

TOWN OF NORTH CASTLE
PLANNING BOARD MEETING
17 Bedford Road
Armonk, New York 10504
December 14, 2009
7:00 p.m.

PLANNING BOARD MEMBERS PRESENT:

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

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

Valerie Desimone
Planning Board Secretary

John Fava
Conservation Board Representative

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

Chairman Michelman noted that this would be Dr. Matusow's last meeting, as his term had expired. On behalf of herself and the Board she thanked him and told him that the Board would miss his expertise.

Dr. Matusow thanked the Board for the opportunity he had to serve on the Board. He enjoyed his experience and time with the Board. He noted that some people in Town have vilified the Planning Board and that those people have suggested that the residents rebel against the Planning Board. He pointed out that it is primarily the Planning Board that is the representative of the people. The idea that the Planning Board is obstructive and should be crippled is not true. The only things that get hung up before the Board are the applicants who appear and seek

approval for things that are outside the bounds of what the code allows. Approvals are the rule, and the Board almost never disapproves applications. It is the Planning Board that keeps applicants within the bounds of reason.

Dr. Matusow thanked the other members of the Board, the professionals and the support staff, as well as the residents of the Town.

APPROVAL OF MINUTES:

November 23, 2009

Ms. Black moved to approve the minutes from the November 23rd meeting as amended. The motion was seconded by Dr. Matusow and unanimously approved.

November 30, 2009

Dr. Matusow moved to approve the minutes from the November 23rd meeting as amended. The motion was seconded by Mr. Delano and unanimously approved.

PUBLIC HEARING:

VARSALES

Lot Line Change

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

2 & 4 Nash Place

Dan Merritts – Thomas C. Merritts Land Surveyors P.C.

Consideration of approving lot line change resolution

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

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

Mr. ? [*did not identify himself*] was present on behalf of the applicant.

Chairman Michelman asked if the applicant's representative had read the resolution. He said that he had and that he had no questions. Ms. Black moved to approve the resolution. The motion was seconded by Mr. Delano and unanimously approved.

SHELL GAS STATION

Site Plan

Section 2, Block 11, Lot 6-6

375 Main Street

Walter Gorman, PE

Consideration of site plan resolution of approval

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

Mr. Douglas Mandart was present on behalf of the applicant. He explained that he has met with Mr. Coyne and Mr. Kaufman and they were able to develop revisions to the plan, and they are all in relative agreement. If Board agreed with the revisions, he hoped to have a resolution of approval.

Mr. Mandart said that they have made revisions to the plan deal with the five-way intersection on Kent Place. The applicant didn't really want to give up the curb cut; having two cuts is important to the value of the land and for the flow of the site. In order to remedy the problem, they propose to make the driveway one-way entrance only and move it further from intersection itself. This puts it a little more than 30' from the intersection, which eliminates the problem that currently exists without impacting traffic flow.

They have reduced the size of the curb cuts to 25' in order to give more islands and more area for pedestrian. Instead of having a dry well, they now propose an oil/water separator and tying it into NS4, and there is access on the southeast corner of the site. That would take care of the storm water drainage.

In terms of the islands along Kent Place, the applicant felt they would impede the delivery trucks to maneuver. Mr. Mandart pointed out that there would be sufficient areas for landscaping along Main Street without the islands. They also revised the size and location of the dumpster enclosure, in order to make it more accessible. They have recalculated the parking, and now they meet the parking requirement.

Lastly, they will move the fuel oil tank to make it right next to the waste oil tank, and on the same concrete pad. This reduces the likelihood of them getting hit, and increases maneuverability in the back.

Mr. Kaufman pointed out that the policy issue that has not been resolved by the Planning Board is what to do with the northern curb cut. If it will be one-way, Mr. Coyne correctly suggested that it should be narrower. Mr. Kaufman said that the alternative is to eliminate that curb cut entirely, which is what he recommends. This would still leave the two other entrances on southern Main Street and Kent Place.

Chairman Michelman said that the improvements were terrific and the Board appreciated it. The only problem she saw was the northern entrance. She noted that turning it into a one-way drive is one way to resolve it, but it may not fit.

Dr. Matusow asked whether the applicant would be willing to make the one-way entrance narrower. He noted that if it was too wide, people make take it as a two-way entrance even if it is designated a one-way. Mr. Mandart said they would not be opposed to that. He noted that they would have to just check the size of the delivery trucks, because 15' might be too small, but they would look into reducing the width. Ms. Black pointed out that would enable them to add landscaping. Dr. Matusow thought that sounded like a reasonable compromise.

Mr. Delano was not as willing to compromise, especially in view of Mr. Coyne's memo. He pointed out that the applicant has not eliminated the five-way intersection. He felt the curb cut had to be removed. To bring traffic in at 90 degrees when a car is sitting at a gas pump is ridiculous. He noted that Mr. Coyne had requested that the applicant revise the plans so that they have all the info together on one plan, and that has not happened. The Board should be looking at one plan that has everything on it. Mr. Delano said that the sketch he presented at the last meeting was based upon the truck movements that the applicant presented to the Board, so he did not know why those additional landscaping opportunities couldn't exist. The paving plan doesn't show that the applicant was going to remove the paving that they have in the street, that they don't have the right to have in the street in the first place. One drawing shows one thing and another shows something else. Mr. Delano thought that there was still more that could be done to improve the overall site.

Mr. Delano added that to hear the applicant's presentation, it sounds that everything they have proposed has been agreed to by Mr. Kaufman and Mr. Coyne, and based upon this memo, he did not think that was the case. He said he was not satisfied with the plan, and he not willing to compromise as far as Dr. Matusow is. He said that he was not looking to shut down the site, but some more work has to be done.

Mr. Mandart said that they did close the curb as Mr. Delano said. Mr. Sauro asked a question about the entrances and Mr. Mandart answered him. Mr. Sauro said that he was not a traffic expert, but he was not sure that this would be the best scenario.

Dr. Matusow asked if it would be a problem for the applicant to give up the curb cut. Mr. Mandart said that to do that, it would limit how the site could operate in the future. He said that Shell doesn't want to keep the site forever. Dr. Matusow asked what Mr. Mandart could envision for the site in the future that would require two curb cuts off Main Street, when most of the stores on Main Street don't have curb cuts at all. Mr. Mandart said that it was not his place to speculate what could be there in the future, but commercial properties never want to give up curb cuts.

Ms. Black pointed out that most of the stores on Main Street have the stores right on the street with parking in the rear, so that the curb cuts would be irrelevant. She presumed that future Planning Boards would continue to develop Main Street in that way.

Mr. Delano thought that the plans need to be put together better. There are things out there that the Board was not seeing on the plan. There is private construction on public property and on someone else's private property, which compromises the sketch that he prepared at the last meeting. Kent Place could look much nicer, but the applicant has not presented a plan that will do that. He noted that most of the truck deliveries are timed so that there is not conflict.

Mr. Coyne asked if there was a way to put mountable pavers in the right of way on Kent Place in

lieu of a landscaped island; this would look better than what was there, but still allow for maneuverability. Mr. Delano said they could put a mountable curb, stamped concrete or mountable pavers; there are options. He added that it would be nice to have a little lawn and get some trees in there.

Chairman Michelman said that the applicant still had to obtain approval from the NYS DOT for the construction of the sidewalk. That could take a great deal of time. While the applicant is pulling the plan together, they should also get moving with the DOT process.

Mr. Kaufman said that the Board still needed to come to a consensus on the curb cut. Mr. Delano thought that the DOT might be more inclined to deal with the applicant if they give back the curb cut.

Ms. Black said she would prefer it without the curb cut. She was inclined to agree with a compromise of narrowing the curb cut and adding landscaping and some kind of mountable pavers / curb.

Chairman Michelman said that the applicant still hadn't addressed the issue of the restaurant overlapping onto their property. Mr. Mandart said that the restaurant was not really doing anything. There are a couple of tomato plants and some garbage. There is no construction there that would be disrupted by moving the fence.

Mr. Mandart said that in terms of the paving on Kent Place, he has spoken to the Highway Department and they said as long as there is no actual construction in the right of way, and there is not, then a little cement overlap was not a problem.

Mr. Delano said that according to the survey, the restaurant is using a fair portion of the gas station property enclosed by a wooden fence for the storage of restaurant equipment. Mr. Mandart said that it was not permanent storage. Mr. Delano said that it didn't matter; it is not supposed to be there for the gas station site plan, so he will not approve it.

Mr. Sauro said that he liked Mr. Delano's drawing that removed the curb cut. He is just concerned with the safety and maneuverability on the site. If the other curb cut was made narrower, then at least they would still have another means of egress if necessary.

Mr. Kaufman said that even with the elimination of the curb cut, they would still have two, two-way access points and that is fairly common for gas stations.

Mr. Mandart said that if people were filling at the tanks, and the other curb cut did not exist, then they might experience some blockage between the egress and access to the site. He said they want to maintain that curb cut to try and give as much maneuverability as possible. He noted that even with this plan, the entrance is more than 30' from the intersection.

Chairman Michelman said that the Board should have a plan that shows everything on one piece of paper. Mr. Mandart said that they could put the site plan on the survey.

Dr. Matusow said that the idea of the second curb cut only really matters if this remains a gas station. If this turns into something other than a gas station, it would not need both. He said he was not saying yes or no on it, but just making a point.

Ms. Black wanted to acknowledge how far the applicant has gone in terms of improving the plan. She said that she would like to see something along the edge of Kent Place. Mr. Mandart said they would work on this.

Mr. Mandart asked whether they were supposed to seek input from the DOT on the curb cut issue or just the sidewalk. Mr. Delano said that if the DOT wanted to opine on that issue, the Board would welcome it

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

SHAPIRO
Special Use Permit
Section 2, Block 17, Lot 4 I 01
2 Hadley Road
Robert Sherwood, RLA Discussion

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 20 out of 24 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present. There were none.

Mr. Robert Sherwood was present on behalf of the applicant. He apologized for having to withdraw the application from previous agendas. The last time they were before the Board, they were proposing to realign the driveway a little bit, add a two-car parking area in the front, and expand and enlarge the parking outside the garage door. He indicated a small wetland on the property and the 100' buffer.

The applicant went to the Conservation Board and expanded a wetland mitigation planting plan. He noted that the applicant would have to upgrade an existing pump chamber. Currently, they are under the asphalt area of the driveway. They made application to the Health Department and in October 2009, they resubmitted to the Health Department, but it was after the plans were submitted to this Board. The tank and the pump chamber are now outside of the parking area, so they are in the process of getting the comments from the Health Department.

Mr. Sherwood said that they were adding approximately 500 sq. ft. of new impervious surface area within the regulated area. There is approximately another 500' outside of that for the driveway and a small shed near the pool for pool supplies.

Chairman Michelman asked if the Board had the new plan. Mr. Sherwood said that they did, he just had not updated the new proposed location of the tank and chambers. Chairman Michelman noted that the Conservation Board's memo mentioned things that they don't seem to have on the plan, including the mitigation. Mr. Kaufman thought the Conservation Board mentioned massive regrading. Mr. Fava said that the relocation of the tank, chamber and the overflow is outside the proposed two-car parking, which would require grading and filling. Mr. Sherwood said that it was an existing lawn space now. Mr. Kaufman did not think that would be significant.

Mr. Kaufman said that Conservation Board recommended approval, with the recommendation that the applicant include pervious pavers and the mitigation area include at least 15' around the wetland boundary. Mr. Sherwood said that there was a great deal of give and take that was taking place and the Conservation Board asked for some pretty substantial mitigation within the wetland. Now they are asking for another 10-15' strip around the wetland, and that seems to be excessive. Mr. Kaufman asked what the ratio was between disturbed area and the planted area. Mr. Sherwood said that they have disturbed approximately 500 sq. ft. and they have mitigated approximately 1,200 sq. ft.

Mr. Kaufman said that the disturbed area constitutes the area of the new impervious surfaces for the driveway and the parking area and the septic tank. That is the number they would use to come up with a 2:1 mitigation ratio. If that is the ration the applicant had, that is all the code requires. Mr. Sherwood said he would do a graphic breakdown.

Mr. Kaufman asked if the applicant has done the low berms and Mr. Sherwood said that he had, and it was on the plan. Mr. Kaufman asked why, then, it was included in the Conservation Board's memo. Mr. Fava said it was suggested by some of the members of the Board that an additional 15' around the existing wetland area be added. It doesn't have to be planted, just unmowed. Dr. Matusow asked if that was acceptable to the applicant. Mr. Sherwood said that he'd have to talk to the applicant about whether he'd want that unmowed look in his front yard. He reiterated that 15' seemed excessive.

Ms. Black asked about the pervious pavers. Mr. Sherwood said his client was not in favor of it; he doesn't want anything that is irregular. He wants something for parking so that his parents will be able to access the house. Mr. Kaufman said that if that was not acceptable to the client it was not a problem because that area will be treated.

Mr. Kaufman said that, at this point, the Board was not requesting any changes, other than to verify that you have the 2:1 mitigation. Ms. Black pointed out that Mr. Sherwood was going to discuss the unmown area with the applicant. Mr. Sherwood agreed.

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

Mr. Kaufman pointed out that the Board was required to make a decision within 62 days now that the public hearing was closed, and the Board did not know when the applicant was going to submit the plans. Dr. Matusow pointed out that applicant could waive the time period. Mr. Sherwood agreed to waive the time period and will try and get the plans in as soon as possible.

41 MAPLE AVENUE

Site Plan

Section 2, Block 14, Lot 6

41 Maple Ave

Mike Fareri

Consideration of site plan resolution

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

Mr. Steve DeLaurentis was present on behalf of the applicant. Chairman Michelman said that since there were no neighbors present, there was no need to make a formal presentation.

Mr. DeLaurentis said that he had read the resolution and had some comments. With respect to item #3 the applicant would like to change it from fence to landscaping, and make it prior to the issuance of C.O.'s if that was acceptable to the Board. The Board agreed. The applicant would like to move item 4 to prior to issuance of a C.O. There will be work that we have to do that incorporates 37 Maple Avenue, and the applicant will have to work with several departments to make that work. The Board agreed. Mr. Kaufman said that item 8 would be combined with item 4. Mr. DeLaurentis agreed.

Mr. DeLaurentis said that after speaking with Mr. Kaufman and Mr. Coyne, he'd like to move items 9-12 as items to be done to satisfaction of town engineer. Mr. Kaufman said that was not any different than what was already in the resolution. Mr. DeLaurentis said that the applicant wanted to combine them and move them to prior to the issuance of a C.O. Mr. Kaufman said that instead of creating the plan now, they would make it a performance standard at the time of [inaudible]. Mr. Delano pointed out that would require Mr. Kaufman and Mr. Coyne to be out there while the ground is open and they're working. Mr. Coyne said he was comfortable with that. Board agreed.

Mr. DeLaurentis wanted to move item #16 to prior to issuance of C.O. Mr. Kaufman said this condition talks about details that will be on the plan, so it makes sense to leave it where it is. Mr. DeLaurentis agreed.

Mr. DeLaurentis asked that item #6 under 'other conditions' be removed because the applicant did not see the relevance in this. Dr. Matusow pointed out that was a standard piece of boilerplate that is included in every resolution. Mr. Delano said that it was a code requirement under the NYS storm water program. Mr. DeLaurentis agreed that it should remain.

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 as amended. The motion was seconded by Mr. Delano and unanimously approved.

20 BEDFORD ROAD
Amended Site Plan
Section 2, Block 14, Lot 13
20 Bedford Road
Mike Fareri
Consideration of site plan resolution

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 16 out of 17 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present. Dr. David Fields, of 40 Bedford Road, was present.

Mr. Steve DeLaurentis was present on behalf of the applicant. He explained that there is a dilapidated shed in the back of the property. The applicant plans to renovate this shed and turn it into a one-bedroom apartment, of approximately 960'. He presented a rendering and explained the layout. Dr. Fields asked if it would have the same footprint. Mr. DeLaurentis said that it would.

Chairman Michelman asked if Mr. Delaurentis had read the resolution. He said that he had and that he had some questions. He asked if the Board would remove item 7 (regarding the requirement that the site plan be revised to depict proposed utility). He pointed out that the utilities already exist. Mr. Coyne said that the Board could move this condition to prior to a CO or revise the comment to depict that the utilities already exist. The Board decided to move it to the CO stage.

Mr. Delaurentis said that he'd like to move item #8 to prior the issuance of a CO. Dr. Matusow pointed out that this was the same issue Mr. Delaurentis raised in the prior application, and the Board decided to deal with it the same way. Mr. Delaurentis felt that item #9 should be stricken because it is in NYS DEC Phase II. Mr. Coyne said this was not applicable. Mr. Delaurentis also wanted to strike condition #2 under prior to issuance of building permit. Mr. Coyne pointed out that the Building Department requires this before a permit can be issued. Mr. Kaufman said that the Building Department would require this regardless and the Planning Board usually includes this as a condition for the Building Department to check off. The Board decided to take it out. Mr. Kaufman also said that item #1 in prior to issuance of a CO could be removed because there is no landscaping associated with the application.

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 as amended. The motion was seconded by Mr. Delano and unanimously approved.

OTHER BUSINESS:

170 BEDFORD ROAD

Site Plan

Section 2, Block 13, Lot 27

162 Bedford Road

Rebecca Rivera – Joseph Crocco Architects

Consideration of approving extension of time site plan resolution

Mr. Steve DeLaurentis was present on behalf of the applicant. Mr. Kaufman explained that there was still the issue of the outstanding invoice that the Board needed to address. Mr. DeLaurentis said he was not prepared to address that.

Mr. Kaufman asked Mr. Baroni what the Board could do. Mr. Baroni asked if this was the same application where the applicant had agreed to put up the \$10,000 and Mr. Kaufman said that it was. Mr. Baroni said that there would be a proposal to change this to a residential plan before the Town Board next week and the invoice will be part of the 10k. Mr. Baroni noted that this was how the applicant got the approval. He explained that if the applicant stayed with the commercial plan, then they would only have to post the difference between the \$10,000 and the invoice amount. Mr. DeLaurentis said he would have to call the applicant. After Mr. DeLaurentis had a chance to speak to Mr. Fareri, he said that Mr. Fareri would be bringing a check over to the Planning Department the next morning.

Mr. Delano moved to approve the extension upon receipt of the check. The motion was seconded by Ms. Black and unanimously approved.

FARERI

Subdivision

Section 1, Block 9, Lot 4-2

69 Round Hill Road

Michael Fareri

Consideration of approving extension of time subdivision resolution

Chairman Michelman noted this approval would not expire until January 9th, but there is a slight chance that the plat would expire before the resolution and the applicant wants to avoid that.

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

SULLIVAN

Final Subdivision

Section 2, Block 13, Lot 17-18

24 Glendale Avenue

Barry Naderman, PE Land Planning & Engineering PC

Consideration of approving final subdivision approval

Mr. Barry Naderman was present on behalf of the applicant. Chairman Michelman noted that no presentation was necessary. Mr. Naderman explained that the applicant was before the Board for final subdivision approval. He explained that there have been no changes since the preliminary approval and they have the endorsement from the Health Department. Once the resolution is approved, the applicant will tear the house down. Chairman Michelman asked if Mr. Naderman had read the resolution. He said that he had and had no issues. There were no issues from Board or the professionals.

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

ARMONK SHOPPING CENTER

Concept Plan

Section 2, Block 13, Lots 7.A & 10.A

450 Main Street & Maple Avenue

Al DelBello, Esq. – Delbello, Donnellan, Weingarten, Wise & Wiederkehr, LLP

Discussion

Mr. DelBello was present on behalf of the applicant. He explained that the applicant has listened very carefully to the town and public's comments. The applicants authorized the architect to redesign the plan, and they were back before the Board with a concept plan. Mr. DelBello said that he believed the new plan has addressed every concern raised.

Michael Ziatta, the applicant's architect, was present for the application. He explained that they have removed the second level entirely. They will maintain supermarket in existing location and keep the loading area in the back of the site. They have provided some new retail at the north end of the property and they will increase the supermarket from 25,000 sq. ft. to 33,225 sq. ft. They will provide 155 parking spaces, which works out to be 1/200 on the retail and 1/250 on the supermarket. Mr. Ziatta explained how the loading would occur and indicated loading area and employee parking area.

Mr. Ziatta presented an architectural rendering to the Board. He explained that they had been concerned with the visibility of the retail area, so they determined they were able to raise the grade in the site. He reduced the retaining wall significantly along Main Street. The parking lot would be approximately 9' below Main Street and blocked by a fence and planting. Mr. DelBello presented the Board with copies of the rendering.

Chairman Michelman said that this is a much better plan. Mr. Delbello explained the pedestrian access.

Mr. Delano asked if the applicant was using the SC numbers for the parking for the supermarket

and wanted to know how that related to the current variance that exists on the site. Mr. DelBello said that he has not looked at the variance, but he did not think that it conformed. He thought they were going to have to deal with either the Town Board or the ZBA on this issue. Mr. Kaufman said that the existing parking requirements would require 268 spaces, and if they used the requirements the applicant was suggesting, they would require 204. The applicant is proposing 155 spaces. Mr. DelBello pointed out that many towns only count the retail space, but said again that they would have to deal with the town board on that issue. Chairman Michelman noted that some of it would be overlap.

Ms. Black asked if the applicant anticipated being able to retain any of the current tenants and Mr. DelBello said that they would like to, but they were not sure. Mr. Kaufman said that keeping the existing uses would further increase the off street parking requirement because they were mainly restaurant uses.

Mr. Delano stated that, in his opinion, this new plan addressed the concerns raised by the residents and the Board.

Mr. DelBello reiterated that the retaining wall would not be that high. Mr. Delano felt that it was very important to get quality landscaping on Main Street. Mr. DelBello said that if the Board felt that the applicant was on the right track, conceptually, they would provide those details.

Ms. Black said that her concern had been the appearance of Main Street and the grade of the property. She thought that this plan began to address those concerns.

Dr. Matusow said that the applicant had better give the Board a good idea on how they plan to deal with the parking deficit. He felt that the Board should keep in mind that this property is still a concern of his, not because of the property itself, but because of the future of that anchor corner. The buildings that occupy the corner now are not what will be there in the future. What the Board does on this corner would close off many options in terms of parking. Dr. Matusow said that he was concerned about the buildings that were located on the southwest corner of the site plan and the use of that driveway.

Mr. DelBello said he did not think that the applicant was proposing anything that would foreclose any options in that area. The town is continuing to look at these buildings and what could be done in terms of parking in the back. Dr. Matusow said that the corner was his real concern. He felt that one could just look at the buildings that were currently there, and know that they were not going to be there for long.

Mr. Kaufman said that the Board would like to facilitate access to those two lots on either side of the applicant's right of way. Mr. DelBello said that would be for someone else to do, not this applicant. Mr. Kaufman explained that the Board has indicated that they would take that piece of property and transfer development rights to the main parcel and use that as a right of way. The applicant has said that was not acceptable. Mr. Kaufman said that he agreed with Dr. Matusow that it is important for the town to potentially eliminate those curb cuts, and now is the time to address this because of the redevelopment of the A&P. He said that they wouldn't be asking the applicant to do anything in terms of construction. Mr. DelBello said that nothing the applicant was doing would preclude the town from doing that in the future. Mr. Kaufman said that now was the time. Mr. Baroni suggested a continuing offer of dedication. Mr. DelBello said that the applicant would consider that. The Board said they were not suggesting negotiating with the

owner of the properties.

The Board indicated that they were pleased with the revisions and the applicant's efforts. Ms. Black noted that with this scheme, there would have to be a period of time where there was no supermarket was functioning. Mr. Ziatta said that was a probability but they would try to minimize that as much as possible.

Ms. Rippstein, a resident, recalled that the original proposal asked for a reduction in parking. Mr. DelBello said that they were not absolutely certain what they would be looking for in terms of parking; it is less than what is required. Ms. Rippstein said that in the early 2000s FP Clark issued a report on this subject, and she was concerned about this plan making that situation worse. To ask the town to accept a situation where there will be more crowding and less parking, is a concern. Mr. Kaufman said that the 2001 study really focused on the west side of Main Street and showed that additional parking was necessary during peak hours of lunchtime. He noted that this plan would require fewer spaces than what is currently required by the code. If they compare what the code requires now versus what the applicant is currently calling for – it is approximately 100 less spaces.

In response to a question from an unidentified neighbor, Mr. DelBello stated that the retail space would be 7,200 sq. ft.

BYRAM RIDGE ROAD SUBDIVISION
Preliminary Subdivision
Section 2, Block 5C, Lot 10
Byram Ridge Road & Hunter Drive
Jim Ryan, RLA Senior Associate, John Meyer Consulting
Discussion

Mr. Dan Hollis, Ms. Megan Smith, Mr. Jim Ryan and Mr. Rob Aiello were present on behalf of the applicant.

Mr. Hollis explained that they needed to recirculate the notice of intent and they applicant was asking for a motion for the Board to declare intent to be lead agency once again. Mr. Kaufman agreed that the Board needed to do that. Mr. Delano moved to declare intent to be lead agency. The motion was seconded by Ms. Black and unanimously approved.

Mr. Hollis said that they were in receipt of the memos from Mr. Kaufman and Mr. Coyne dated October 23, 2009. One of the points repeated in Mr. Kaufman's memo was the need to refer to the Conservation Board for their recommendation. There is a letter of recommendation from the Conservation Board, which said that that Board recommended approval. He did not think it was appropriate for the dissenting opinion of the Conservation Board as part of the record. He said that perhaps it could be included as a comment from a member of the public, but not as a "minority report" that could muddy the water for this Board. The Conservation Board voted to recommend approval and the "dissenting opinion" has no weight.

Mr. Delano noted that there was a wetland permit application associated with the subdivision and one of the requirements is for the applicant to show an alternate plan where a permit was

not necessary. He also noted that the Board has been asking for this alternate plan, and the applicant has not submitted one.

Mr. Ryan said that they have shown the Board two alternatives. Alternatives #6 and #7 both took the applicant completely out of the wetland, with the exception of a small well encroachment. Mr. Delano said that if the plan had any encroachment, no matter how small, then that doesn't count. Mr. Delano noted that the conservation subdivision alternative did not meet the intent. Mr. Delano said that if the applicant can show a five lot plan that conforms to zoning and does not require a wetland permit, than he should. If the only way to do that is by showing a four-lot subdivision, then they have to do that. Mr. Delano pointed out that did not mean that the Board had to approve the four-lot subdivision. The Board could still consider a 5-lot subdivision because the town's wetland ordinance is not a prohibitive one. Mr. Delano added that this Board did not believe that the conservation subdivision was appropriate for this.

Mr. Hollis said that there was no way they would be able to show a five-lot plan that did not require a wetland permit. He said that although the Board might like to look at a four-lot subdivision, that is not what the applicant wants to do. The application is for a five-lot subdivision with a wetland permit. They acknowledge that it would be an exercise in futility to show a four-lot subdivision because they have no intention of doing that. They are admitting that they cannot do a five-lot subdivision without a wetland permit. However, the current plan mitigates that. This plan will enhance that area visually and functionally. Mr. Delano reiterated that there was a code requirement for the applicant to produce a document for the Board's review that does not require a wetland permit; just because the applicant did not want to produce it doesn't mean that they don't have to do it. The requirement has nothing to do with lot count.

Mr. Kaufman said that assuming the applicant prepares a plan that conforms to that requirement, the Board should focus on whether a five-lot subdivision would work for the Board.

Dr. Matusow said that he has heard all of this before. The Board knows that the applicant does not want a four-lot plan even though the Board would like that. They haven't moved too far. Perhaps there is a compromise that would allow the Board to consider a five-lot subdivision that would be acceptable. Dr. Matusow gave the applicant a plan to consider that shows the five lots as the applicant wants. If the entire area in green were given as a conservation easement, that would only require the nearby house to be a little smaller and the configurations of two houses would have to change. He thought there might be enough environmental protection to allow this to move forward. Dr. Matusow said that if the applicant stated that he would not agree to this plan, than he would recommend that the Board limit the approval to only four lots, and make the applicant sue the Board.

Mr. Hollis said that they had a period of time to consider this, and he'd like to talk to the applicant about it. Dr. Matusow said that they would have to be careful of what the IPP approved because they would be married to the footprint and sizes of these houses. If they need to shrink any houses, they need to do that at this stage.

Mr. Hollis said that if the Board thought that this was a good idea, then he would speak to the client. Ms. Black thought it was a good idea. The only other thing you should consider is the house on Lot 5 because it is very close to the buffer line; perhaps that should move slightly south.

Mr. Kaufman said that if the client thought this was acceptable, then they could call him and set up a meeting.

Mr. Delano said that he did not really have a chance to look at this plan so he can't say whether he supports this or not.

FUTIA
Lot line
Section 6, Block 5, Lot 9A
Dennis Lowes
Consideration of extension of time resolution

The Board noted that this was the first 90-day extension

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

The meeting was adjourned at 9:08 p.m.
