permit
Section 1, Block 4, Lot 10-390
18 Maple Way
Rudolph Petruccelli, P.E. – Petruccelli Engineering
Discussion

Mr. Brandon Jones was present for the application. He explained that the applicant was planning the demolition of the existing in ground pool on a 1.6-acre lot and the construction of a new proposed pool in the rear of the residence. There are some things that are being proposed that will need the ZBA's approval.

Mr. Kaufman explained that this application is a little different; this applicant is proposing to reduce the land coverage by approximately 1,000 sq. ft. He added that it was a nice plan that relocates the pool from the front to the rear. He added that it was a well-thought out plan.

Dr. Matusow said that the Board had no idea what would come back from the ZBA because, in the past, they have gotten into planning functions.

Chairman Michelman noted that the applicant is at the maximum permitted and there is an issue with the setback in the back yard. Additionally, the existing house did not appear to meet the setbacks and she asked if there was a variance. Mr. Jones said that there was a variance. Chairman Michelman asked for a copy to be submitted to the Board.

Dr. Matusow moved to refer the application for the ZBA. The motion was seconded by Ms. Black and unanimously approved.

Mr. Kaufman explained that once the application was through the ZBA and came back to this Board, then they would discuss the screening.

Mr. Delano asked the location of the applicant's septic expansion area. Mr. Jones said he was not sure if it is depicted on the plan, but knew there was sufficient room. Mr. Delano said the applicant needed to make sure they were not putting the pool in an area designated as expansion area.

Mr. Delano noted that the applicant had two curb cuts, one of which has a poor sight line and recommended that they close the one off of Upland Drive, which would reduce land coverage. Mr. Jones explained that there are several children in the house, and there is a need for parking; one area had been asphalt and the applicant voluntarily removed that.

MOLLOY
Special Use Permit
Section 2, Block 5A, Lot 2A
2 Faraway Road
Mr. Molloy
Discussion

Mr. Brendon Malloy was present for his application. He explained that after the site walk he spoke to the Highway Department, who informed him that they would not allow the use of the 6" pipe. He said that he would have to figure out where he would put the additional surface runoff and the runoff for the pool.

He asked whether the storm design would require a 25 year storm or a 50 year storm. Mr. Kunny said that the applicant's engineer should contact him and they would discuss it.

Mr. Malloy said he was concerned that this will kill the project. He was not sure that he would have the room for this. Chairman Michelman suggested that before he abandoned this, his engineer should speak with the Town Engineer to see if there is a way to accommodate the issues.

Dr. Matusow said that if that issue was solved, the only other issue he saw was trying to save the tree. Mr. Kaufman added that they had also talked about screening the neighbor on the Greenway, but otherwise, this was very straightforward. Chairman Michelman agreed that other than the one issue, the others are not insurmountable. She added that if the pool goes in, then it would have to be filled from an off site source.

VENTORINO
Special Use Permit
Section 2, Block 17, Lot 4C
11 Sterling Road South
Craig A. Studer, ASLA – Studer Design Assoc. Inc.
Discussion

Mr. Craig Studer was present for the application. He explained that the applicant was seeking a special use permit. The existing lot is 2.11 acres. He indicated a small section of wetland and the 100' setback as well as the existing septic and the septic reserve and a chain link fence that separates the lawn area from a wooded area. In front, there is an existing driveway that comes up to a quarter round driveway.

The applicant is proposing an in ground pool with spa, an additional patio and pergola area with a fire pit. The existing deck will remain. In front, the applicant is proposing a new curb cut, which will lead to a square courtyard that would be in proportion to the house and create an area for the children to play. They will relocate trees from the driveway to that area.

Mr. Studer explained that he had submitted a fairly comprehensive plan that shows stormwater and drainage as well as a planting plan. He noted that there would be erosion control as well as temporary measures to protect the wetland during construction. Nothing will occur beyond the fence.

Currently, the site has just over 10,000 sq. ft. of coverage, which is approximately 11%. The basic allowable coverage is 9% and the maximum is 15%. The applicant's proposal will put them at 14.3%, which is roughly 300 sq. feet less than the maximum. Chairman Michelman thought that was large.

Chairman Michelman said that there was a lot of activity on the property prior to the current owner taking possession. Mr. Studer said he was not sure. The applicant bought the house in the summer and there was work going on inside, but he did not know if any other work going on.

Chairman Michelman noted that there had been discussion of 6' high entry piers along the street. She said that the Board did not have anything against 6' piers in particular but thought that 4' would be consistent with what already exists on the street.

Chairman Michelman asked if Mr. Studer had reviewed the memo from Mr. Kaufman, and Mr. Studer said he did not, but was confident that those issues would be addressed. Mr. Kaufman explained that this is the opportunity to bring the site into conformity; there are existing conditions on the site that are not on the survey. Additionally, it appears that some of the buffer was disturbed, and if so, that should be renaturalized. Lastly, there is a patio that was built in the rear of the house under the pergola that was not on the original site plan, but it should be part of the approval now.

Chairman Michelman asked Mr. Kaufman if he thought the Board should have the wetlands verified. Mr. Kaufman said that they should be, and that he would refer this to the Town's Wetland Consultant. Mr. Kunny said that he was still waiting for details on the design of the stormwater treatment system and that he still had questions about the grading, which is very close to the buffer. He noted that the applicant is also proposing planting within the buffer, which might require a wetlands permit. Mr. Studer asked if there was any indication that the current flagging of the wetlands was inaccurate and Mr. Kaufman said no; that the Board liked to have its own consultant verify.

Mr. Delano said that the applicant needed to delineate the septic expansion area. Other than that, he had no issues. Chairman Michelman advised the applicant to review the memos from the Town Planner and Town Engineer and address those issues as well as those raised by the Board at the meeting.

Mr. Studer asked the next available date for the application but the Board said they would not know until the applicant submitted the revised materials. Ms. Desimone advised Mr. Studer that applicants were placed on agendas on a first come, first served basis, so they should resubmit as soon as possible.

CONTE

Special Use Permit, Tree Removal

Section 2, Block 3, Lot 2-18

3 Terrace Circle

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

Discussion

Mr. Barry Naderman was present for the application, along with the applicant's architect and Mr. Conte. Mr. Naderman explained that the lot is 4.25 acres and has a manmade wetlands (indicated), which is part of the drainage design for the subdivision. There is also a rock outcropping. Mr. Naderman indicated the designated vegetative buffers, and noted that would be maintained. He explained that the driveway would be taken off the rock embankment. He indicated the locations of the motor court as well as the pool and cabana. The gross land coverage would be 19,773, and the maximum allowed is 20,681. Mr. Naderman noted that they would be over the basic, so they would need a permit. He added that they would also need a permit for the FAR because that would be at 12,490 and the maximum is 13,957.

Mr. Naderman explained that the project would be served by municipal sewers and an individual well. He indicated the well site. Mr. Naderman stated that they have done the testing for the drainage systems and he indicated where the pipe would be discharged into basin. Mr. Naderman added that he had reviewed the memos from the Town Engineer and the Town Planner and did not see any major issues.

Mr. Naderman presented an aerial photo, which shows that the portion of the property is pretty wooded and the only affected residence would be lot 17. The one side of the house has the garage and the driveway apron and the house is set much further down than the other house. The landscaping plan shows supplemental screening on a high elevation, and that will be very beneficial to the adjoining property owner.

Chairman Michelman said she still had concerns about the attic space. She felt that this would be a very large house, and a very tall house that would allow for space in the attic and on the second floor that is just slightly under 7' 6". She noted that if it was going to be higher than that there would be a problem. She pointed out that the Board was always concerned about vacant space. She suggested that because the height is 7'5", and the space could not be used, that the applicant bring it down a little so it doesn't look so imposing.

Mr. Naderman wanted to speak about the code itself. Chairman Michelman said that she knew what the code said: anything less than 7'6" can't be used. She noted that the height at 7'5" would be very easily converted.

Mr. Gary Sevitsky, the applicant's architect, said that with respect to the height of house, it was the design of the house that caused the roof space to go up to the attic. He said that there is no intention to use the attic at all; it was just a function of the roof slope. Chairman Michelman wanted to know why there was a stairway to the attic if the applicant did not plan on using it. Mr. Sevitsky said that was to provide access to the utilities that will be up there; it is a maintenance staircase to get to the attic utilities. He said that he could probably bring the height down. Mr. Sevitsky noted that the "roof in the attic is way down" and there are dormers in the attic. It is the geometry of the roof that brings it up. He said that if he started playing with the slopes of the roof, it would change the aesthetics. When you start playing with the slopes of the roof, it doesn't look right; it is a 12 on 12 slope and that is appropriate for this house.

Chairman Michelman stated that the house is in a good location, but there will be neighbors that will be looking up at it. She said that she was only raising her own points of view. Mr. Sevitsky asked if it would be beneficial to show what the actual sight lines would be and Chairman Michelman thought it might help the neighbor next door. Mr. Sevitsky said that there was only one house that would possibly be affected, and if properly screened, it would not be an issue.

Mr. Naderman stated that he often hears concerns about size, massing, and whether a house is out of character with the neighborhood. He believed that the only other houses that would see the applicant's house are very large homes with very large massing, one of which has no screening whatsoever. The applicant's house will have far less of a presence than the others. The applicant's house will meet the overall height requirements and that is what the code is for.

Chairman Michelman was also concerned with the pool house because of its full kitchen, living room, bathroom and fireplace. Mr. Naderman recognized her concern and said that as with some other pool houses, this was to be an open pavilion-type structure. He said that the way it had been dealt with in the past was for the Board to prevent year round use by restricting heating. Chairman Michelman said that the Board has also restricted the installation of full kitchens. Dr. Matusow said that the Board has required that the kitchen equipment is such that it only be for casual use. Mr. Sevitsky said that the owner has no intention of using the space as an apartment. The Board said that they were sure that was true, but they also knew that homes get sold, and new people come in who will use it as an apartment. Dr. Matusow said it was the Board's job at this stage to 'keep a lid on it' so that they do not face problems in the future. Ms. Black noted that the plan shows a six-burner stove and heating, and those are things that the Board would likely limit. The applicant said he would have no problem with making adjustments.

Mr. Kaufman noted that the house is properly sited. The Board discussed the massing and the cabana and those were his only issues.

Mr. Delano asked if the applicant would run into the tree preservation easement, and that they may be prevented from having the fence in that area. Mr. Naderman said he would look into this. Dr. Matusow asked if it was a pool fence or a general fence. Mr. Naderman said that it was a regular fence that would enclose the whole backyard. He indicated where the fence line would be. Mr. Kaufman said that even if the fence were permitted there, it would be a good idea to put the fence along the easement line to clearly delineate the preservation easement. In other words, move it in. Mr. Naderman said he would look into it.

Chairman Michelman asked if Mr. Kunny had any issues. Mr. Kunny said that he was waiting for the applicant to submit the storm drainage calculations. He added that the front drainage seemed to be extended to the buffer area and would need a wetlands permit. Mr. Kunny also suggested that the applicant take another look at the driveway to avoid the rock face cut. Mr. Naderman said that the rock face cut is there now. He said that the applicant was going to try and pull it forward, but they would also have to increase the grade of the drive to the 14% maximum. He said that he looked into moving it forward but he did not want to get too close to the neighboring property, but there might be something we could do.

Ms. Black noted that this was a large house, but that it was fairly well sited on the property and not really visible except to one neighbor. She added that it was surrounded by very large homes.

Chairman Michelman asked if the applicant had been to the ARB and Mr. Naderman said they had not yet. Mr. Kaufman said that the Board could refer the application to the ARB if the Board was comfortable with the house location. Mr. Delano said that Mr. Kaufman might want to express Chairman Michelman's concern about the attic space. He also suggested fake dormers and dropping the collar ties, that way it would be clear that it is substandard, and there would be no daylight.

The applicant would be referred to the ARB, and was directed to address the other issues.

POOLS OF PERFECTION

Site Plan

Section 2, Block 13, Lot 3D-1

523 Main Street

Chris Carthy

Discussion

Mr. Chris Carthy was present for the application. He explained that he was looking for a referral to the ZBA. Chairman Michelman noted that the applicant has made great progress, but the key is to deal with the NYS DOT before we go any further. Mr. Carthy said that was impossible. Chairman Michelman said that the Board cannot do anything until they know that the DOT would allow the applicant to make these changes in the DOT right of way.

Mr. Carthy said that he hired professionals and went to the DOT, and they told him that they were overworked, underpaid, and that they had no time for this. He said that the DOT was going to take forever and he thought he could go to the ZBA without the DOT approval.

Mr. Kaufman explained that although the applicant submitted a plan that addressed the comments of the Board, he did so by putting the improvements on property that the applicant does not control. He said that before any time was invested with the ZBA, they needed to find out whether this is feasible for the DOT because if it was not, then the plan could not be implemented.

Mr. Carthy said that he wanted to try to do it concurrently. Mr. Kaufman said you could, but if he proceeded that way, and got the variance from the ZBA but no approval from the DOT, the applicant would not be able to get site plan approval from the Planning Board. Mr. Carthy did not see any harm in going to the ZBA first since he would need both approvals. The Board didn't see the harm either, but advised him that the ZBA might reject the application until they hear from DOT.

Dr. Matusow moved to refer the application to the ZBA. Ms. Black seconded the motion and it was unanimously approved.

BYRAM RIDGE ROAD SUBDIVISION

**Preliminary Subdivision
Byram Ridge & Hunter Drive
Section 2, Block 5C, Lot 10
Jim Ryan, RLA Senior Associates**

Mr. Jim Ryan was present for the application. He explained that the applicant went to the Conservation Board and made a number of improvements. Although the changes were subtle, they resulted in positive impacts. They have reduced the number of trees to be eliminated; now they are only removing 78, whereas before it was almost double that number. Of those 78 trees, only 31 are considered in good condition by an arborist.

On lot two the applicant would use the existing curb cut and come in just behind the row of trees. On lot one, the driveway is on Hunter Drive, and they consolidated the curb cut on Hunter Drive.

Mr. Ryan explained that they have kept the driveway as far out of the buffer area as possible, and they would continue to work on that aspect of the plan. He said that he had received the memos from Mr. Kaufman and Mr. Kunny, and he would address those issues.

Mr. Ryan said that it had been suggested that he look at the possibility of a common septic and water. He explained that was not the preference of the Health Department because the Town would have to set up a water and sewer district for the area. It is the applicant's feeling that they would end up with the same amount of septic disturbance anyway. He did not think that there would be any net benefit.

As far as the lots are concerned, the applicant is looking at alternatives for conservation. All of the alternatives involve trying to introduce a common roadway, and would result in more impervious surface than what is shown currently.

Chairman Michelman thought that one of the Conservation Board's most interesting comments was the suggestion to consolidate lots 4 and 5 because they felt one of those lots was inadequate. She said that the issue was "right on." There is great improvement, but there are still issues for further improvement that may not totally meet the applicant's objective. The applicant should seriously consider reconfiguring those lots because, from the Conservation Board's perspective, they are inadequate, and this Board respected their opinion. She thought that the applicant was trying to squeeze a lot into a relatively small amount of space.

Mr. Ryan said that, with respect to Mr. Kaufman's comments, the applicant was not proposing any disturbance in the steep slope area. Additionally, regarding the lot sizes, all of the lots will have 1-acre minimum. He asked the Board to schedule a public hearing.

One neighbor asked if he could ask the applicant a question. Chairman Michelman said that this was not a public hearing. The neighbor said that he'd be happy to ask the applicant's representative after the meeting. Mr. Ryan said he was happy to meet with the neighbors.

Ms. Black was not sure this was ready for the public hearing because of lots 4 and 5. Mr. Kaufman said that he suggested a conservation subdivision to give the applicant the flexibility with the lot sizes and the frontage, not to increase impervious surfaces. Chairman Michelman

said that as soon as some of the major issues are addressed, then the Board could consider scheduling a public hearing.

Mr. Delano said he would like to see a subdivision layout that did not require a wetlands permit, and that takes into consideration the grading easement near Hunter Drive. Mr. Ryan asked if the Board wanted all of the trees to come down to satisfy the comment about the sight line easement. Dr. Matusow said that was not the Board's directive; the applicant merely had to demonstrate what trees would have to come down in order to honor the easement.

TURET

Preliminary Subdivision

East Lane, West Lane, Nichols Road

Tim Allen - Bibbo Associates

Discussion

Mr. Tim Allen was present on behalf of the applicant. He explained that the applicant was proposing a 4-lot subdivision off of East Lane. Essentially, there will be three new houses and they would be renovating the existing house. The applicant received the Board's comments at the site walk. He wanted to go through the consultants' comments to nail down the issues and move toward a public hearing.

With respect to item #2 in Mr. Kaufman's memo, Mr. Allen said he was not sure if the Conservation Board had met to discuss the matter, but he would like to make sure it is done. He said that he had not yet seen that memo. The Conservation Board representative said they haven't been to the site. Mr. Turret said that it was referred to that Board in April. Mr. Kaufman said that the applicant should contact the Conservation Board and request to be on their agenda.

Mr. Allen said that he had spoken to the Town Wetlands Consultant who believes there is a wetland area that is adjoining the right of way. Chairman Michelman said that the Board had received that memo. Mr. Allen said that he would address those comments.

Mr. Allen asked about the open space committee review. Mr. Kaufman said that the Board would send it to them for their review, and if they have comments, the Board would consider them.

Mr. Allen asked about Mr. Kaufman's comment about the ARB. Mr. Kaufman explained that there is a provision in the subdivision regulations that permits the Board to refer a subdivision to the ARB, but noted that the Board typically does not do that. The Board said they were not interested in making that referral because that could wait until the site plan stage.

Mr. Allen noted that the application was referred to the police and fire departments, but had not yet received any comments.

With respect to general comment #1 (letter from the Historical Preservation Committee) Mr. Allen said that he had not seen that memo. Mr. Kaufman said that it was only a brief memo and the Board would send him a copy. Mr. Kaufman said that he would like to discuss it further with the Board but would wait until he reviewed the memo first.

With respect to the wetlands permits, Mr. Allen said that since the last meeting, he had focused on septic and stormwater areas. The septic areas were tested and are all fine and they also tested for expansion areas. Mr. Allen said that he relocated the stormwater treatment areas and he was seeking a permit for the intrusion of one portion of the infiltrator. Mr. Kaufman asked if the applicant moved the basin at all and Mr. Allen said that it wasn't in the wetland area, just the outlet. Mr. Delano said that he would like to see a plan that doesn't require a wetland permit. Mr. Allen said there was not a plan like that. Mr. Allen said that he would provide a functional analysis. Mr. Kaufman said that if the Board received a plan that didn't require a wetland permit, the Board wouldn't need a functional analysis. Mr. Allen said that was not likely and that was why they would provide the analysis.

With respect to item #4, Mr. Allen said that he did not recall discussing the teardown of the house. The applicant is planning on rehabbing it with a new garage and bringing it up by one story. Mr. Kaufman said that the point was that if the applicant was going to put such significant resources into this house, there is a chance to get a better orientation for all the houses if this house was torn down and started new. He explained his idea of how to reconfigure the siting of the houses. Mr. Allen said that was a decision that the applicant would have to seriously consider. The Board recognized this.

Mr. Turret said he was considering whether there was a way to do away with the cul-de-sac, and allow reconfiguration of the houses that way, but was not sure if it would work in terms of drainage. Mr. Kaufman said that would be a possibility if the engineering worked. He added that if the applicant was contemplating revising the plan, that was ok. Mr. Allen said that the Board would have to consider significant waivers (i.e. private road standards, fire, school buses, and others). The applicant had wanted to submit a plan that met code. Chairman Michelman noted that if the applicant if looked at current plan, the existing house looks odd in comparison to the other houses.

Mr. Allen said that he could do a narrative of what the private road would encompass for the next submission. There are issues with the common drive because there are more houses than the Board would permit off a private road. Mr. Kaufman said that the issue would be frontage. Mr. Baroni said that it wouldn't be a common drive, it would be a private road. Mr. Kaufman asked if the applicant was showing a town road standard, and Mr. Allen said he was. Mr. Kaufman said that the applicant could go to private road standard. Mr. Allen said that he could not because there are a limited number of houses that could use the private road, and there are already existing homes that use the road, so the applicant would exceed that number. The applicant is willing to work with the Board to move in another direction, and he would give the Board an explanation as to what would be required if the applicant was to vary some of the requirements.

Mr. Allen said that there are a lot of trees that will come out as a result of this plan. Additionally, the applicant would not be able to do a conservation subdivision because of the septic and wells. Mr. Kaufman said that they might be able to keep essentially the same configuration with smaller lot sizes, but get a conservation easement to encompass the wetlands. Mr. Allen said he would consider this.

Mr. Allen said that the applicant has shown the landscape buffer area to screen the back of Palmer Road. Mr. Kaufman asked if the applicant had the ability to move the septic to the rear. Mr. Allen explained that that the further back into this lot you go, the rock area increases. The

applicant has tested the site considerably, and unfortunately, the septic area needs to be in the area as proposed. It would not work if they tried to flip the house and the septic. Mr. Kaufman asked if it was possible to take that lot off the common driveway and provide the two more western lots with individual driveways from the cul-de-sac and flip that house and access the house on the other side. He thought that might provide more room. Mr. Allen said that there is a steeper slope in that area that would prevent moving the septic too far. He said that he had considered having a driveway on the other side, but they would have to be very careful about impacting the neighbor; and if they reconfigured the lot entirely, that could potentially happen, but in the current configuration that would not work.

Mr. Allen said that there is a minor steep slope disturbance area. Specifically near the driveway area for lot #3 and the house site for lot #4. However, he believes that they are fairly minor in nature. With respect to the wetland disturbance buffer area, he would like to talk to the Conservation Board and get a referral back to this Board.

With respect to comment #12, it is the applicant's preference that there be two separate driveways for lots 3 and 4 (which is the application before the Board).

The Board asked if the Fire Department had responded, and Mr. Kaufman said they had not. Mr. Allen noted that Mr. Kaufman had referred to a culvert pipe, which has been there for some time, and the applicant is proposing that it remain. He said that he believed the contiguous buildable area, which is shown on sheet one, was adequate. Additionally, they have shown the underground utilities on the plan and the area for children to wait for buses would be up to the Board.

Mr. Turret asked if the Planning Board would be lead agency and Mr. Kaufman explained that they were by default because no other agency responded.

Mr. Allen said that he would address the memos from the Town Engineer and the Wetlands Consultant. He said that he needed direction as to where the Board wanted the applicant to go. This plan meets the code, and he said he would provide the narrative as discussed. Mr. Delano said that the applicant needed to know how they would deal with the memo from the Historical Preservation Committee. Mr. Kaufman suggested the applicant do a phase one study. Mr. Allen said he had not yet seen that memo, but would look at it. Mr. Kaufman read the letter from the Committee, which indicated that, based upon reported resources they recommended a phase one study for the property. Mr. Allen said he'd review the letter and further discuss it with the Board. Mr. Kaufman noted that it was not a very difficult survey.

Mr. Allen recognized that he still needed to address the engineering memo but said they had put it off because they wanted to nail down the plan before they moved forward.

Dr. Matusow pointed out that if the change in the road didn't work out, then the Board was looking at a pretty final plan. The Board suggested the applicant consider tweaking some of the houses if possible.

Mr. Allen asked if the Board was comfortable with the reduced frontage on the cul-de-sac and the Board said they had no issues with that.

PROJECT ABANDONMENT:

The Board was considering an action that would deem any application abandoned if no communication is received from the applicant within one year.

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

APPOINTMENT OF ACTING CHAIR:

This issue related to appointing an acting chairman if the Planning Board Chairman was absent or otherwise unavailable.

Dr. Matusow moved to appoint Mr. Delano as the acting chair until 2009. The motion was seconded by Ms. Black and approved by all, except Mr. Delano, who accepted the responsibility but recused himself from the vote.

The meeting was adjourned at 10:11 p.m.
