

**TOWN OF NORTH CASTLE
PLANNING BOARD MEETING
15 Bedford Road
Armonk, New York 10504
February 9, 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

Valerie Desimone
Planning Board Secretary

Maggi Pack
Conservation Board Representative

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

PUBLIC HEARING

**COLEMAN
Special Use Permit
Section 2, Block 3, Lot 34
63 Wrights Mill Road
William F. O'Neill, RLA – O'Neill Architects
Consideration of approving special use permit resolution**

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 25 out of 27 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present. There were none.

Mr. Peter Monteleone and Mr. O'Neill were present on behalf of the applicant along with the applicants themselves.

Chairman Michelman said since there were no neighbors present, no presentation was needed. She noted that some small items had been left open since last time they met was in early January that needed to be corrected, but nothing was done. So, all those items that could have been taken care of are now conditions in the resolution.

Chairman Michelman asked if Mr. Coyne had any issues and Mr. Coyne said that he had no major substantive issues. Mr. Kaufman said that all of his concerns were identified as conditions in resolution. There were no comments from the board members. Chairman Michelman noted that the applicant would have to return to the ARB and that this listed as a condition in the resolution. She asked if the applicant had read the resolution. Mr. O'Neill said that he had seen the resolution and thought that some of the conditions have been addressed. He had no issues with the resolution.

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 Dr. Matusow and unanimously approved.

GOULET
Special Use Permit
Section 2, Block 11, Lot 10.A04
10 Pheasant Drive
Dennis Lowes – Ralph MacDonald Company
Consideration of approving special use permit resolution

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 10 out of 11 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present. Mr. Richard Coh (12 Pheasant Drive) and Mr. Joe Lestingi (21 Pheasant Drive) were present.

Ms. Goulet was present for her application. She explained that her mother lived in an apartment in her home since it was built in 1992. She wanted to formalize the apartment and make it a legal accessory apartment. There would not be any changes to the area.

Mr. Lestingi asked what an accessory apartment was. Mr. Kaufman explained that it is a separate dwelling unit within the house that has its own entrance, bathroom, kitchen, etc. Mr. Lestingi asked if it could be rented, and Mr. Kaufman said that it could be, but there are certain conditions that have to be met under the code. He explained the major requirements of what had to be met under the code. He pointed out that this applicant satisfies all of the conditions.

Mr. Coh asked if this was something that was common and reasonable in this area. Mr. Kaufman said that this is expressly permitted under the code in this area, but the board had to determine whether it is appropriate in the neighborhood and whether it meets the code requirements.

Chairman Michelman said that the applicant would have to add an additional parking space in

order to satisfy that requirement. She noted that the applicant was only trying to legalize the existing apartment.

Mr. Coh asked where the additional parking space would be located and Ms. Goulet indicated the area on the plan. Mr. Coh asked if the board considered all of the additional impervious surface and FAR and Mr. Kaufman said that they had.

Mr. Lestingi asked how the sale of the house would affect the apartment. Mr. Kaufman explained that the permit would expire upon the sale of the main dwelling. However if there is an existing tenant in the apartment then that tenant is allowed to remain.

Neither Mr. Coyne nor Mr. Kaufman had any issues. Mr. Delano said that there was something missing from page 2 in the 4th and 6th whereas clauses. Mr. Kaufman said that he would make the corrections.

Mr. Lestingi thought that the word "within" seemed important; he wanted to know if someone could build outside of the realm of the 7,200 sq. ft. Mr. Kaufman said that it had to be attached to the existing house. Under the code, detached accessory apartments are not permitted unless it meets certain conditions. He explained that in this situation, it has to be attached to the main dwelling.

Chairman Michelman asked if Ms. Goulet had read the resolution but she had not. The board gave her a moment to read the resolution and asked if the neighbors had any additional questions; they did not.

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

Ms. Goulet, having read the resolution, noted that the resolution required that the additional parking space be built within a year, but wanted to know if she really had to build it. She said that she was not planning on renting out the apartment anytime soon, and that she doesn't need the space right now. She said she would hate to tear up the lawn. Dr. Matusow suggested landbanked parking. Mr. Baroni did not think that that section of the code applies to residential areas.

Mr. Kaufman said that the applicant could choose not to have the board vote on the resolution and then come back when they want to build it. The board thought then they would have an illegal apartment. The applicant said that it wasn't illegal; she got approval for the kitchen and her mother lives in the apartment. The board looked over the plans with the applicant. Mr. Goulet suggested just signing the resolution and then either letting it expire or requesting an extension. The board agreed with that. Mr. Kaufman explained that in order to get the legal accessory apartment, the applicant would need to build the space.

Mr. Delano asked if the applicant had the letters from emergency services and Mr. Kaufman said that he did not; it was item number one in the conditions. Mrs. Goulet said that she would get that information for the board rather than having to have another meeting. Ms. Desimone explained that the applicant would have to submit final plans for signature that showed the kitchen, because the Planning Board files don't show the kitchen.

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

CONTINUING BUSINESS:

STONE MANORS @ ARMONK LLC.

Site Plan

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

2 Daphne Lane

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

Michael Finan PE – CMX

Discussion

Consideration of approving site resolution extension of time

Chairman Michelman explained that the board had received a letter from the applicant requesting their site plan resolution be extended for one year from February 11, 2009 as a result of the current economic climate. The applicant is trying to avoid building until they have secured a buyer.

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

ARMONK SQUARE

Site Plan

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

Main Street, Maple Avenue, Bedford Road

Mark Miller, Esq. – Veneziano & Associates

Discussion

Consideration of approving site plan resolution

The board received a letter from the applicant explaining the delay (they are still dealing with outside agencies including Department of Health, DOT and DEP). The letter indicated that almost all other conditions in the resolution have been satisfied. Dr. Matusow asked how many extensions the board was permitted to give and Mr. Kaufman explained there was no limit.

Dr. Matusow moved to approve the extension of time. The motion was seconded by Mr. Delano and unanimously approved.

20 BANKSVILLE AVENUE

Referral from Town Board

Section 1, Block 12, Lot 7D

20 Banksville Avenue

Joe Crocco – Joe Crocco Architects, P.C.

Discussion

Chairman Michelman noted that there were a lot of neighbors present, but explained that this was not a public hearing. She said that the board would not acknowledge any comments at the meeting. She recognized that the neighbors had submitted many letters to the board, and those letters would be made a part of the public hearing. The following neighbors were present:

1. Mr. & Mrs. O'Connor, 5 Round House Court
2. Ms. Birnbaum, 1 Round House Court
3. Mr. & Mrs. Dyer, 1 Hobby Lane
4. Ms. Lazaros, 7 Round House Court
5. Ms. Saperstein, 2 Round House Court
6. Ms. Gunzelman, 6 Zygmont Lane, Greenwich, CT
7. Mr. Dohmen, 6 Zygmont Lane, Greenwich CT
8. Mr. David Jacobs, 6 Round House Court
9. Ms. Vitacco, 14 Hobby Farm Drive
10. Mr. Saggese, 13 Hobby Farm Drive
11. Mr. Marcus, 2 Hobby Farm Drive
12. Mr. Doto, 2 Hobby Lane
13. Mr. Peter Jacobs, 1 Hobby Farm Drive
14. Mr. Brown, 56 Bedford Banksville Road
15. Mr. Gasr, 4 Round House Court

Mr. Hollis was present on behalf of the applicant along with Mr. DePietro and Mr. Carr. Mr. Hollis explained that the applicant received the lengthy memos from the Town Engineer and Town Planner and recognized that they would have to address those issues.

The Conservation Board had their meeting on January 20th and indicated that they want to go and walk the site. Ms. Evans and Mr. Sessions plan on going to the site to look at some of the issues raised in the professionals' memos. Given the fact that there are issues, the applicant asked that this board and the Conservation Board coordinate a site walk. He explained that the applicant would make available any necessary vehicles and demonstrate sight lines. He added that the emergency officials were also welcome to attend.

Chairman Michelman said that the board had been to the site. Mr. Hollis suggest another site walk.

Chairman Michelman thought the memos were thoughtful on all sides. The board recognized that this was a very sensitive site and now that wetland issues seem to be surfacing to a greater degree than when the application began, there are broad issues here that need to be addressed (specifically the appropriateness of this type of application in a wetland buffer and in the CEA area). She said that to deal with the buffer issue satisfactorily, they require 2:1 mitigation but the applicant cannot meet that requirement because there is no room. The applicant's own plan shows that the trucks will have to go over into the oncoming lanes, no matter which way they go. She added that a prior Planning Board determined that the neighboring property could not have outdoor storage of any kind and this board respects prior determinations. Subsequent to that, the area became more residentially developed, which makes it even more difficult.

She suggested that since the Town Board was really the designated lead agency, and that this board takes issue with the project, if this board agrees, they could refer it back to the Town Board with a recommendation that they have the aforementioned major concerns. She thought that this would be better than breaking down this application in stages, and that it would be less costly to the applicant. She said that the board could not make this decision in the beginning of the process.

Mr. Hollis said he wouldn't have a problem with that as long as any special use and SEQRA determinations would be subject to further review by this board. Mr. Kaufman agreed. Mr. Hollis did not think there should be any conclusions as to the issues announced here; he didn't want anything prejudged in the letter, they should just raise the issues without any stated determination from this board.

Mr. Baroni said that the reason why this application was referred to this board was for a recommendation – either positive or negative – and not for a list of the issues. He said that the board shouldn't refer this back to the Town Board until they believe they have enough information to make a positive or negative recommendation. Chairman Michelman said she thought she made that clear. Mr. Baroni said that if they were able to take a position, that's fine, but it had to be a position. Mr. Hollis cautioned about making a recommendation one way or another without a clear record.

Dr. Matusow thought that Chairman was trying to do the applicant a favor. From the information the board has reviewed, there are so many big problems that the board doubts whether the applicant can solve. He said that the applicant may have to go through many studies at a great cost; however, in light of what Mr. Baroni said, he didn't see many alternatives. The applicant will have to satisfy this board on a great number of issues before they could make a positive recommendation to the Town Board – and in the end, that recommendations might not be positive.

Dr. Matusow said he did not doubt that the applicant could solve the engineering issues, however the wetland issues were very significant. He would have to know how they would do what they planned to do and how they would protect the environment. The applicant already intrudes on the buffer and this is in a CEA. The use has the potential to cause silting in the wetland; construction yards cannot be kept clean. The applicant is looking for a fuel storage / dispensing on the site and that causes the potential for a fuel leak on this site, which could be potentially disastrous. He did not think the applicant could reduce that risk to nothing. Additionally, these sizable vehicles would be moving in and out of the site and the board would probably have to refer this to the town's traffic consultant. The question isn't whether a skilled operator can get the trucks in and out of the property, but the safety of the other people who use that road. There will be huge trucks that will obstruct that road. He pointed out that this would be another expense for the applicant because the applicant pays for the town's traffic consultant. He added that even where this board has made positive recommendations to the Town Board, they have ultimately denied the application based upon their own separate concerns. He said this could take 6-7 months and the applicant could still end up with a negative recommendation.

Mr. Hollis pointed out that the applicant was entitled to the special permit as long as he meets the requirements of the code. He said that the applicant has already invested a substantial amount of money into this property and the application. Dr. Matusow said that was not the board's concern.

Mr. Hollis said that he needed to make my record in the best way possible in the event that the applicant was denied, or someone challenges any future approvals. He said that he and the client recognized the risk. They are beginning to address the issues raised in the memos and they are prepared to keep moving ahead. He said that he agreed with Mr. Baroni that an amorphous recommendation was not what the Town Board wanted. However, he thought that the board could refer it back and say that they were not able to make a recommendation at this time, because of your specific concerns, but recommend that they consider the permit

application, and if granted, that it be subject to this board's approval. During that time, the applicant would have to satisfy the board's concerns.

Chairman Michelman did not think that would accomplish much. Mr. Hollis thought that it would make for a quicker approval process. Dr. Matusow said it did not look like that would happen.

Ms. Black said that she agreed with the safety concerns of the trucks and that the wetland issues concerned her, especially given the CEA. She did not know how the applicant would be able to mitigate this area, and also questioned the safety of having a fueling station in buffer area. She acknowledged that the Conservation Board has yet to walk the site and make their recommendations.

Mr. Hollis thought that a site walk would benefit this board. He pointed out that this application was not the one that would tip the scales and turn the CEA into a disaster area; the applicant was going to do the best possible plan. They knew what they had to do and they know it would be a long and difficult road, and they are prepared to deal with it accordingly.

Mr. Delano said that he was not averse to having the applicant continue with this board, but he'd like to hear back from the Conservation Board. The applicant needs to look at the 2:1 mitigation and there are some deficiencies in the plans and they had to be corrected. He said that he would like to see the extent of the violation too and see the magnitude of the tree cutting / earth work. He said that these wetlands are all part of a water system that leads to a bigger area. The board should take a look at the entire wetland in the area and get a functional analysis of the wetlands and weigh the impacts.

Mr. Sauro thought that it was too early to dismiss this application either negatively or positively. He thought the board should hear back from the Conservation Board and the wetlands consultant. He thought the board could work with the plan, and once they receive more information, they would know what direction they are heading in.

CONTE

Special Use, Tree Removal

Section 2, Block 3, Lot 2-18

3 Terrace Circle

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

Discussion

Mr. Barry Naderman was present on behalf of the applicant. He explained that the applicant was seeking site plan approval and special use permits. After the last submission, the applicant addressed many comments from the professionals and the Conservation Board.

Mr. Kaufman said that the Board had some additional comments from the Conservation Board and comments from the county. He noted that the board does not always receive such detailed comments and concern from the County Planning Board. He said that this was a large home in a subdivision of large homes, so he was not concerned with that aspect of the application. He recommended keeping the plan as is, but tweaking it a little. He said he was still concerned with getting some additional conserved area and thought there were opportunities to use semi-pervious or pervious pavement. There is a lot of driveway on this site plan. The Conservation Board and the County Planning Board recommended looking at using green technologies in order to reduce impacts of this house.

Mr. Naderman said that he too was alarmed at the comments from the County Planning Board because they normally don't make such significant comments. However, they make reference to the fact that the applicant shouldn't use the wetlands as detention basins and they are not – that was a part of the original subdivision. The applicant was proposing their own stormwater mitigation.

Mr. Naderman explained that this was a 4¼-acre parcel that was already environmentally constrained. The subdivision already has a designated green belt along the backs of the properties and the applicant was only proposing limited development. He did not think 1½ acres out of the entire lot was significant. He said that he did not think it was appropriate to further burden the site with more conservation easements.

Mr. Naderman said that the applicant was willing to consider green technology, but cautioned that this technology was very costly, and this is a tough economy. He did not think it should be a mandate of the site plan. Chairman Michelman said that they were only asking that the applicant consider it.

Mr. Kaufman said that this was not an application for site plan approval; the applicant was asking to go above the basic FAR and land coverage. If applicant is not willing to include green technologies, the board needs to weigh this in their decision.

Mr. Naderman said that with respect to pervious pavements, they will look into this and determine where any areas could accommodate pervious / semi pervious pavement. He did not think there were many areas that would be able to accomplish this though.

Chairman Michelman reiterated that these are suggested for consideration; if the site won't accommodate pervious pavement, then the board would like to know it. She said that the board always pays a great deal of attention to the Conservation Board's comments. The house is large, but it is surrounded by other large houses. However, the calculations seem a bit manipulated in order to stay underneath the maximum. Mr. Naderman said that they were not manipulations. The definitions of floor area are written, and this is not the only application with attic space less than 7½'.

Chairman Michelman said that the attic was not the only area of concern – there are other spaces that could be used for living space, even if that is not what this applicant intends. Mr. Naderman explained that the entire upstairs is not attic space; many tray ceilings extend up into the attic.

One of the applicant's other representatives said that there were some areas in the attic that would be about 5'. He pointed out that under the code, the attic could not be used as habitable space, even if there were 10' ceilings. Mr. Naderman explained that if you look at the architectural plan, the hatched areas (indicated) are not really usable – the raised tray ceilings from below intrude upwards.

Mr. Kaufman said that was not his point. He was more concerned with the mass itself, not the habitable space. He said that the board should evaluate this. Mr. Delano said that the only way the board needed to evaluate this issue was from the street view and the neighbor's house. Mr. Kaufman agreed, and said that in this situation this was not really an issue. Mr. Delano agreed. Mr. Naderman pointed out that the houses nearby are much larger than what is proposed. Dr.

Matusow asked if this was the house way down the hill and Mr. Naderman said that was correct. Mr. Naderman showed a cross section of the slopes. One area will retain all of its trees (indicated). He did not think it will be highly visible from any adjoining properties.

Ms. Black asked about the comment regrading the pool fence back near the edge of the property. She noted that this was a wooded area and questioned why the pool fence couldn't be moved in. Mr. Naderman said that this was an area that the applicant wants to be able to use. They don't want to have that feel like it is someone else's property. The applicant has a lot of land back there and they want to use it. Dr. Matusow asked where the fence was proposed and Mr. Naderman indicated. Dr. Matusow noted that this was the kind of thing the board discussed in their discussion about the deer fence legislation. Fencing in the entire property would obstructs paths of wildlife and causes wildlife to go onto other peoples' properties. This problem can be solved by moving the fence in.

Mr. Kaufman noted that the landscaping plan talks about how the wooded area would remain, so he did not see why the applicant would want the fence that far out. Mr. Naderman said that the applicant would still like to utilize the wooded area; the conserved area would not preclude that. Mr. Kaufman agreed and said that the fence could have gates that would permit access. Mr. Naderman said that in the future, the applicant might want to consider obtaining tree removal permits and creating additional lawns. Dr. Matusow thought there was a way to do both. Mr. Naderman said that given the limited amount of usable lawn area, having the fence closer in was not the type of setting they wanted to create. The applicant paid a lot of money for the lot and they want their back yard to stay open. Mr. Kaufman said that the applicant should create a plan that shows what type of back yard is reasonable and appropriate. He did not think the board would want to restrict that.

Dr. Matusow said he had no problem with fences, but he did not think that they should fence off almost half of the property. It affects more than just the owner of the property. Mr. Naderman said that the houses that are already developed already have fences around them. Dr. Matusow said the board could only deal with what is in front of them. He said he was not asking that the applicant give up their lawn area, just that the fence not run along the fence along the property line as the applicant is proposing.

Mr. Sauro asked where the neighbor's fence was located and Mr. Naderman indicated. Mr. Sauro suggested an alternative location for the fence, that didn't include that much additional space. Mr. Naderman said that alternative would cause more of an impact to the owner than to the deer. Ms. Black wanted to know why would it impact the homeowner at all – the fence would be in the wooded area. Mr. Naderman said that it would be quite visible to move it in as Ms. Black suggested. Again, the continuity of the land is important to the applicant.

Mr. Delano asked about the property to the south of the applicant. Mr. Naderman believed it was a separate building lot that has not yet been developed. Mr. Delano asked if the 50' vegetative buffer continued there, but Mr. Naderman was not sure.

Mr. Naderman pointed out that the entire front portion of the property would be maintained as it is today and that is a big portion of land.

Dr. Matusow agreed with Mr. Sauro that moving the fence slightly wouldn't gain much; but he was talking about having the fence around the pool and the patio. Then it can be screened, and not be a visual impediment. That way, the applicant could have the expansive view of their

property like they want. Mr. Naderman explained that the applicant has a vision for their property, and this is not what they desire; however, they will discuss further.

Dr. Matusow said this was really the only other issue the board was hung up on. The other issues don't concern them that much. Ms. Black agreed; the massing didn't bother her because although it is large it can't be seen.

Mr. Naderman said that, with respect to the stormwater, part of the application is for approval of the additional buffer intrusion. Dr. Matusow asked if that would require mitigation. Mr. Naderman said that it would, but that issue confused him. He knew that when wetlands were disturbed 2:1 mitigation was required, but beyond 100' buffer, he did not know what loss of wetlands would incur to require mitigation. Mr. Kaufman said they were not asking the applicant to create wetlands, but some type of area that is kept pristine. Dr. Matusow suggested that the decreasing the size of the fenced in area be considered mitigation. Mr. Kaufman said that they could consider that, if that area would be protected.

Mr. Sauro said that he was uncomfortable with telling people where they should put their pool fence. He felt that, within reason, they should get as much lawn as possible. However, he agreed that the applicant should address the other concerns. Mr. Sauro asked whether the applicant would be able to see the fence from the pool deck if they put the fence in the back as they planned. Mr. Naderman said they could not, but the applicant was going to have additional discussions about the fence.

Mr. Delano asked if the detention basin drained into the Byram River basin and Mr. Naderman said that it did not. Mr. Naderman said that they acknowledged they would need to comply with state requirements. Chairman Michelman asked if the applicant was planning to keep entire front area as wooded and Mr. Naderman said that they were, although they might do some scruff cleaning. Chairman Michelman thought that Mr. Kaufman was talking about that area as being a conservation easement – so that if the lot was ever sold, that area would remain wooded. Mr. Naderman said that the area nearby is already protected by code constraints. Dr. Matusow said that those are code requirements that could change, but conservation easements could not. The board pointed out that the conservation easement wouldn't impact the applicant at all.

Mr. Naderman said that he just spoke to the applicant and they will have a new study of pool area and fencing to see if there is a way to maintain the corridors as suggested. The applicant is also willing to consider placing a protective covenant in the front to protect the green space if they can try and study creating additional lawn area in the back. The board members all said they liked this idea.

FARERI
Subdivision
69 Round Hill Road
Section 1, Block 9, Lot 4-2
Susan Fasnacht, PE
Discussion regarding adopted preliminary subdivision resolution

Mr. Steve DeLaurentis was present on behalf of the applicant. He explained that he had

reviewed the preliminary subdivision resolution and there are two issues. He noted that he sent a letter to the board, which the board said they received.

Mr. Kaufman said that the first issue, on page 4 of 9 in the 4th whereas clause from the bottom they could add the words "and / or existing structure." Mr. DeLaurentis agreed. The board said that was a reasonable request. Mr. Delano moved to amend the resolution accordingly. Ms. Black seconded the motion. The motion was approved by all except Dr. Matusow who abstained because he was not at the last meeting.

Dr. Matusow wanted to know what applicant meant by "variance." Mr. Baroni explained that the sprinkler law has a variance procedure built into it where if the applicant shows that there are alternate means of fire protection, they could get a variance from the sprinkler law.

Mr. DeLaurentis said the second issue had to do with redundancy. The town professionals did a comprehensive review of this plan over the last year and a half. They got the IPP to a point where they have shown that they can do what is shown on the plan. They did a complete grading analysis, stormwater prevention plan, they developed structures and depicted the necessary piping etc. The applicant's problem is that they have a potential buyer but he is hesitant because there is nothing that says he could do this specific plan and because he may have to go for a special use permit.

He suggested that there be language included that they be allowed to go up to a certain limit on FAR and gross land coverage. He recognized that they would have to come back for site plan approval, but in terms of marketability, it would be helpful for them to have some language.

Mr. Kaufman explained that the Board could not waive the requirement for a special use permit – it is that is a code requirement. There are a couple of ways to deal with this situation, and he has spoken to the applicant about it. For example, the applicant could make an application for the specific lots or, the board could put in the resolution that up to the basic amount is permitted without a permit. Mr. DeLaurentis said that would not help them; the applicant went through all this work and would like something more. Mr. DeLaurentis asked Mr. Baroni if they could put something in the resolution as a whereas clause but Mr. Baroni said that would not accomplish anything.

Dr. Matusow explained that just because an applicant comes in under the maximum doesn't mean they are automatically entitled to it. The Planning Board has to look at it and review it in detail. Mr. Baroni pointed out that it would also be subject to its own public hearing and the board has no power to waive that. Mr. DeLaurentis asked if they could include language that says the resolution is based upon the specific plans that show all the work the applicant has done. Mr. Delano said they could probably put something like that in the whereas clauses; they were basically only statements of fact taken from the applicant's plan. Mr. Kaufman said they could do that but they would still have to come back for a special use permit.

Chairman Michelman said she did not mind the whereas clauses, because they have no legal significance, however often new owners have the idea that everything is done, and then they want to change them. Mr. Delano said that the whereas clauses will establish record that at the time, the Planning Board thought that this was a doable plan

Mr. Kaufman said that if they moved ahead with the preliminary approval, then the applicant could come in for the three lots for site plan approval. Mr. DeLaurentis said they could not do

that because they couldn't have a specific house design.

Dr. Matusow pointed out that the minutes of the Planning Board meetings would accomplish the same thing as the whereas clauses. Mr. Kaufman said that if the Board was going to add the whereas clauses, he wanted the board to tell him exactly what they wanted. Mr. Delano suggested simply a verbal representation of the details on the plan. The board decided that they did not want to go this way.

Mr. DeLaurentis asked if he could speak with the applicant for a moment, and the board agreed. When Mr. DeLaurentis came back he asked if it was possible to put this off until another meeting. Mr. Baroni pointed out that the board already adopted a resolution. If the applicant wanted to come back, they will have to adopt an amended resolution. The board did not think that this was significant enough to require another public hearing.

Mr. Baroni cautioned that resolutions could be challenged within 30 days of filing with the clerk and the amendment will extend that period. Dr. Matusow asked if whether the applicant coming back to get an amended resolution, that would reopen the applicant to all of the other issues on the site. Mr. Baroni said that potentially, it could. He stated that if the board was thinking of going that way, they may want to consider reopening the public hearing. Dr. Matusow thought the applicant should be aware of this.

Mr. DeLaurentis said the lot was not marketable as it is. The board didn't understand why that was the case. If the applicant was selling a piece of property, buyers are going to have to comply with the code. Mr. Baroni suggested putting a condition in the contract so that if the future buyer cannot get the approvals they want, then they could back out. He said this was the typical way to deal with this type of situation. Mr. DeLaurentis said that deals made in this economic climate are very different than deals that were made in the past. They are dealing with entirely different buyers who want to know right away that they will be able to build a house up to a specific size and a pool, etc.

Mr. DeLaurentis said that they had to study everything on this property because of the way the code is written. They did not see why they have to be subjected to a special use permit. The board reiterated that was the law. Mr. Baroni said that the board wanted to make sure the lots would work under the maximum build out, and now that they know the subdivision works, they still have to comply with the rest of the code.

Mr. DeLaurentis asked if this could be moved to the next agenda because the applicant did not want to move forward. Mr. Delano said that even if the applicant came back the attorney has explained that the board cannot do what the applicant is asking. Mr. DeLaurentis said that the applicant would like the opportunity to talk to his own attorney. Mr. Delano said that was fine, but there was no need for this to be on the agenda again – the applicant could just talk to his attorneys.

Mr. DeLaurentis asked about the time limit being up, and reopening the public hearing. Mr. Baroni said that the applicant should sign the resolution that was filed with the town clerk; this would not prevent the applicant from coming back for an amendment. Mr. DeLaurentis asked if they would have to reopen the public hearing. Mr. Baroni said he did not think the issues are significant enough to require a new public hearing. The applicant will have to sign the first resolution and then the amendment.

DISCUSSION OF PROPOSED DEER FENCE DRAFT LOCAL LAW

Mr. Kaufman explained that the proposed draft deals with two things: allowing 8' deer fences and walls on the front setbacks.

The issue of deer fencing came from the ZBA; they were getting numerous requests to approve 8' deer fences. Although they were approving them, they wanted to see if the Town Board would consider allowing 8' as of right in the code. It would be in the section that says that 6' fence is permitted for regular fences and there would be an exception that would allow 8' deer fence along side and rear yards.

The second aspect concerns walls at the front yard setback line. This board has been concerned with approving 6' walls in the front, so he suggested amending the code to only allow 4'. Some Town Board members had been concerned with prohibiting 6' walls and felt that it was something that this board could consider when it came before us. He said that while this is something the Planning Board considers, they only see a few applications when they come in for some other issue.

Ms. Black noted that all the data the ZBA obtained said that 7' was sufficient. Mr. Kaufman explained that the DEC recommends 8'. Mr. Delano pointed out that stock deer fencing is sold in 6' or 8' heights. Ms. Black did not think the board would want to make it so that residents would have to get custom fence. She did not have a problem with 8' deer fencing.

With respect to the front, Ms. Black thought that the board did not want solid walls over 4', but there were some instances where they allowed something different up to 6' (i.e. a 4' stonewall and then a picket fence on top). Mr. Kaufman said that would not be allowed under the new code. Ms. Black thought that putting a 4' limit in code may be too restrictive even though the board has made decisions like that in the past.

Chairman Michelman thought that this might be creating more problems by codifying it, because then it would require more applications for variances.

Mr. Kaufman explained that the Town Board was looking for some guidance on this issue from this board and he wanted to know if there was a consensus.

Mr. Sauro did not think it was necessary to include the limits for the front yard set back as part of the code amendment.

Dr. Matusow said that the board has been successful in dealing with applications where they have had an issue with the front fences. He said that the board has enough levers to get the applicants to reduce the fence. Mr. Kaufman said that was true for the applicants that came to the board, but the board was only seeing a very small percentage of the applications. Dr. Matusow recognized this but thought that the board should consider just how much they want to codify. He thought that this would be stepping over the line by establishing a limit; it reduces the board's flexibility.

Mr. Kaufman asked about the board's feelings on deer fences in the front yard. He wanted to know if the board would allow an 8' deer fence in the front. Chairman Michelman thought that 8'

in the front would be offensive. Mr. Delano and Ms. Black agreed. Dr. Matusow did not think that many people would consider putting an 8' fence in the front. Chairman Michelman said that if they said that they would allow up to 8' on the side and rear, then they wouldn't need to say that it isn't allowed in the front.

The board agreed that they would allow 6' fences around the property but mesh deer fencing up to 8' would be permitted on the sides and rear.

Dr. Matusow noted that people putting 8' fences around their entire property line could have the effect of blocking migratory paths of animals and forcing animals into neighboring yards and streets. This would occur mainly on larger properties. He thought that there should be a requirement that it be placed closer to the homes and not on the property line. Ms. Black suggested no fencing beyond clearing and grading limit lines, but Mr. Kaufman explained that not every property has a clearing and grading limit line.

Dr. Matusow thought that the draft language be revised to deal with these suggestions. He also said that perhaps this could be in the discretion of the Building Inspector. Mr. Sauro said that the board could not do anything and continue to let the ZBA deal with it on a case-by-case basis. The size of a lot may not always be a determinative factor; there is too much to think of, and it may not be possible to legislate.

Ms. Black noted that there is nothing to prevent people from erecting 6' fences on their property around the property line; perhaps the board should consider legislation preventing fences around the entire property line.

Mr. Kaufman thought that the ZBA would probably prefer legislation as opposed to having them review it on a case-by-case basis. Chairman Michelman pointed out that this was their function and they should look at these on a case-by-case basis.

Mr. Kaufman read the letter from the ZBA indicating that there have been a number of recent deer fence applications seeking fences in excess of 6'. Mr. Baroni said that the ZBA had a point in that the fact that there have been so many applications may be indicative of a problem and perhaps legislation is needed.

Chairman Michelman recognized the influx, but still thought that whether or not to fence the entire property needed to be determined on a case-by-case basis being mindful of the ecological impacts that the fences would have on deer movement.

Dr. Matusow – not sure that you could easily write a piece of legislation that easily addresses the concern of fencing off entire ppty. Perhaps solution is to better educate the building department and the ZBA and leave the code as is. The rest of the board agreed. Matusow – we have to make sure they get something from us explaining our concerns.

Indicate that the board doesn't have any problem w/ 8' high fences, but that they need to be determined on a case-by-case basis, which is most appropriate for the ZBA to do.

Dr. Matusow explained that the only other alternative he could see was to have the Planning Board deal with these applications, and that would be very onerous. Mr. Coyne suggested that the RPRC could deal with it. Mr. Kaufman said that would be a possibility. Chairman Michelman

agreed it was a possibility, but that was not part of the Building Department, and this was really a ZBA function.

Ms. Black moved to make the aforementioned recommendation to the Town Board. The motion was seconded by Mr. Delano and unanimously approved.

DISCUSSION OF PROPOSED AMENDMENTS TO GROSS LAND COVERAGE REGULATIONS

Mr. Kaufman explained that the Planning Board has been dealing with Gross Land Coverage applications via a special use permit and FAR applications via site plans. However, the town doesn't have residential site plans any more, so it is his recommendation to treat both of types of applications as special use permits. The standards are the same, so there would be no difference in terms of the way they are approved. He added that the figures are not proposed to change.

Chairman Michelman noted that the board has, in effect, been doing special use permits for both types of applications and Mr. Kaufman agreed. Ms. Black thought that both types should be treated consistently.

Ms. Black moved to make this amendment. The motion was seconded by Mr. Sauro and unanimously approved.

The meeting was adjourned at 9:50 p.m.
