

**TOWN OF NORTH CASTLE
PLANNING BOARD MEETING
15 Bedford Road
Armonk, New York 10504
April 13, 2009
7:00 p.m.**

PLANNING BOARD MEMBERS PRESENT:

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

ALSO PRESENT:

Adam Kaufman
Town Planner

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

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

Mr. John Fava
Conservation Board Representative

Valerie Desimone
Planning Board Secretary

The meeting was called to order at 7:03 p.m.

APPROVAL OF MINUTES:

March 23, 2009

Mr. Delano moved to approve the minutes from the March 23rd meeting as amended. The motion was seconded by Ms. Black and unanimously approved.

PUBLIC HEARING:

BERNSTEIN

Site Plan

Section 1, Block 9, Lot 4-10

5 Gifford Lake Drive

Frank Giuliano – Landscape Architect

Consideration of site plan resolution

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 8 out of 9 cards were returned and one envelope and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application. There were none.

Mr. Frank Giuliano was present on behalf of the applicant. He explained that he had read the resolution and did not have any issues with it. He said that the applicant has done the percolation tests and they have all turned out positive with the engineer's approval. The other issue was the verification of coverage and there is no problem with that. There were no issues from Mr. Kaufman or Mr. Coyne.

Dr. Matusow recalled being on the site and it looked acceptable, but there are facts that have to be faced. He said that he would like to say yes to this proposal, but, this is a pool; a recreational use. The entire pool will be in the wetland buffer. The entire property is entirely in a CEA. He wanted to know the rationale that the Board used as criteria that allows them to permit this pool entirely in a wetland buffer, which is entirely in a CEA. He suggested that this might be one of those applications that the property is located in such a way, that a recreational amenity should not exist.

Mr. Kaufman explained that his rationale is that there is an existing lot with a significant amount of lawn area and erosion problems. The applicant's plan resolves those problems. He added that the Conservation Board's rationale is that this will be a more environmentally sound outcome, even with the pool. Dr. Matusow said that if this was the case, this was a good rationale.

Mr. Giuliano agreed that this was a wetland, but when the subdivision was built, walls were built to create a drainage ditch to get the water into Gifford Lake. Because no mitigation measures were taken, the ditch has eroded significantly and the applicant is willing to repair and mitigate the damage. Additionally, a ½-acre of land will go to a "no mow zone." The actual mitigation is quite extensive. None of the harm was created by the applicant, but the applicant is willing to correct it. He said the applicant was reforesting almost an acre of land in exchange for the 900 sq. ft. pool addition

Dr. Matusow asked if it was safe to say that this property would be better off environmentally with this work done and Mr. Kaufman said that was true. Chairman Michelman noted that the Conservation Board came to the conclusion that this mitigation would improve the site greatly.

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

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

POWER

Special Use Permit

Section 2, Block 5, Lot 14-16

Quaker Meeting House Road

Charles Gardner, RLA

Discussion

Consideration of special use permit resolution

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 12 out of 13 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application. There were none.

Mr. Charles Gardner was present for the applicant. He explained that the applicant was seeking to modify the clearing and grading limit line. He indicated the old line as well as the new proposed line. The applicant also plans to install a pool and adjoining terraces. They have modified the plans based upon the comments from the Town Engineer. Mr. Gardner stated that they have not done the calculations yet for the percolation, but he was working on it and would get it to the Town Engineer as soon as possible. Mr. Gardner said that he had read the resolution and had no problems with it, though he would like to be able to work with Mr. Kaufman on screening on the periphery; he said he'd like to try and coordinate it with the neighbor because they are adding planting as well.

Chairman Michelman said that as far as she was concerned, the screening concern was the only open item. She said she understood that the applicant wanted to cooperate with the neighbor, but the Board is concerned with what the applicant was doing on his own property. She wanted to make sure there will be substantial and effective screening. Chairman Michelman noted that it was a condition of the resolution. Mr. Gardner said he understood and that it was a condition that he satisfy the Town Planner.

There were no additional issues. Mr. Delano moved to close the public hearing. The motion was seconded by Ms. Black and unanimously approved.

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

BEEHIVE

Site Plan

Section 2, Block 15, Lot 1A

30 Old Route 22

Barry Naderman – Naderman Land Planning & Engineering

Chairman Michelman read the public notice for the record. Ms. Desimone noted that all cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application. There were none.

Mr. Barry Naderman was present on behalf of the applicant, along with the applicants' architect, Bill O'Neill and the applicants themselves. Mr. Naderman explained that the applicants were seeking site plan approval for their restaurant expansion. There would not be any increase in seating or an increase in the area of the apartment above. He explained that they would be doing minor improvements to the parking and aesthetics.

Chairman Michelman pointed out that there was an issue as to what is really happening to the structure of the restaurant, was this considered a teardown or a renovation. Mr. Naderman explained that after a meeting with the applicant's architect, the Town Planner and the Building Inspector, a question arose as to whether this would be considered a tear down. In its current form, the Building Inspector deemed this would be considered a tear down; however it could be modified so that it was not a tear down.

Chairman Michelman stated that the Board was led to believe that this would be a modification to an existing building. Mr. O'Neill said that is what it was. Chairman Michelman said that it was important that whatever is presented to the Board consist of the facts. She said if this was a tear down, it is legitimate, as long as the Board knows what they are dealing with a tear down or a renovation. Mr. O'Neill said that in his opinion, it was not characterized as a tear down and that this was a relatively new notion for the applicant. He explained that in speaking with Mr. Fon, they talked about changes that, in Mr. Fon's opinion would make it not a tear down, this could happen without changing the site plan.

Mr. Naderman said that this was not as deceitful as it sounds. All along the applicant has had conceptual floor plans that modified certain aspects of the building and that hasn't changed. Once Mr. O'Neill was retained to make the plans work, it was revealed that it would be considered more as a teardown than a renovation. Chairman Michelman said that was fine, but the Board needed to know which one it was, a tear down or a renovation. Mr. Naderman said that, at the end of the day, they are proposing to do what is shown on the site plan. There is really no change to that. The changes, from a site plan standpoint, would be to keep some of the interior walls.

Mr. Baroni commented that the Board would have to be very careful for it not to be a teardown, so that the building does not lose its non conforming status. Mr. Kaufman said that in this district, the Planning Board can establish the setbacks. Mr. Baroni asked whether, in that case, the Planning Board needed to know exactly whether this was a teardown and Mr. Kaufman said no. Therefore, the teardown of the building is not an issue, since the Planning Board can establish setbacks if required.

Mr. Naderman said that the applicant has secured the required zoning variances for coverage and parking and those aspects will all remain exactly the same. Mr. Baroni stated that if the setbacks were different than what they are currently, the Planning Board needed to know whether they would be establishing new setbacks. Mr. Kaufman agreed. Mr. Baroni said that, in that case, the Board needed a confirmation from Mr. Fon as to whether this was a teardown or not. Mr. Kaufman said they did not because the Board would be approving the setbacks anyway. He thought that the real issue is whether, if it is a teardown, it impacts the site plan itself. He said that if they were really talking about a teardown, this could leave the Board with more options as to where to locate the building and how to maximize parking, etc. Mr. Naderman said that would typically be true, but in this instance, there are not a lot of options for the building. He explained why moving the building one way or another would reduce the overall amount of parking. He said this is really the best location for the building.

Chairman Michelman asked whether the restaurant would be closed during the renovation and Mr. O'Neill said that it must be closed, as per the Building Inspector. It is too small a building to undergo this type of renovation and to keep the restaurant open.

Mr. Naderman said that regardless of what it is called, the project remains the same. Chairman Michelman said that it is obviously a teardown if the applicant would have to close the restaurant. She said that she did not have a problem with the improvements that are being made, that was not the issue. The Board needed to know what it is they were dealing with on a site plan, a teardown or a renovation. Mr. O'Neill thought that was a little hard on the applicants and Mr. Naderman. Chairman Michelman said this was between the professionals and the Planning Board. Mr. O'Neill agreed but said that since the last meeting, he sat down with the applicant and designed the plans. Mr. Naderman said that until Mr. O'Neill designed the plans, his perception was that this was a renovation. A meeting took place, at Mr. Fon's request, with himself, Adam Kaufman, Barry Naderman and Bill O'Neill that they all meet to review the plans to determine whether this was a teardown or not.

Mr. Naderman added that it was always anticipated that the restaurant would have to be closed during the renovations because it would have been impossible to keep open during the work. This aspect has no bearing on whether it is a tear down or not.

Chairman Michelman asked if there were any issues. Neither Mr. Coyne nor Mr. Kaufman had any issues. Ms. Black asked which plans the applicant preferred, if they had a choice. Mr. O'Neill said that they preferred the plans the Building Inspector has deemed a teardown. Part of that design was based upon the design of a really nice kitchen. The plan works the best and fits within the site plan footprint. This plan has also been conceptually approved by the ARB.

Chairman Michelman asked if they had read the resolution and neither Mr. Naderman nor Mr. O'Neill had.

Dr. Matusow said he wanted to be sure that if the Board granted the resolution, that what they are permitting would be exactly what will get done. He wanted to know if the resolution accurately reflected what would be done and Mr. Kaufman said that it would depend on whether the Board was approving a renovation or a teardown.

Mr. O'Neill said he did not see too much of a difference between the renovation situation and the teardown situation. Mr. Delano noted that the plans seek the demolition of the exiting building and the construction of a new restaurant. The resolution that he read seems to take into account the situation the Board was dealing with.

Mr. Naderman said that the site plans are exactly the same; they haven't changed. Chairman Michelman noted that the applicant still needed to provide detailed floor plans to the satisfaction of the Town Planner. Mr. Naderman recognized this.

Ms. Black said that she had no problem with this being considered a teardown, provided the site plan is the same, the site functions better and the ARB thinks it is more attractive that way.

Ms. Black moved to close the public hearing. The motion was seconded by Mr. Sauro and unanimously approved.

Mr. Delano noted that they needed to renumber something on page six of ten. Mr. Kaufman agreed and noted that on page 3, in the first complete whereas, there was a minor typo.

Dr. Matusow moved to approve the resolution as corrected, authorizing the teardown of the existing building and the construction of a new restaurant building. The motion was seconded by Ms. Black and unanimously approved.

VARSALES

Lot Line Change

Section 2, Block 8, Lots 13A & 13A-5

2 & 4 Nash Place

Barry Naderman - Naderman Land Planning and Engineering, P.C.

Consideration of Final Subdivision resolution

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 17 out of 18 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application. There were none.

Mr. Barry Naderman was present on behalf of the applicant. He explained that there have been no changes since the prior approval. Chairman Michelman explained that the Board had already approved this as a final approval, but it lapsed, so a new public hearing was needed.

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

Ms. Black moved to approve the resolution. The motion was seconded by Dr. Matusow and unanimously approved.

STEINER

Special Use Permit

Sec 2, Block 4, Lot 1-3

37 Sarles Street

Luigi DeMasi, AIA

Consideration of site plan resolution

Chairman Michelman read the public notice for the record. Ms. Desimone noted that all cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application. There were none.

Mr. DeMasi was present on behalf of the applicant. He explained the applicant was seeking approval for a 900 sq. ft. addition on the first floor, but there would be no change to the gross land coverage. He noted that they received ARB approval on April 1st.

There were no issues from either Mr. Kaufman or Mr. Coyne. Chairman Michelman noted that there was a typo in the resolution; on page 2 in the third whereas, it should be gross floor area not land coverage. It is below max by 1,177 sq. ft. Mr. Kaufman said that he would make that change. Mr. DeMasi said that the only issue he saw was the number in the area calculations. It should be 988 and he wrote 918.

There were no other comments from the Board.

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

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

SHELL GAS STATION

Site Plan

375 Main Street

Section 2, Block 11, Lot 6-6

Walter Gorman, PE

Discussion

Chairman Michelman noted that this was a continuing public hearing and asked if there were any neighbors present for the application. There were none.

Doug Mandart was present on behalf of the applicant. Mr. Mandart stated that they have made many changes based upon comments from Mr. Kaufman. One notable change is that they have realigned the fence, which allows the applicant to get additional parking on the site. This change enables them to achieve all the required parking on the site. The tanks will be relocated onto the site to get them out of the road. Part of the concrete pad will extend into Kent Place, but he was told that was acceptable.

Mr. Mandart said that the applicant wants to tidy up the site to the south and add a curb and landscaping. The applicant would like to pave the area behind the station, provide proper stormwater mitigation and would like to enclose the dumpster. As far as the fuel tank, a description of the pad has been included on the plans. The applicant also wants to include 6 bollards around the tank since that area will be used for parking now. Parking on the site will be angled to permit cars to drive to the rear easier. There is a loading area designated on the site.

Mr. Mandart said that the applicant would like the Board's input regarding curb cuts. Right now there are none. Chairman Michelman stated that this was quite an improvement. She asked if Mr. Coyne had any issues. Mr. Coyne said that his comments were listed in his memo. He noted that with respect to the curb cut on Kent Place, a wide cut or no curb cut is less safe as it could be. Perhaps something could be done there. With respect to the tandem spaces proposed, he was not sure if the code speaks to that. Mr. Kaufman said that typically, the Board does not approve tandem spaces, but given the use here, it seems reasonable. The Board agreed. Mr. Coyne said that additional dimensioning might need to take place to make sure that everything is appropriately sized; the applicant is maximizing every square inch of this site, so they should consider requiring a survey. With respect to the dumpster, he did not know if truck access to that dumpster area would really be possible. Mr. Mandart said that it was located where it was because they thought that it would be better than in the corner, but they might be able to put it somewhere else.

Mr. Kaufman said that the most significant planning issues are the curb cut and the missing sidewalk link.

Mr. Delano agreed that the applicant needed a survey. The Board does not want to approve something only to find out that it is in the town right of way. Mr. Mandart said that one had been done at the beginning of this project. Mr. Delano said that should be submitted. Additionally, Mr. Delano said that the owner of the property should be on board with this application and the applicant should submit proof that the owner approves these changes. Mr. Delano added that it seemed the applicant would also need a wetland permit.

Ms. Black said she was concerned about the curbing too. Right now, anyone can enter and exit at any point along Kent Place. She'd like to see a designated entrance / exit, along with a sidewalk link and additional landscaping.

Dr. Matusow asked about the handicapped parking and Mr. Mandart indicated the designated spot. He added that there are also existing ramps. Dr. Matusow asked if this was sufficient and Mr. Kaufman said that it was. Dr. Matusow asked about the loading space and whether that was sufficient and Mr. Kaufman said that it was probably sufficient, but the proposed loading space might impede access to the pumps. Mr. Mandart said that it would impede one spot. Dr. Matusow asked if the Board was permitted to approve that and Mr. Kaufman said that they could.

Dr. Matusow asked if the Board had any indication about what the space in the rear can be used for. He noted that it was in the buffer and adjacent to the stream and pointed out that garage-type work can spill things into the wetland. He wanted to know what can be done to restrict activities in this area. Mr. Kaufman said that the Board could impose a condition that there be no outdoor servicing. Dr. Matusow thought that the Board should look at all of these things while the applicant was before the Board, because this was their one shot to take care of this site.

Dr. Matusow added that there seems to be a large shed on the back of the property and wanted to know if it had the necessary permits, including a wetland permit. Mr. Kaufman said that if it is a shed and it is on this property then the applicant would need to show it on the site plan. Mr. Mandart said he was not aware of any permanent structures. Dr. Matusow said he was not sure if it was still there, but it was in his notes, and he wanted to raise the issue.

Dr. Matusow asked about the waste oil tank and thought it might be located in such a way that it may or may not require its own wetlands permit for being there. Mr. Kaufman said that he had no information on this. Dr. Matusow said the Board needed to look into this. Mr. Kaufman said that the Board could legitimize that. Dr. Matusow agreed, but he wanted to know and deal with this now because he did not think the Board was "going to have another bite at this apple." He added that the Board needed to know exactly what they are approving in terms of the outdoor lighting.

Mr. Sauro liked the idea of the deciduous trees on Kent Place and Main Street. Mr. Mandart acknowledged this but said that was something that would come later. Mr. Sauro asked if the applicant would be willing to consider a sidewalk connection on Main Street. Mr. Mandart said the applicant would be willing to consider that.

Dr. Matusow noted that the Board started this application talking about the heater and where the oil tank would go, and as long as he saw all these other items taken care of he would not as concerned with those locations.

Mr. Delano moved to adjourn the public hearing. The motion was seconded by Ms. Black and unanimously approved.

MASSARO
Subdivision
Section 6, Block 5, Lot 2-3
54 Custis Avenue
Jim Vanolli, P.E.
Consideration of preliminary subdivision resolution

Chairman Michelman noted that this was a continued public hearing and asked if there were any neighbors present for the application. There were none.

Mr. Jim Vanoli was present on behalf of the applicant. He said he spoke to the Town Engineer regarding the "bump out" that is on the drawings and that can be traced back with no problem. It had been interpreted to be a parking area, and since the applicant met the parking requirements for the two-family homes, he removed it. It was interpreted by others to be a part of the hammerhead so he has no problem with putting it back. The fire department approved his November 5th plans, which show a 20x55 rectangle. Those spaces at the time were parking spaces. The hammer head was not deleted from the plan, the parking spaces were, but he can put it back without a problem.

Mr. Vanoli said that they have accommodated the comment to create a gentler slope. With respect to the sprinkler system, the recommendation was that a system be installed in all two-family houses. He had included this feature, and then discovered that was not required under the building code for the Town of North Castle. He wanted to know why this applicant was being held to higher standard than others. He said the applicant has indicated that he will install larger house connections, so they would be willing to make accommodations for that.

Mr. Vanoli said that he had reviewed the resolution and it was fine. He wanted clarification on certain items, and they were addressed to his satisfaction. Mr. Kaufman said that he would keep in the condition relating to the draft homeowners' agreement until Mr. Baroni signs off on it.

Mr. Kaufman asked if the applicant was ok with the language in the resolution regarding the sprinklers. Dr. Matusow thought that if the Board was to be satisfied with a plan that shows oversized water lines, then the condition should be reworded. Mr. Kaufman agreed, unless the applicant was going to install sprinklers. Dr. Matusow stated that Mr. Vanoli had just said the applicant was not willing to do that. Mr. Kaufman questioned whether this would be acceptable to the fire department. Mr. Vanoli claimed the fire department said they were. Mr. Kaufman pointed out that the fire department approved of this when the plans contained a note that there would be a sprinkler system. Mr. Vanoli said that the fire department has no say in this matter because it was not part of the code. Mr. Kaufman said that the concern is that the applicant is not building the road to town standards. He thought the Board should get a signoff from the fire department that they are ok with this.

Dr. Matusow also thought the Board should require language that the applicant would have the water lines installed. Mr. Kaufman agreed. Mr. Kaufman asked the Board what they wanted to

do about the fire department. Dr. Matusow did not see that the fire department had any choice but to ok this proposal as long as this meets the current code. He did think that the fire department should be notified that the plans have changed. Mr. Kaufman asked what would happen if the fire department says that they want it. Mr. Vanoli said again that they had no authority to say that they want it because it is not required under state or town code.

Mr. Coyne noted that the town code requires an 80' diameter cul-de-sac that can be modified based upon approval from the fire department. Because this proposal does not meet that standard, the applicant needs approval from the fire department. Mr. Vanoli said the fire department issued a letter expressing their approval. Mr. Kaufman said again that that approval was based upon the prior note that the applicant would have sprinklers. If the sprinklers are not part of the plan anymore then the fire department could determine that they want the 80' cul-de-sac.

Someone [*did not identify himself*] said that he had had conversations with the Building Inspector, and was told that he did not have to have sprinklers.

Mr. Delano noted that there is a turning area and driveway width that is in conformity with the fire chief's requests. The lines will be such that should sprinklers ever become code, then it can be satisfied. Mr. Kaufman said that he would have a conversation with the chief.

Mr. Delano noted that in granting preliminary subdivision approval, the Board listed all the documents that were prepared, but there is more than one plat in the set, so they need to know which one they are approving. Mr. Kaufman said he would clarify this.

Mr. Vanoli asked if they could specify the name of the sheet because if he submitted a partial set of drawings to the health department, they would want to know why it is incomplete. Mr. Kaufman agreed.

Chairman Michelman asked if the Board should adopt a neg dec at the meeting and Mr. Kaufman said that by adopting the resolution, they would be doing that.

Mr. Delano noted that on page 4 of the resolution, in the second whereas from the bottom, the reference to a wetlands permit needed to be removed. Mr. Kaufman agreed.

There were no other issues.

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

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

BERLINER
Special Use
Section 2, Block 5, Lot 12-14
12 Quaker Meeting House Road
Rivi Oren, RLA
Discussion
Consideration of special use permit resolution

Chairman Michelman noted that this was a continued public hearing and asked if there were any neighbors present for the application. Sharon Riener of 14 Quaker Meeting House Road was present.

Ms. Oren was present on behalf of the applicant. She explained that based upon comments at the last Planning Board meeting, they have relocated the pool and changed the fence, taking the fence away from the property line. The new location of the pool is in the revised clearing and grading limit line. That way, the fence will just be surrounding the pool. The woods remain free and open and the fence is away from the concerned neighbor. This enabled the applicant to reduce the amount of pavement and they removed about 80 sq. ft. of coverage. She added that the applicant likes this plan better.

Chairman Michelman agreed that this was an improvement. She noted that Ms. Oren failed to mention that the spa was enlarged. Ms. Oren said that it was not enlarged; she used the same size. The pool is much smaller. Chairman Michelman said that regardless, the applicant did reduce the overall square footage.

Chairman Michelman asked if the neighbor had any questions. Ms. Riener said she did not. She just wanted to be assured that the new trees would not encroach on her property. She said the applicant had assured her that this would not happen, so she was satisfied.

Mr. Kaufman asked if there was any vegetation adjacent to the proposed trees, and Ms. Oren said that she was not aware of any. She said that the applicant was not interested in adding any more than what is necessary. She said she'd be willing to work with the neighbor on the screening.

Ms. Oren noted that there had been a comment in the draft resolution about infringement on the side setback, but there are only four stepping stones that are not really considered "structures." Mr. Kaufman explained that because this was associated with the pool, he believed it had to be counted, but the applicant would have to deal with the Building Department on this issue. Mr. Baroni thought they would likely have to be counted and if that is the case, then the applicant would have to go to the ZBA.

There were no additional issues or comments. Mr. Delano moved to close public hearing. The motion was seconded by Ms. Black and unanimously approved.

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

CONTINUING BUSINESS:

20 BANKSVILLE AVENUE
Referral from Town Board
Section 1, Block 12, Lot 7D
20 Banksville Avenue
Joe Crocco – Joe Crocco Architects, P.C.
Discussion

This item was removed from the agenda.

CALDER CENTER – FORDHAM UNIVERSITY
Site Plan
Section 2, Block 1, Lot 8
31 Whipoorwill Road
Dr. John w. Wehr, Director of the Calder Center
David Rigney – Office of General Counsel
Declare lead agency intent

Mr. Kaufman explained that the Board just needed to declare intent to be lead agency and that the applicant was told that they did not have to appear.

Mr. Delano moved to declare intent to be lead agency. The motion was seconded by Ms. Black and unanimously approved.

LAST LICKS

Mr. Bill O'Neill was present on behalf of the applicant, along with Mr. Costello, the Vice President of the company. Mr. O'Neill said that the applicant was seeking to avoid site plan approval due to the unique circumstances of this lot. Such a waiver is permitted where there is no increase in parking requirement. He said that the applicant plans a change of use from retail to carry-out restaurant. The space had a variance at one time allowing tables. Off site parking is no longer available. Once that was removed, the applicant had to revert to retail use. The town has since adopted the carryout restaurant code, and applicant wants to change the use to that type.

Chairman Michelman asked if there was adequate parking on the site and Mr. O'Neill said there was not, but there would not be any increase in the parking requirement. He noted that it was unlikely that the applicant would ever be able to show adequate on site parking. He believed there are total of 9 spaces based upon a shared parking agreement. Mr. Kaufman explained that in the calculations they utilized the maximum attainable number of spaces if there were no cross parking easements. If the applicant can have 23 spaces within the confines of your site, that is what would be used.

Mr. O'Neill said that they would require a landbanked parking agreement and / or a variance. The parking requirement is 34 spaces. Mr. Kaufman said that the applicant would never be able to meet that. Mr. O'Neill agreed and said that at most, they could show up to 31 landbanked spaces. Mr. Kaufman agreed that change of use from retail to carryout restaurant doesn't increase the parking requirement. He said that this might have been a good time to clean up the files and that would be the only reason he'd recommend going through the site plan process. Mr. O'Neill said that the parking situation was changed in 1998 and there was approval in 2001 for the addition to the building. There is an approved site plan that shows the current parking situation. Since there is no change in parking, it is like going from retail to retail.

Mr. Kaufman advised Mr. O'Neill to make sure the applicant meets the requirements for a carry out restaurant (i.e. the amount of floor area devoted to seating and the total number of seats). Mr. O'Neill said he would be happy to submit a diagram in this regard; he did not think they would have a problem. Mr. Delano asked whether the applicant would have to come to this

Board at all if the Board was amenable to the waiver, and Mr. Kaufman said that they would not; that everything would be done through the Building Department.

Chairman Michelman asked if anyone had any issues with the waiver. No comments were made by the board at this time.

Mr. Delano moved to grant the site plan waiver subject to demonstrating that they meet the carryout restaurant requirements. The motion was seconded by Ms. Black and unanimously approved.

MUHART
Special Use Permit
Section 1, Block 5, Lot 15-21
7 Hobby Farm Drive
John Kalin, P.E.
Consideration of amended special use permit resolution

Mrs. Muhart was present for the application. She said that she had given the Board a plan about how to lay out the sport court on the property and they were now looking for approval on that plan. Mr. Kaufman explained that when the Board originally approved the sport court, it required the court to be green, but when the applicant got the permit, she wanted a theme on the sport court. He said that this Board would need to change the resolution if they chose to permit this theme.

Bill from Hudson Valley Sport Court said that he has courts that are colors other than green; it depends on what games will be played on the court. Here, the applicant wanted to have a Yankees theme.

Chairman Michelman said that the Board has always been concerned for the neighbors because this is very visible to the neighbors. Mrs. Muhart said that it will not be; she plans to add the required screening, and she would also be happy to add additional trees and fencing to close off her entire property.

Mr. Rob Silpe of 5 Hobby Farm Drive wanted to know why, as matter of process, was there no public notice for this application. Chairman Michelman said that there was but Mr. Kaufman corrected her and said that there was no notice for this amendment. Chairman Michelman stated that an amendment to a resolution does not necessarily require public notice. Mr. Baroni said that if this was considered a substantive change, the Board could require a new public hearing.

Mr. Silpe asked if there was a technical difference between a sport court and a basketball court and Mr. Kaufman said there was not. Mr. Silpe said that he had never seen any indications of holes or backboards or rims on the plans, so he never considered this as a basketball court and he wanted to know if this should have been indicated on the site plan. Chairman Michelman said no, that the Board's concern was the size. Mr. Kaufman said that the Planning Board was concerned with the gross land coverage. The use of it is permitted in a residential district and the Board doesn't really delve into what kind of sport will be played on it. Mr. Silpe asked whether there will be 13' high baskets on the court, because if so, he thought it was silly to allow something that high when the town limits fence height.

Mr. Silpe also commented on the landscaping plan that was approved. He said that he has seen examples of extensive landscaping provided for pools typically less than ¼ the size of this court. Here, a plan was developed which included a row of rhododendrons that probably won't last, along with 11 bushes and 2 trees. He said he knows the concern this Board has for privacy and he did not think that was addressed here. Chairman Michelman said that there is landscaping here. Mr. Silpe said that what was approved hardly seems adequate.

Dr. Matusow pointed out that the Board was not trying to screen the entire property line, just to make sure that the sport court would not be a visual problem from the neighbor's point of view. Mr. Kaufman added that there would not be complete screening, but there were clusters to break it up.

Mr. Silpe said that this entire thing could be seen from his driveway. Dr. Matusow did not think it was necessary that as you leave the driveway that there is no possibility to see what is on the neighbor's property. The Board's concern ought to be whether or not they have adequately screened the court from the neighbor's house. He thought the Board was probably ready to look at a revised landscaping plan to make sure that the screening is sufficient. Mr. Silpe also suggested the Board require additional screening for Hobby Farm Drive because the court is in clear view of the houses across the pond. Chairman Michelman said that when the Board walked the site, that had been one of their concerns.

Ms. Muhart said that she has lived in the house for 17 years, and she guaranteed there would not be a vision issue. She said again that she was more than happy to give Mr. Silpe as much privacy as a fence and planting could provide.

Dr. Matusow said that Mr. Silpe had a point about the height of the basketball nets and that he had never thought of that issue. He thought that the Board should consider a new landscaping plan and that they should keep this issue in mind. Dr. Matusow said that the applicant's current proposal will give the Board the opportunity to correct any deficiency.

Mrs. Muhart wanted to know what the difference was between seeing two hoops on her property, versus seeing the basketball hoops on driveways everywhere. Dr. Matusow said that because the applicant was seeking to add an entirely new structure the Board needed to take this into consideration.

Mr. Kaufman recognized that the Board wanted to increase the number of trees and asked if they also wanted to require fencing. Dr. Matusow said he wanted to see a revised landscaping plan from the applicant and for the Board to review that plan. The rest of the Board agreed. Chairman Michelman said that she did not have a problem with the proposal, but she wanted to see the plan.

Mr. Baroni asked if the Board was going to require a new public hearing. Dr. Matusow asked if they could hold off on that decision until they saw the revised plan to see how much of an issue this would be. Mr. Baroni said that they could, but that would delay this application. Chairman Michelman said that she did not believe they needed a new public hearing and Dr. Matusow and Ms. Black agreed.

Mrs. Muhart said that since they have already started construction, and one of Mr. Silpe's concerns is that he is watching the construction, she wanted to know if they could move ahead quickly. Dr. Matusow pointed out that if the applicant wanted to do this quickly, she could move forward with the approved plan. Mr. Sauro suggested they just add a couple of evergreens to screen the hoops.

Mr. Lou Marcus said that he lived across the street and he could see this area. He thought that the Yankees emblem / theme would commercialize this area.

The Board said that there was nothing that would require the applicant to stop construction; they just wanted to see a revised landscaping plan.

Bill (from Sport Court) asked if the colors were prescribed in the resolution. Mr. Kaufman said that green was the color permitted under the resolution. Bill stated that even if the applicant chose to conform to the existing resolution, they would still need a second color for the basketball key. Mr. Kaufman stated that since the resolution says green, they would need to amend it to allow for a second color.

Mr. Kaufman said that the applicant may want to consider abandoning the Yankees theme, and just proceed with the approved resolution. He asked if the Board wanted to amend the resolution to permit the second color. Dr. Matusow thought that the Board should deal with everything all at once. He said that the applicant or the applicant's representative read the original resolution and no one ever mentioned the fact that they would need two different colors.

Mrs. Muhart said they would need to halt construction because they need a second color. The Board did not think they would have to stop, but the applicant said that they would because they had to order the materials.

Mr. Delano said he wouldn't be opposed to altering the colors of the court tonight, absent the Yankees theme. He said the neighbor raised a real issue about the commercialism of the court once the Yankees theme was adopted. He said he would not be opposed to changing the color scheme though to add a second color. Mr. Sauro agreed with the modification of the change of color but suggested the applicant might be opening a can of worms with the theme.

Ms. Black thought that the second color should be fairly subtle and something that would blend in with the landscaping. She said that the Yankee logos would be a problem for me. Ms. Black said she would not want to see it if she was a neighbor but if the applicant really wanted that, she would want substantial screening that would prevent the neighbors from seeing it

Dr. Matusow said that the Board has heard from a neighbor who informed them that the original plan may not be sufficient for screening the sport court originally approved.

Mr. Silpe said that once the trees came down that the applicant needed to clear for the court, he had a clear view of the court from his front door. The landscaping plan did not accommodate this. Mrs. Muhart stated that Mr. Silpe bought his property knowing how his lot was laid out. Dr. Matusow asked if Mrs. Muhart was still willing to screen the Silpe view of the court. He reminded her that if she was not asking for any change, they would not be having this discussion. This is an opportunity for the Board to make an improvement to the plan. He wanted to know if she was still amenable to screen this, as she said she was earlier and if so, he wanted to make sure it is part of whatever approval given.

Mr. Sauro said he was sensitive to the screening issue but in fairness to the applicant, the Board had its chance to get the necessary screening. He did not think the subtle changes in the color of the court constituted a material change that would require the Board to significantly revisit the site plan and the landscaping.

Chairman Michelman said she was inclined to agree with Mr. Sauro, but the issue is that this has come back for a new face of the court, and now the applicant needs two colors. It would have been useful to know the colors initially and now the Board has to amend the resolution.

The Board asked for the neighbors' input and Mr. Silpe said that he understood the need for two colors but he thought that they should be green and something else. He thought that would have the least impact. Chairman Michelman did not think it was fair to ask the applicant to choose colors right away.

Dr. Matusow did not think it was up to the neighbors to pick the colors of the court. Mr. Silpe said that was a fair statement. Dr. Matusow said that even though he voted for this the first time, he would not vote for it again if the Board did not review a landscaping plan again. Chairman Michelman felt that the Board already approved the plan which they believed would meet all the criteria to protect the street. She said they could not say whether it was adequate or not. Dr. Matusow said that the Board would not get another chance to look at this and it seemed to him they should use this chance.

Ms. Muhart suggested that she be permitted to use gray and navy blue as the colors for the court. Mr. Delano moved to revise the third condition to read the site plan shall be revised to be gray and navy blue to satisfaction of the town planner. The motion was seconded by Mr. Sauro. Dr. Matusow, Chairman Michelman and Ms. Black all voted against the motion.

Ms. Black acknowledged the need for a second color, but she did not think it should be something other than two shades of green. Dr. Matusow said that he would accept blue and gray if the applicant revised the landscaping plan.

Chairman Michelman asked if the Board was going to amend the resolution or whether they would delay it.

Ms. Muhart said that she would like to use green and grey. Mr. Delano moved to amend the resolution to allow those two colors. The motion was seconded by Mr. Sauro. Motion approved by all but Dr. Matusow.

BENZ

Special Use

Section 2, Block 16, Lot 17.B16

39 Limestone Road

Tim Lener, AIA

Discussion

Consideration of amended special use permit resolution

Donald and Gina Benz were present for their application.

Mr. Kaufman explained that the Building Department has determined that the applicant's plan is considered a tear down. There is a resolution that would conform to the plans that were submitted to the Building Department

Chairman Michelman asked for the applicant's explanation. Mr. Benz submitted a sheet of paper to the Board. He said that he believes that under the Town Code, his proposal is an alteration / renovation and not a tear down. When he went to the Building Department to get the permit, he was told that this would be considered new construction. He said that "new construction" under the code, means something not previously existing on the site. However, nothing has changed on the plans. Everything is the same. He already has County Health Department approval as well as his wetlands approval.

Chairman Michelman said that the Board was confused because they saw a different set of plans than others saw. Mr. Kaufman said that this was not an issue of new construction; it is whether this constitutes a tear down or not. Mr. Benz said that under the code, the issue is whether or not this constitutes new construction and this isn't. This was his wife's grandparent's house and the property is already developed with an existing house.

Chairman Michelman said that the Board was shown a specific set of site plans, which the Building Department questioned and found that it was not an addition but a tear down. She said that she didn't know why the applicant was before the Board because there was nothing the Board could do.

Mr. Kaufman explained that the Board just needed to change the language in the resolution, which is before the board tonight. Chairman Michelman asked if the applicant had seen the amended resolution and Mr. Benz said he had not. Mr. Kaufman explained that everything was exactly the same, except it now was characterized as a teardown.

Ms. Black moved to approve the resolution. The motion was seconded by Mr. Delano and approved by all except for Chairman Michelman.

The applicants said that they were very disappointed with this Board, and particularly Chairman Michelman's negative vote.

MARQUIS ASSOCIATES

Site Plan

Section 6, Block 8, Lot 69.A

Meredith Black – Zarin & Steinmetz

Discussion

Ms. Meredith Black was present for this application. She explained that Bill O'Neill and the owner were present as well.

Ms. Black explained that in October, the application was referred to the ZBA, where they received all five necessary variances. She presented the site plan that was originally proposed and stated that after going to the ZBA, the plans were revised. The applicant is now seeking site plan approval and to schedule a public hearing. She said that they have received the comments from the Town Engineer.

She explained that they need to request a waiver for the number of loading spaces; two are required, but the applicant will only provide one. The warehouse spaces have been reduced and there is not really a need for two loading spaces. The site has been functioning in safe and consistent manner since the applicant purchased it.

With respect to the Town Engineer's comment regarding the functionality of the loading area, the applicant retained a consultant who determined that it was adequate. She submitted a letter to the Board reflecting this. Ms. Black said that the applicant was willing to put up large barrels filled with sand / water near the spaces to see if the trucks in the loading area are intruding.

Chairman Michelman asked if the building was completely rented at this point and the owner said that about 1400 sq. ft. is not rented. Ms. Black explained that this was taken into consideration when they developed our parking needs

With respect to the spaces and directional arrows, Ms. Black said they would be marked and striped as necessary. With respect to the dumpster, the omission was an oversight on the applicant's part and they will be shown. She indicated their current and proposed locations.

With respect to the concrete curbing, there is currently a 2' wide concrete curb that runs along the front. The applicant will be eliminating that, and they have suggested including wheel stops at the front end of the parking space.

With respect to Mr. Kaufman's memo from October and his comment regarding landscaping, right now there are some planters along the front but by relocating those spaces, they will have to lose those planters. Mr. Kaufman had suggested including planters and putting them on top of the concrete, but Ms. Black was not sure where that would work. She said the applicant was open to suggestions. Mr. Kaufman said that the corners of the parking spaces might be a good place to do it. The owner said they could try and do that.

Mr. Delano asked if the applicant had any photos of the front of the building and Ms. Black presented some to the Board and explained the photos to them. Mr. Delano felt that the wheel stops would be a horrible solution, and perhaps in lieu of them, the applicant could install a low curb 18-24" from the building. Grass could be planted there, and then in the corners, a small shrub could be planted. Ms. Black said they could look into this. Mr. O'Neill said that they did talk about this previously but there is some concern because they do not know how they would be able to cut the grass in that area. Mr. Delano suggested gravel as an alternative, and at least they'd be able to get the shrubs in.

Ms. Black said that they have not yet submitted a photometrics plan because they are not changing anything on this site. Also there is no concern for the neighbors due to the topography of the site. The lights that are there only light the parking lot, and there is some accent lighting in the front. Chairman Michelman asked Mr. Kaufman if there was a problem with that and Mr. Kaufman said that it was not an issue if the Board did not think it was.

Chairman Michelman asked Mr. Kaufman about the existing building exceeding the FAR. Ms. Black explained that this has been how the building has existed since its construction; this is grandfathered because there were no FAR requirements at that time.

The Board said this could be scheduled for a public hearing and revised plans should be submitted prior to that meeting.

CHARNEY

Special Use Permit

Section 2, Block 16, Lot 17A-6

12 Palmer Place

Robert Schweitzer, RLA – Lasting Impressions Landscape Architecture

Discussion

Mr. Nick Pouder was present on behalf of the applicant along with applicants. He explained that he was there on behalf of the applicant's landscape architect who could not attend. Mr. Pouder stated that they had received the Conservation Board's memo as well as the memos from Mr. Kaufman and Mr. Coyne. There were some issues with missing documents, which had been mistakenly omitted. Mr. Kaufman said they could be submitted later.

Mr. Pouder said that they have discussed several ideas regarding mitigation. Originally, the applicant intended to remove a maple tree. They have since looked at this again, and he thought there might be a way to keep that tree, and keep the natural grade.

With respect to the overall lawn care of the site, the applicant was suggesting an organic approach and they would put the specifications on the plan for the next submission.

With respect to the buffer, Mr. Pouder thought there were a couple of areas to do buffer expansion and mitigation. He thought that if they let the septic area go to meadow, it would really reduce the only useable lawn area. The applicant proposes to expand the buffer further uphill to the natural breaking grade. Also the whole perimeter of the site is loaded with barberry, which is fairly noxious and invasive, so the applicant was proposing to make that area function better by removing all of that. Mr. Kaufman said that would count as mitigation. He asked how deep the expanded buffer would be and Mr. Pouder said it would be approximately 10'.

The Conservation Board representative asked if the applicant would let the area naturally revegetate itself and Mr. Pouder said they would and that it would be a no mow zone. The Conservation Board representative asked if the applicant could give him a definite figure about how far that would extend into the site and Mr. Pouder said that it was approximately 35' into the site from the property line. Mr. Kaufman said that he thought Mr. Pouder had just said it was 10' and Mr. Pouder said he thought they could go further than what Mr. Schweitzer already provided. Mr. Kaufman pointed out that there was approximately 40' of buffer between the buffer and the lawn area and Mr. Pouder agreed. Mr. Kaufman said that was much better than previously proposed. He said they would not get 2:1 mitigation, but they were maximizing what we can get. Mr. Pouder said that it really depended on how "mitigation" was defined; it is a question of some level of mitigation.

Mr. Baroni asked how the applicant planned to prevent the barberry from growing back. Mr. Pouder explained that it was spread by birds, who will continue to reseed it, so it is a long term maintenance issue.

Chairman Michelman asked if there were other issues. The Conservation Board representative said they were particularly concerned about preserving the sugar maple, and working out the drainage and septic. Mr. Coyne explained that the only real question was whether, if the tank had to be lowered, it would be sufficient. He said that hopefully the applicant wouldn't have to

get the Health Department involved, but if they can't get gravity flow, and need a pump system, the Health Department would need to be involved. Mr. Coyne asked if the Board wanted to do that testing now, or if they were comfortable enough with the topography on the site to move forward. Mr. Coyne said that the easiest thing would be to have someone go there and test it; the issue is whether they'd need a pump system or not. The Board said that issue would not hold up the public hearing.

The Board said that this could be scheduled for a public hearing for the April 27th meeting. Mr. Pouder noted that the deadline for that meeting had just passed. Mr. Kaufman said that it was up to the Board, and that he was ok with preparing a resolution with these issues as conditions as long as the applicant provided the exact numbers.

The meeting was adjourned at 10:17 p.m.

**TOWN OF NORTH CASTLE
PLANNING BOARD MEETING
15 Bedford Road
Armonk, New York 10504
April 13, 2009
7:00 p.m.**

PLANNING BOARD MEMBERS PRESENT:

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

ALSO PRESENT:

Adam Kaufman
Town Planner

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

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

Mr. John Fava
Conservation Board Representative

Valerie Desimone
Planning Board Secretary

The meeting was called to order at 7:03 p.m.

APPROVAL OF MINUTES:

March 23, 2009

Mr. Delano moved to approve the minutes from the March 23rd meeting as amended. The motion was seconded by Ms. Black and unanimously approved.

PUBLIC HEARING:

BERNSTEIN

Site Plan

Section 1, Block 9, Lot 4-10

5 Gifford Lake Drive

Frank Giuliano – Landscape Architect

Consideration of site plan resolution

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 8 out of 9 cards were returned and one envelope and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application. There were none.

Mr. Frank Giuliano was present on behalf of the applicant. He explained that he had read the resolution and did not have any issues with it. He said that the applicant has done the percolation tests and they have all turned out positive with the engineer's approval. The other issue was the verification of coverage and there is no problem with that. There were no issues from Mr. Kaufman or Mr. Coyne.

Dr. Matusow recalled being on the site and it looked acceptable, but there are facts that have to be faced. He said that he would like to say yes to this proposal, but, this is a pool; a recreational use. The entire pool will be in the wetland buffer. The entire property is entirely in a CEA. He wanted to know the rationale that the Board used as criteria that allows them to permit this pool entirely in a wetland buffer, which is entirely in a CEA. He suggested that this might be one of those applications that the property is located in such a way, that a recreational amenity should not exist.

Mr. Kaufman explained that his rationale is that there is an existing lot with a significant amount of lawn area and erosion problems. The applicant's plan resolves those problems. He added that the Conservation Board's rationale is that this will be a more environmentally sound outcome, even with the pool. Dr. Matusow said that if this was the case, this was a good rationale.

Mr. Giuliano agreed that this was a wetland, but when the subdivision was built, walls were built to create a drainage ditch to get the water into Gifford Lake. Because no mitigation measures were taken, the ditch has eroded significantly and the applicant is willing to repair and mitigate the damage. Additionally, a ½-acre of land will go to a "no mow zone." The actual mitigation is quite extensive. None of the harm was created by the applicant, but the applicant is willing to correct it. He said the applicant was reforesting almost an acre of land in exchange for the 900 sq. ft. pool addition

Dr. Matusow asked if it was safe to say that this property would be better off environmentally with this work done and Mr. Kaufman said that was true. Chairman Michelman noted that the Conservation Board came to the conclusion that this mitigation would improve the site greatly.

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

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

POWER

Special Use Permit

Section 2, Block 5, Lot 14-16

Quaker Meeting House Road

Charles Gardner, RLA

Discussion

Consideration of special use permit resolution

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 12 out of 13 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application. There were none.

Mr. Charles Gardner was present for the applicant. He explained that the applicant was seeking to modify the clearing and grading limit line. He indicated the old line as well as the new proposed line. The applicant also plans to install a pool and adjoining terraces. They have modified the plans based upon the comments from the Town Engineer. Mr. Gardner stated that they have not done the calculations yet for the percolation, but he was working on it and would get it to the Town Engineer as soon as possible. Mr. Gardner said that he had read the resolution and had no problems with it, though he would like to be able to work with Mr. Kaufman on screening on the periphery; he said he'd like to try and coordinate it with the neighbor because they are adding planting as well.

Chairman Michelman said that as far as she was concerned, the screening concern was the only open item. She said she understood that the applicant wanted to cooperate with the neighbor, but the Board is concerned with what the applicant was doing on his own property. She wanted to make sure there will be substantial and effective screening. Chairman Michelman noted that it was a condition of the resolution. Mr. Gardner said he understood and that it was a condition that he satisfy the Town Planner.

There were no additional issues. Mr. Delano moved to close the public hearing. The motion was seconded by Ms. Black and unanimously approved.

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

BEEHIVE

Site Plan

Section 2, Block 15, Lot 1A

30 Old Route 22

Barry Naderman – Naderman Land Planning & Engineering

Chairman Michelman read the public notice for the record. Ms. Desimone noted that all cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application. There were none.

Mr. Barry Naderman was present on behalf of the applicant, along with the applicants' architect, Bill O'Neill and the applicants themselves. Mr. Naderman explained that the applicants were seeking site plan approval for their restaurant expansion. There would not be any increase in seating or an increase in the area of the apartment above. He explained that they would be doing minor improvements to the parking and aesthetics.

Chairman Michelman pointed out that there was an issue as to what is really happening to the structure of the restaurant, was this considered a teardown or a renovation. Mr. Naderman explained that after a meeting with the applicant's architect, the Town Planner and the Building Inspector, a question arose as to whether this would be considered a tear down. In its current form, the Building Inspector deemed this would be considered a tear down; however it could be modified so that it was not a tear down.

Chairman Michelman stated that the Board was led to believe that this would be a modification to an existing building. Mr. O'Neill said that is what it was. Chairman Michelman said that it was important that whatever is presented to the Board consist of the facts. She said if this was a tear down, it is legitimate, as long as the Board knows what they are dealing with a tear down or a renovation. Mr. O'Neill said that in his opinion, it was not characterized as a tear down and that this was a relatively new notion for the applicant. He explained that in speaking with Mr. Fon, they talked about changes that, in Mr. Fon's opinion would make it not a tear down, this could happen without changing the site plan.

Mr. Naderman said that this was not as deceitful as it sounds. All along the applicant has had conceptual floor plans that modified certain aspects of the building and that hasn't changed. Once Mr. O'Neill was retained to make the plans work, it was revealed that it would be considered more as a teardown than a renovation. Chairman Michelman said that was fine, but the Board needed to know which one it was, a tear down or a renovation. Mr. Naderman said that, at the end of the day, they are proposing to do what is shown on the site plan. There is really no change to that. The changes, from a site plan standpoint, would be to keep some of the interior walls.

Mr. Baroni commented that the Board would have to be very careful for it not to be a teardown, so that the building does not lose its non conforming status. Mr. Kaufman said that in this district, the Planning Board can establish the setbacks. Mr. Baroni asked whether, in that case, the Planning Board needed to know exactly whether this was a teardown and Mr. Kaufman said no. Therefore, the teardown of the building is not an issue, since the Planning Board can establish setbacks if required.

Mr. Naderman said that the applicant has secured the required zoning variances for coverage and parking and those aspects will all remain exactly the same. Mr. Baroni stated that if the setbacks were different than what they are currently, the Planning Board needed to know whether they would be establishing new setbacks. Mr. Kaufman agreed. Mr. Baroni said that, in that case, the Board needed a confirmation from Mr. Fon as to whether this was a teardown or not. Mr. Kaufman said they did not because the Board would be approving the setbacks anyway. He thought that the real issue is whether, if it is a teardown, it impacts the site plan itself. He said that if they were really talking about a teardown, this could leave the Board with more options as to where to locate the building and how to maximize parking, etc. Mr. Naderman said that would typically be true, but in this instance, there are not a lot of options for the building. He explained why moving the building one way or another would reduce the overall amount of parking. He said this is really the best location for the building.

Chairman Michelman asked whether the restaurant would be closed during the renovation and Mr. O'Neill said that it must be closed, as per the Building Inspector. It is too small a building to undergo this type of renovation and to keep the restaurant open.

Mr. Naderman said that regardless of what it is called, the project remains the same. Chairman Michelman said that it is obviously a teardown if the applicant would have to close the restaurant. She said that she did not have a problem with the improvements that are being made, that was not the issue. The Board needed to know what it is they were dealing with on a site plan, a teardown or a renovation. Mr. O'Neill thought that was a little hard on the applicants and Mr. Naderman. Chairman Michelman said this was between the professionals and the Planning Board. Mr. O'Neill agreed but said that since the last meeting, he sat down with the applicant and designed the plans. Mr. Naderman said that until Mr. O'Neill designed the plans, his perception was that this was a renovation. A meeting took place, at Mr. Fon's request, with himself, Adam Kaufman, Barry Naderman and Bill O'Neill that they all meet to review the plans to determine whether this was a teardown or not.

Mr. Naderman added that it was always anticipated that the restaurant would have to be closed during the renovations because it would have been impossible to keep open during the work. This aspect has no bearing on whether it is a tear down or not.

Chairman Michelman asked if there were any issues. Neither Mr. Coyne nor Mr. Kaufman had any issues. Ms. Black asked which plans the applicant preferred, if they had a choice. Mr. O'Neill said that they preferred the plans the Building Inspector has deemed a teardown. Part of that design was based upon the design of a really nice kitchen. The plan works the best and fits within the site plan footprint. This plan has also been conceptually approved by the ARB.

Chairman Michelman asked if they had read the resolution and neither Mr. Naderman nor Mr. O'Neill had.

Dr. Matusow said he wanted to be sure that if the Board granted the resolution, that what they are permitting would be exactly what will get done. He wanted to know if the resolution accurately reflected what would be done and Mr. Kaufman said that it would depend on whether the Board was approving a renovation or a teardown.

Mr. O'Neill said he did not see too much of a difference between the renovation situation and the teardown situation. Mr. Delano noted that the plans seek the demolition of the existing building and the construction of a new restaurant. The resolution that he read seems to take into account the situation the Board was dealing with.

Mr. Naderman said that the site plans are exactly the same; they haven't changed. Chairman Michelman noted that the applicant still needed to provide detailed floor plans to the satisfaction of the Town Planner. Mr. Naderman recognized this.

Ms. Black said that she had no problem with this being considered a teardown, provided the site plan is the same, the site functions better and the ARB thinks it is more attractive that way.

Ms. Black moved to close the public hearing. The motion was seconded by Mr. Sauro and unanimously approved.

Mr. Delano noted that they needed to renumber something on page six of ten. Mr. Kaufman agreed and noted that on page 3, in the first complete whereas, there was a minor typo.

Dr. Matusow moved to approve the resolution as corrected, authorizing the teardown of the existing building and the construction of a new restaurant building. The motion was seconded by Ms. Black and unanimously approved.

VARSALES

Lot Line Change

Section 2, Block 8, Lots 13A & 13A-5

2 & 4 Nash Place

Barry Naderman - Naderman Land Planning and Engineering, P.C.

Consideration of Final Subdivision resolution

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 17 out of 18 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application. There were none.

Mr. Barry Naderman was present on behalf of the applicant. He explained that there have been no changes since the prior approval. Chairman Michelman explained that the Board had already approved this as a final approval, but it lapsed, so a new public hearing was needed.

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

Ms. Black moved to approve the resolution. The motion was seconded by Dr. Matusow and unanimously approved.

STEINER

Special Use Permit

Sec 2, Block 4, Lot 1-3

37 Sarles Street

Luigi DeMasi, AIA

Consideration of site plan resolution

Chairman Michelman read the public notice for the record. Ms. Desimone noted that all cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application. There were none.

Mr. DeMasi was present on behalf of the applicant. He explained the applicant was seeking approval for a 900 sq. ft. addition on the first floor, but there would be no change to the gross land coverage. He noted that they received ARB approval on April 1st.

There were no issues from either Mr. Kaufman or Mr. Coyne. Chairman Michelman noted that there was a typo in the resolution; on page 2 in the third whereas, it should be gross floor area not land coverage. It is below max by 1,177 sq. ft. Mr. Kaufman said that he would make that change. Mr. DeMasi said that the only issue he saw was the number in the area calculations. It should be 988 and he wrote 918.

There were no other comments from the Board.

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

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

SHELL GAS STATION

Site Plan

375 Main Street

Section 2, Block 11, Lot 6-6

Walter Gorman, PE

Discussion

Chairman Michelman noted that this was a continuing public hearing and asked if there were any neighbors present for the application. There were none.

Doug Mandart was present on behalf of the applicant. Mr. Mandart stated that they have made many changes based upon comments from Mr. Kaufman. One notable change is that they have realigned the fence, which allows the applicant to get additional parking on the site. This change enables them to achieve all the required parking on the site. The tanks will be relocated onto the site to get them out of the road. Part of the concrete pad will extend into Kent Place, but he was told that was acceptable.

Mr. Mandart said that the applicant wants to tidy up the site to the south and add a curb and landscaping. The applicant would like to pave the area behind the station, provide proper stormwater mitigation and would like to enclose the dumpster. As far as the fuel tank, a description of the pad has been included on the plans. The applicant also wants to include 6 bollards around the tank since that area will be used for parking now. Parking on the site will be angled to permit cars to drive to the rear easier. There is a loading area designated on the site.

Mr. Mandart said that the applicant would like the Board's input regarding curb cuts. Right now there are none. Chairman Michelman stated that this was quite an improvement. She asked if Mr. Coyne had any issues. Mr. Coyne said that his comments were listed in his memo. He noted that with respect to the curb cut on Kent Place, a wide cut or no curb cut is less safe as it could be. Perhaps something could be done there. With respect to the tandem spaces proposed, he was not sure if the code speaks to that. Mr. Kaufman said that typically, the Board does not approve tandem spaces, but given the use here, it seems reasonable. The Board agreed. Mr. Coyne said that additional dimensioning might need to take place to make sure that everything is appropriately sized; the applicant is maximizing every square inch of this site, so they should consider requiring a survey. With respect to the dumpster, he did not know if truck access to that dumpster area would really be possible. Mr. Mandart said that it was located where it was because they thought that it would be better than in the corner, but they might be able to put it somewhere else.

Mr. Kaufman said that the most significant planning issues are the curb cut and the missing sidewalk link.

Mr. Delano agreed that the applicant needed a survey. The Board does not want to approve something only to find out that it is in the town right of way. Mr. Mandart said that one had been done at the beginning of this project. Mr. Delano said that should be submitted. Additionally, Mr. Delano said that the owner of the property should be on board with this application and the applicant should submit proof that the owner approves these changes. Mr. Delano added that it seemed the applicant would also need a wetland permit.

Ms. Black said she was concerned about the curbing too. Right now, anyone can enter and exit at any point along Kent Place. She'd like to see a designated entrance / exit, along with a sidewalk link and additional landscaping.

Dr. Matusow asked about the handicapped parking and Mr. Mandart indicated the designated spot. He added that there are also existing ramps. Dr. Matusow asked if this was sufficient and Mr. Kaufman said that it was. Dr. Matusow asked about the loading space and whether that was sufficient and Mr. Kaufman said that it was probably sufficient, but the proposed loading space might impede access to the pumps. Mr. Mandart said that it would impede one spot. Dr. Matusow asked if the Board was permitted to approve that and Mr. Kaufman said that they could.

Dr. Matusow asked if the Board had any indication about what the space in the rear can be used for. He noted that it was in the buffer and adjacent to the stream and pointed out that garage-type work can spill things into the wetland. He wanted to know what can be done to restrict activities in this area. Mr. Kaufman said that the Board could impose a condition that there be no outdoor servicing. Dr. Matusow thought that the Board should look at all of these things while the applicant was before the Board, because this was their one shot to take care of this site.

Dr. Matusow added that there seems to be a large shed on the back of the property and wanted to know if it had the necessary permits, including a wetland permit. Mr. Kaufman said that if it is a shed and it is on this property then the applicant would need to show it on the site plan. Mr. Mandart said he was not aware of any permanent structures. Dr. Matusow said he was not sure if it was still there, but it was in his notes, and he wanted to raise the issue.

Dr. Matusow asked about the waste oil tank and thought it might be located in such a way that it may or may not require its own wetlands permit for being there. Mr. Kaufman said that he had no information on this. Dr. Matusow said the Board needed to look into this. Mr. Kaufman said that the Board could legitimize that. Dr. Matusow agreed, but he wanted to know and deal with this now because he did not think the Board was "going to have another bite at this apple." He added that the Board needed to know exactly what they are approving in terms of the outdoor lighting.

Mr. Sauro liked the idea of the deciduous trees on Kent Place and Main Street. Mr. Mandart acknowledged this but said that was something that would come later. Mr. Sauro asked if the applicant would be willing to consider a sidewalk connection on Main Street. Mr. Mandart said the applicant would be willing to consider that.

Dr. Matusow noted that the Board started this application talking about the heater and where the oil tank would go, and as long as he saw all these other items taken care of he would not as concerned with those locations.

Mr. Delano moved to adjourn the public hearing. The motion was seconded by Ms. Black and unanimously approved.

MASSARO
Subdivision
Section 6, Block 5, Lot 2-3
54 Custis Avenue
Jim Vanolli, P.E.
Consideration of preliminary subdivision resolution

Chairman Michelman noted that this was a continued public hearing and asked if there were any neighbors present for the application. There were none.

Mr. Jim Vanoli was present on behalf of the applicant. He said he spoke to the Town Engineer regarding the "bump out" that is on the drawings and that can be traced back with no problem. It had been interpreted to be a parking area, and since the applicant met the parking requirements for the two-family homes, he removed it. It was interpreted by others to be a part of the hammerhead so he has no problem with putting it back. The fire department approved his November 5th plans, which show a 20x55 rectangle. Those spaces at the time were parking spaces. The hammer head was not deleted from the plan, the parking spaces were, but he can put it back without a problem.

Mr. Vanoli said that they have accommodated the comment to create a gentler slope. With respect to the sprinkler system, the recommendation was that a system be installed in all two-family houses. He had included this feature, and then discovered that was not required under the building code for the Town of North Castle. He wanted to know why this applicant was being held to higher standard than others. He said the applicant has indicated that he will install larger house connections, so they would be willing to make accommodations for that.

Mr. Vanoli said that he had reviewed the resolution and it was fine. He wanted clarification on certain items, and they were addressed to his satisfaction. Mr. Kaufman said that he would keep in the condition relating to the draft homeowners' agreement until Mr. Baroni signs off on it.

Mr. Kaufman asked if the applicant was ok with the language in the resolution regarding the sprinklers. Dr. Matusow thought that if the Board was to be satisfied with a plan that shows oversized water lines, then the condition should be reworded. Mr. Kaufman agreed, unless the applicant was going to install sprinklers. Dr. Matusow stated that Mr. Vanoli had just said the applicant was not willing to do that. Mr. Kaufman questioned whether this would be acceptable to the fire department. Mr. Vanoli claimed the fire department said they were. Mr. Kaufman pointed out that the fire department approved of this when the plans contained a note that there would be a sprinkler system. Mr. Vanoli said that the fire department has no say in this matter because it was not part of the code. Mr. Kaufman said that the concern is that the applicant is not building the road to town standards. He thought the Board should get a signoff from the fire department that they are ok with this.

Dr. Matusow also thought the Board should require language that the applicant would have the water lines installed. Mr. Kaufman agreed. Mr. Kaufman asked the Board what they wanted to

do about the fire department. Dr. Matusow did not see that the fire department had any choice but to ok this proposal as long as this meets the current code. He did think that the fire department should be notified that the plans have changed. Mr. Kaufman asked what would happen if the fire department says that they want it. Mr. Vanoli said again that they had no authority to say that they want it because it is not required under state or town code.

Mr. Coyne noted that the town code requires an 80' diameter cul-de-sac that can be modified based upon approval from the fire department. Because this proposal does not meet that standard, the applicant needs approval from the fire department. Mr. Vanoli said the fire department issued a letter expressing their approval. Mr. Kaufman said again that that approval was based upon the prior note that the applicant would have sprinklers. If the sprinklers are not part of the plan anymore then the fire department could determine that they want the 80' cul-de-sac.

Someone [*did not identify himself*] said that he had had conversations with the Building Inspector, and was told that he did not have to have sprinklers.

Mr. Delano noted that there is a turning area and driveway width that is in conformity with the fire chief's requests. The lines will be such that should sprinklers ever become code, then it can be satisfied. Mr. Kaufman said that he would have a conversation with the chief.

Mr. Delano noted that in granting preliminary subdivision approval, the Board listed all the documents that were prepared, but there is more than one plat in the set, so they need to know which one they are approving. Mr. Kaufman said he would clarify this.

Mr. Vanoli asked if they could specify the name of the sheet because if he submitted a partial set of drawings to the health department, they would want to know why it is incomplete. Mr. Kaufman agreed.

Chairman Michelman asked if the Board should adopt a neg dec at the meeting and Mr. Kaufman said that by adopting the resolution, they would be doing that.

Mr. Delano noted that on page 4 of the resolution, in the second whereas from the bottom, the reference to a wetlands permit needed to be removed. Mr. Kaufman agreed.

There were no other issues.

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

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

BERLINER
Special Use
Section 2, Block 5, Lot 12-14
12 Quaker Meeting House Road
Rivi Oren, RLA
Discussion
Consideration of special use permit resolution

Chairman Michelman noted that this was a continued public hearing and asked if there were any neighbors present for the application. Sharon Riener of 14 Quaker Meeting House Road was present.

Ms. Oren was present on behalf of the applicant. She explained that based upon comments at the last Planning Board meeting, they have relocated the pool and changed the fence, taking the fence away from the property line. The new location of the pool is in the revised clearing and grading limit line. That way, the fence will just be surrounding the pool. The woods remain free and open and the fence is away from the concerned neighbor. This enabled the applicant to reduce the amount of pavement and they removed about 80 sq. ft. of coverage. She added that the applicant likes this plan better.

Chairman Michelman agreed that this was an improvement. She noted that Ms. Oren failed to mention that the spa was enlarged. Ms. Oren said that it was not enlarged; she used the same size. The pool is much smaller. Chairman Michelman said that regardless, the applicant did reduce the overall square footage.

Chairman Michelman asked if the neighbor had any questions. Ms. Riener said she did not. She just wanted to be assured that the new trees would not encroach on her property. She said the applicant had assured her that this would not happen, so she was satisfied.

Mr. Kaufman asked if there was any vegetation adjacent to the proposed trees, and Ms. Oren said that she was not aware of any. She said that the applicant was not interested in adding any more than what is necessary. She said she'd be willing to work with the neighbor on the screening.

Ms. Oren noted that there had been a comment in the draft resolution about infringement on the side setback, but there are only four stepping stones that are not really considered "structures." Mr. Kaufman explained that because this was associated with the pool, he believed it had to be counted, but the applicant would have to deal with the Building Department on this issue. Mr. Baroni thought they would likely have to be counted and if that is the case, then the applicant would have to go to the ZBA.

There were no additional issues or comments. Mr. Delano moved to close public hearing. The motion was seconded by Ms. Black and unanimously approved.

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

CONTINUING BUSINESS:

20 BANKSVILLE AVENUE
Referral from Town Board
Section 1, Block 12, Lot 7D
20 Banksville Avenue
Joe Crocco – Joe Crocco Architects, P.C.
Discussion

This item was removed from the agenda.

CALDER CENTER – FORDHAM UNIVERSITY
Site Plan
Section 2, Block 1, Lot 8
31 Whipoorwill Road
Dr. John w. Wehr, Director of the Calder Center
David Rigney – Office of General Counsel
Declare lead agency intent

Mr. Kaufman explained that the Board just needed to declare intent to be lead agency and that the applicant was told that they did not have to appear.

Mr. Delano moved to declare intent to be lead agency. The motion was seconded by Ms. Black and unanimously approved.

LAST LICKS

Mr. Bill O'Neill was present on behalf of the applicant, along with Mr. Costello, the Vice President of the company. Mr. O'Neill said that the applicant was seeking to avoid site plan approval due to the unique circumstances of this lot. Such a waiver is permitted where there is no increase in parking requirement. He said that the applicant plans a change of use from retail to carry-out restaurant. The space had a variance at one time allowing tables. Off site parking is no longer available. Once that was removed, the applicant had to revert to retail use. The town has since adopted the carryout restaurant code, and applicant wants to change the use to that type.

Chairman Michelman asked if there was adequate parking on the site and Mr. O'Neill said there was not, but there would not be any increase in the parking requirement. He noted that it was unlikely that the applicant would ever be able to show adequate on site parking. He believed there are total of 9 spaces based upon a shared parking agreement. Mr. Kaufman explained that in the calculations they utilized the maximum attainable number of spaces if there were no cross parking easements. If the applicant can have 23 spaces within the confines of your site, that is what would be used.

Mr. O'Neill said that they would require a landbanked parking agreement and / or a variance. The parking requirement is 34 spaces. Mr. Kaufman said that the applicant would never be able to meet that. Mr. O'Neill agreed and said that at most, they could show up to 31 landbanked spaces. Mr. Kaufman agreed that change of use from retail to carryout restaurant doesn't increase the parking requirement. He said that this might have been a good time to clean up the files and that would be the only reason he'd recommend going through the site plan process. Mr. O'Neill said that the parking situation was changed in 1998 and there was approval in 2001 for the addition to the building. There is an approved site plan that shows the current parking situation. Since there is no change in parking, it is like going from retail to retail.

Mr. Kaufman advised Mr. O'Neill to make sure the applicant meets the requirements for a carry out restaurant (i.e. the amount of floor area devoted to seating and the total number of seats). Mr. O'Neill said he would be happy to submit a diagram in this regard; he did not think they would have a problem. Mr. Delano asked whether the applicant would have to come to this

Board at all if the Board was amenable to the waiver, and Mr. Kaufman said that they would not; that everything would be done through the Building Department.

Chairman Michelman asked if anyone had any issues with the waiver. No comments were made by the board at this time.

Mr. Delano moved to grant the site plan waiver subject to demonstrating that they meet the carryout restaurant requirements. The motion was seconded by Ms. Black and unanimously approved.

MUHART
Special Use Permit
Section 1, Block 5, Lot 15-21
7 Hobby Farm Drive
John Kalin, P.E.
Consideration of amended special use permit resolution

Mrs. Muhart was present for the application. She said that she had given the Board a plan about how to lay out the sport court on the property and they were now looking for approval on that plan. Mr. Kaufman explained that when the Board originally approved the sport court, it required the court to be green, but when the applicant got the permit, she wanted a theme on the sport court. He said that this Board would need to change the resolution if they chose to permit this theme.

Bill from Hudson Valley Sport Court said that he has courts that are colors other than green; it depends on what games will be played on the court. Here, the applicant wanted to have a Yankees theme.

Chairman Michelman said that the Board has always been concerned for the neighbors because this is very visible to the neighbors. Mrs. Muhart said that it will not be; she plans to add the required screening, and she would also be happy to add additional trees and fencing to close off her entire property.

Mr. Rob Silpe of 5 Hobby Farm Drive wanted to know why, as matter of process, was there no public notice for this application. Chairman Michelman said that there was but Mr. Kaufman corrected her and said that there was no notice for this amendment. Chairman Michelman stated that an amendment to a resolution does not necessarily require public notice. Mr. Baroni said that if this was considered a substantive change, the Board could require a new public hearing.

Mr. Silpe asked if there was a technical difference between a sport court and a basketball court and Mr. Kaufman said there was not. Mr. Silpe said that he had never seen any indications of holes or backboards or rims on the plans, so he never considered this as a basketball court and he wanted to know if this should have been indicated on the site plan. Chairman Michelman said no, that the Board's concern was the size. Mr. Kaufman said that the Planning Board was concerned with the gross land coverage. The use of it is permitted in a residential district and the Board doesn't really delve into what kind of sport will be played on it. Mr. Silpe asked whether there will be 13' high baskets on the court, because if so, he thought it was silly to allow something that high when the town limits fence height.

Mr. Silpe also commented on the landscaping plan that was approved. He said that he has seen examples of extensive landscaping provided for pools typically less than $\frac{1}{4}$ the size of this court. Here, a plan was developed which included a row of rhododendrons that probably won't last, along with 11 bushes and 2 trees. He said he knows the concern this Board has for privacy and he did not think that was addressed here. Chairman Michelman said that there is landscaping here. Mr. Silpe said that what was approved hardly seems adequate.

Dr. Matusow pointed out that the Board was not trying to screen the entire property line, just to make sure that the sport court would not be a visual problem from the neighbor's point of view. Mr. Kaufman added that there would not be complete screening, but there were clusters to break it up.

Mr. Silpe said that this entire thing could be seen from his driveway. Dr. Matusow did not think it was necessary that as you leave the driveway that there is no possibility to see what is on the neighbor's property. The Board's concern ought to be whether or not they have adequately screened the court from the neighbor's house. He thought the Board was probably ready to look at a revised landscaping plan to make sure that the screening is sufficient. Mr. Silpe also suggested the Board require additional screening for Hobby Farm Drive because the court is in clear view of the houses across the pond. Chairman Michelman said that when the Board walked the site, that had been one of their concerns.

Ms. Muhart said that she has lived in the house for 17 years, and she guaranteed there would not be a vision issue. She said again that she was more than happy to give Mr. Silpe as much privacy as a fence and planting could provide.

Dr. Matusow said that Mr. Silpe had a point about the height of the basketball nets and that he had never thought of that issue. He thought that the Board should consider a new landscaping plan and that they should keep this issue in mind. Dr. Matusow said that the applicant's current proposal will give the Board the opportunity to correct any deficiency.

Mrs. Muhart wanted to know what the difference was between seeing two hoops on her property, versus seeing the basketball hoops on driveways everywhere. Dr. Matusow said that because the applicant was seeking to add an entirely new structure the Board needed to take this into consideration.

Mr. Kaufman recognized that the Board wanted to increase the number of trees and asked if they also wanted to require fencing. Dr. Matusow said he wanted to see a revised landscaping plan from the applicant and for the Board to review that plan. The rest of the Board agreed. Chairman Michelman said that she did not have a problem with the proposal, but she wanted to see the plan.

Mr. Baroni asked if the Board was going to require a new public hearing. Dr. Matusow asked if they could hold off on that decision until they saw the revised plan to see how much of an issue this would be. Mr. Baroni said that they could, but that would delay this application. Chairman Michelman said that she did not believe they needed a new public hearing and Dr. Matusow and Ms. Black agreed.

Mrs. Muhart said that since they have already started construction, and one of Mr. Silpe's concerns is that he is watching the construction, she wanted to know if they could move ahead quickly. Dr. Matusow pointed out that if the applicant wanted to do this quickly, she could move forward with the approved plan. Mr. Sauro suggested they just add a couple of evergreens to screen the hoops.

Mr. Lou Marcus said that he lived across the street and he could see this area. He thought that the Yankees emblem / theme would commercialize this area.

The Board said that there was nothing that would require the applicant to stop construction; they just wanted to see a revised landscaping plan.

Bill (from Sport Court) asked if the colors were prescribed in the resolution. Mr. Kaufman said that green was the color permitted under the resolution. Bill stated that even if the applicant chose to conform to the existing resolution, they would still need a second color for the basketball key. Mr. Kaufman stated that since the resolution says green, they would need to amend it to allow for a second color.

Mr. Kaufman said that the applicant may want to consider abandoning the Yankees theme, and just proceed with the approved resolution. He asked if the Board wanted to amend the resolution to permit the second color. Dr. Matusow thought that the Board should deal with everything all at once. He said that the applicant or the applicant's representative read the original resolution and no one ever mentioned the fact that they would need two different colors.

Mrs. Muhart said they would need to halt construction because they need a second color. The Board did not think they would have to stop, but the applicant said that they would because they had to order the materials.

Mr. Delano said he wouldn't be opposed to altering the colors of the court tonight, absent the Yankees theme. He said the neighbor raised a real issue about the commercialism of the court once the Yankees theme was adopted. He said he would not be opposed to changing the color scheme though to add a second color. Mr. Sauro agreed with the modification of the change of color but suggested the applicant might be opening a can of worms with the theme.

Ms. Black thought that the second color should be fairly subtle and something that would blend in with the landscaping. She said that the Yankee logos would be a problem for me. Ms. Black said she would not want to see it if she was a neighbor but if the applicant really wanted that, she would want substantial screening that would prevent the neighbors from seeing it

Dr. Matusow said that the Board has heard from a neighbor who informed them that the original plan may not be sufficient for screening the sport court originally approved.

Mr. Silpe said that once the trees came down that the applicant needed to clear for the court, he had a clear view of the court from his front door. The landscaping plan did not accommodate this. Mrs. Muhart stated that Mr. Silpe bought his property knowing how his lot was laid out. Dr. Matusow asked if Mrs. Muhart was still willing to screen the Silpe view of the court. He reminded her that if she was not asking for any change, they would not be having this discussion. This is an opportunity for the Board to make an improvement to the plan. He wanted to know if she was still amenable to screen this, as she said she was earlier and if so, he wanted to make sure it is part of whatever approval given.

Mr. Sauro said he was sensitive to the screening issue but in fairness to the applicant, the Board had its chance to get the necessary screening. He did not think the subtle changes in the color of the court constituted a material change that would require the Board to significantly revisit the site plan and the landscaping.

Chairman Michelman said she was inclined to agree with Mr. Sauro, but the issue is that this has come back for a new face of the court, and now the applicant needs two colors. It would have been useful to know the colors initially and now the Board has to amend the resolution.

The Board asked for the neighbors' input and Mr. Silpe said that he understood the need for two colors but he thought that they should be green and something else. He thought that would have the least impact. Chairman Michelman did not think it was fair to ask the applicant to choose colors right away.

Dr. Matusow did not think it was up to the neighbors to pick the colors of the court. Mr. Silpe said that was a fair statement. Dr. Matusow said that even though he voted for this the first time, he would not vote for it again if the Board did not review a landscaping plan again. Chairman Michelman felt that the Board already approved the plan which they believed would meet all the criteria to protect the street. She said they could not say whether it was adequate or not. Dr. Matusow said that the Board would not get another chance to look at this and it seemed to him they should use this chance.

Ms. Muhart suggested that she be permitted to use gray and navy blue as the colors for the court. Mr. Delano moved to revise the third condition to read the site plan shall be revised to be gray and navy blue to satisfaction of the town planner. The motion was seconded by Mr. Sauro. Dr. Matusow, Chairman Michelman and Ms. Black all voted against the motion.

Ms. Black acknowledged the need for a second color, but she did not think it should be something other than two shades of green. Dr. Matusow said that he would accept blue and gray if the applicant revised the landscaping plan.

Chairman Michelman asked if the Board was going to amend the resolution or whether they would delay it.

Ms. Muhart said that she would like to use green and grey. Mr. Delano moved to amend the resolution to allow those two colors. The motion was seconded by Mr. Sauro. Motion approved by all but Dr. Matusow.

BENZ
Special Use
Section 2, Block 16, Lot 17.B16
39 Limestone Road
Tim Lener, AIA
Discussion
Consideration of amended special use permit resolution

Donald and Gina Benz were present for their application.

Mr. Kaufman explained that the Building Department has determined that the applicant's plan is considered a tear down. There is a resolution that would conform to the plans that were submitted to the Building Department

Chairman Michelman asked for the applicant's explanation. Mr. Benz submitted a sheet of paper to the Board. He said that he believes that under the Town Code, his proposal is an alteration / renovation and not a tear down. When he went to the Building Department to get the permit, he was told that this would be considered new construction. He said that "new construction" under the code, means something not previously existing on the site. However, nothing has changed on the plans. Everything is the same. He already has County Health Department approval as well as his wetlands approval.

Chairman Michelman said that the Board was confused because they saw a different set of plans than others saw. Mr. Kaufman said that this was not an issue of new construction; it is whether this constitutes a tear down or not. Mr. Benz said that under the code, the issue is whether or not this constitutes new construction and this isn't. This was his wife's grandparent's house and the property is already developed with an existing house.

Chairman Michelman said that the Board was shown a specific set of site plans, which the Building Department questioned and found that it was not an addition but a tear down. She said that she didn't know why the applicant was before the Board because there was nothing the Board could do.

Mr. Kaufman explained that the Board just needed to change the language in the resolution, which is before the board tonight. Chairman Michelman asked if the applicant had seen the amended resolution and Mr. Benz said he had not. Mr. Kaufman explained that everything was exactly the same, except it now was characterized as a teardown.

Ms. Black moved to approve the resolution. The motion was seconded by Mr. Delano and approved by all except for Chairman Michelman.

The applicants said that they were very disappointed with this Board, and particularly Chairman Michelman's negative vote.

MARQUIS ASSOCIATES

Site Plan

Section 6, Block 8, Lot 69.A

Meredith Black – Zarin & Steinmetz

Discussion

Ms. Meredith Black was present for this application. She explained that Bill O'Neill and the owner were present as well.

Ms. Black explained that in October, the application was referred to the ZBA, where they received all five necessary variances. She presented the site plan that was originally proposed and stated that after going to the ZBA, the plans were revised. The applicant is now seeking site plan approval and to schedule a public hearing. She said that they have received the comments from the Town Engineer.

She explained that they need to request a waiver for the number of loading spaces; two are required, but the applicant will only provide one. The warehouse spaces have been reduced and there is not really a need for two loading spaces. The site has been functioning in safe and consistent manner since the applicant purchased it.

With respect to the Town Engineer's comment regarding the functionality of the loading area, the applicant retained a consultant who determined that it was adequate. She submitted a letter to the Board reflecting this. Ms. Black said that the applicant was willing to put up large barrels filled with sand / water near the spaces to see if the trucks in the loading area are intruding.

Chairman Michelman asked if the building was completely rented at this point and the owner said that about 1400 sq. ft. is not rented. Ms. Black explained that this was taken into consideration when they developed our parking needs

With respect to the spaces and directional arrows, Ms. Black said they would be marked and striped as necessary. With respect to the dumpster, the omission was an oversight on the applicant's part and they will be shown. She indicated their current and proposed locations.

With respect to the concrete curbing, there is currently a 2' wide concrete curb that runs along the front. The applicant will be eliminating that, and they have suggested including wheel stops at the front end of the parking space.

With respect to Mr. Kaufman's memo from October and his comment regarding landscaping, right now there are some planters along the front but by relocating those spaces, they will have to lose those planters. Mr. Kaufman had suggested including planters and putting them on top of the concrete, but Ms. Black was not sure where that would work. She said the applicant was open to suggestions. Mr. Kaufman said that the corners of the parking spaces might be a good place to do it. The owner said they could try and do that.

Mr. Delano asked if the applicant had any photos of the front of the building and Ms. Black presented some to the Board and explained the photos to them. Mr. Delano felt that the wheel stops would be a horrible solution, and perhaps in lieu of them, the applicant could install a low curb 18-24" from the building. Grass could be planted there, and then in the corners, a small shrub could be planted. Ms. Black said they could look into this. Mr. O'Neill said that they did talk about this previously but there is some concern because they do not know how they would be able to cut the grass in that area. Mr. Delano suggested gravel as an alternative, and at least they'd be able to get the shrubs in.

Ms. Black said that they have not yet submitted a photometrics plan because they are not changing anything on this site. Also there is no concern for the neighbors due to the topography of the site. The lights that are there only light the parking lot, and there is some accent lighting in the front. Chairman Michelman asked Mr. Kaufman if there was a problem with that and Mr. Kaufman said that it was not an issue if the Board did not think it was.

Chairman Michelman asked Mr. Kaufman about the existing building exceeding the FAR. Ms. Black explained that this has been how the building has existed since its construction; this is grandfathered because there were no FAR requirements at that time.

The Board said this could be scheduled for a public hearing and revised plans should be submitted prior to that meeting.

CHARNEY

Special Use Permit

Section 2, Block 16, Lot 17A-6

12 Palmer Place

Robert Schweitzer, RLA – Lasting Impressions Landscape Architecture

Discussion

Mr. Nick Pouder was present on behalf of the applicant along with applicants. He explained that he was there on behalf of the applicant's landscape architect who could not attend. Mr. Pouder stated that they had received the Conservation Board's memo as well as the memos from Mr. Kaufman and Mr. Coyne. There were some issues with missing documents, which had been mistakenly omitted. Mr. Kaufman said they could be submitted later.

Mr. Pouder said that they have discussed several ideas regarding mitigation. Originally, the applicant intended to remove a maple tree. They have since looked at this again, and he thought there might be a way to keep that tree, and keep the natural grade.

With respect to the overall lawn care of the site, the applicant was suggesting an organic approach and they would put the specifications on the plan for the next submission.

With respect to the buffer, Mr. Pouder thought there were a couple of areas to do buffer expansion and mitigation. He thought that if they let the septic area go to meadow, it would really reduce the only useable lawn area. The applicant proposes to expand the buffer further uphill to the natural breaking grade. Also the whole perimeter of the site is loaded with barberry, which is fairly noxious and invasive, so the applicant was proposing to make that area function better by removing all of that. Mr. Kaufman said that would count as mitigation. He asked how deep the expanded buffer would be and Mr. Pouder said it would be approximately 10'.

The Conservation Board representative asked if the applicant would let the area naturally revegetate itself and Mr. Pouder said they would and that it would be a no mow zone. The Conservation Board representative asked if the applicant could give him a definite figure about how far that would extend into the site and Mr. Pouder said that it was approximately 35' into the site from the property line. Mr. Kaufman said that he thought Mr. Pouder had just said it was 10' and Mr. Pouder said he thought they could go further than what Mr. Schweitzer already provided. Mr. Kaufman pointed out that there was approximately 40' of buffer between the buffer and the lawn area and Mr. Pouder agreed. Mr. Kaufman said that was much better than previously proposed. He said they would not get 2:1 mitigation, but they were maximizing what we can get. Mr. Pouder said that it really depended on how "mitigation" was defined; it is a question of some level of mitigation.

Mr. Baroni asked how the applicant planned to prevent the barberry from growing back. Mr. Pouder explained that it was spread by birds, who will continue to reseed it, so it is a long term maintenance issue.

Chairman Michelman asked if there were other issues. The Conservation Board representative said they were particularly concerned about preserving the sugar maple, and working out the drainage and septic. Mr. Coyne explained that the only real question was whether, if the tank had to be lowered, it would be sufficient. He said that hopefully the applicant wouldn't have to

get the Health Department involved, but if they can't get gravity flow, and need a pump system, the Health Department would need to be involved. Mr. Coyne asked if the Board wanted to do that testing now, or if they were comfortable enough with the topography on the site to move forward. Mr. Coyne said that the easiest thing would be to have someone go there and test it; the issue is whether they'd need a pump system or not. The Board said that issue would not hold up the public hearing.

The Board said that this could be scheduled for a public hearing for the April 27th meeting. Mr. Pouder noted that the deadline for that meeting had just passed. Mr. Kaufman said that it was up to the Board, and that he was ok with preparing a resolution with these issues as conditions as long as the applicant provided the exact numbers.

The meeting was adjourned at 10:17 p.m.
