

**TOWN OF NORTH CASTLE
PLANNING BOARD MEETING
15 Bedford Road
Armonk, New York 10504
October 26, 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

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

Chairman Michelman noted that the Shapiro application was removed from the agenda due to an error in publication. She also noted that the Byram Ridge Road subdivision application had been removed from the agenda.

PUBLIC HEARING:

SULLIVAN

Preliminary Subdivision

24 Glendale Avenue

Section 2, Block 13, Lot 17-18

Barry Naderman, PE – Naderman Land Planning & Engineering PC

Discussion

Consideration of approving preliminary subdivision approval

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 25 out of 30 cards and one envelope were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the meeting. There were none.

Mr. Barry Naderman was present on behalf of the applicant along with Mr. Sullivan himself. Mr. Naderman explained that the applicant was seeking approval for a two-lot subdivision. He explained that this was a re-approval of the prior preliminary approval. He said that he read the resolution and had a few comments.

Mr. Naderman said that the conditions relating to the grading easement could be removed and the Board agreed. Mr. Naderman requested that the condition relating to the existing sanitary sewer service be moved to the section "prior to issuance of building permit." Mr. Coyne and Mr. Kaufman said that was acceptable. Mr. Naderman said that the applicant already has a signed plat endorsed by the Health Department and they were seeking preliminary approval. Mr. Kaufman explained that the applicant still would have to submit a final plat to the Board because they were only approving a preliminary plat. Mr. Naderman said that as soon as this was approved, he'd be filing the final application. Mr. Kaufman told him he had to make sure the necessary conditions were satisfied. Mr. Naderman asked if the public hearing could be waived and Mr. Kaufman said it could.

Mr. Delano questioned whether condition #2 in "conditions before final plat" was really necessary. Mr. Kaufman said that it was, unless the Board was going to require what that note says. Mr. Kaufman explained that the code has been revised since this plat was originally filed so it was not applicable anymore. Mr. Delano asked if condition #10 regarding the removal and restoration of the driveway - did you want to make that the responsibility of the Highway Department and / or the Town Engineer as opposed to it being the responsibility of Mr. Kaufman. Mr. Kaufman said that condition just meant that the note should be on the plat to the satisfaction of the Town Planner. Mr. Baroni suggested that it be more specific and Mr. Kaufman agreed.

There were no other comments. Mr. Delano moved to close the 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.

IBM

**Preliminary Subdivision & Amended Site Plan
Section 2, Block 16, Lot 4 – 1 New Orchard Road
Section 2, Block 16, Lot 4-1 – 1 North Castle Drive
Mark Gratz – Divney Tung Schwalbe**

Discussion

Consideration of approving preliminary subdivision resolution

Chairman Michelman read the public notice for the record. Ms. Desimone noted that only 4 green cards were missing. Chairman Michelman asked if there were any neighbors present for the meeting. Ms. Dorothy Lander of 25 Old Post Road was present.

Mr. Edward Dolan, Tony Cannanacko and Mark Gratz were present on behalf of the applicant. Mr. Dolan explained that the applicant was proposing a two-lot subdivision and seeking approval for an amended site plan.

Mr. Gratz explained the existing IBM campus is 343 acres and currently divided into two lots (Lot A and Lot B). The subdivision proposal would divide the existing Lot A parcel, which has the former IBM headquarters facility and create three different parcels. From those three parcels a portion (18 acres) would be annexed onto Lot B, which would increase from 211 acres to 229 acres. A new Lot 3 would be created which would house the existing IBM North Castle facility. The new development parcel is Lot A-4.

Mr. Gratz presented a plan to the Board and the neighbors. He indicated Ms. Lander's property and explained that there are no plans, from a traffic standpoint, to modify any signage or restrictions on Old Post Road. He indicated the new access point, which would be from the existing IBM entrance across from the eagle on Main Street.

Mr. Gratz explained that as a result of this proposal, there would not be any increase in development potential. Part of the project entails action by the Town which could possibly allow a hotel on a particular 33 acre parcel. This was found by the Town's traffic consultant to improve the traffic conditions if it should occur.

Chairman Michelman asked if there were any questions. Ms. Lander asked the current rules for the hours of new construction. Chairman Michelman said it was set forth in the code. She told Ms. Lander that this plan is simply looking at allowing a subdivision so that some time in the future, they could split up their own property. Mr. Kaufman said that she could call him tomorrow for the actual hours. Ms. Lander asked how this project would impact the traffic on Old Post Road and Mr. Gratz said it should not impact traffic. He explained the location of the entrances to Ms. Lander's satisfaction. The existing buildings will continue to operate the way they do today.

Mr. Dolan said that the applicant was requesting that the Board issue a negative declaration and grant preliminary subdivision approval.

Mr. Kaufman advised the applicant that the Board was willing to close the public hearing if the applicant would waive the time constraints in relation to the Board making its decision. Mr. Dolan agreed to waive the time constraints.

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

Dr. Matusow moved to adopt a neg dec. The motion was seconded by Ms. Black and unanimously approved.

Chairman Michelman asked if the applicant had read the resolution. Mr. Dolan said that he had, and had no issues.

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

CODY AND C.S. HADLEY LLC

Special Use Permit

7 Hadley Road

Section 2, Block 17, Lot 5F

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

Discussion

Consideration of approving special use permit resolution

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 18 out of 20 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the meeting. Ms. Fran Bernard 11 Hadley Road was present.

Mr. Barry Naderman was present on behalf of the applicant. He explained that the property is two acres and there had been an existing residence that has been torn down (indicated). The application is for a new residence, associated driveway, pool and pool house. The plan proposes an individual septic system in the front and a second septic in the rear for the pool house with associated grading. The site plan includes a fair amount of screening along the property lines. He indicated the applicant's property as well as Ms. Bernard's.

Mr. Naderman presented the front, rear and side elevations of the house. He explained the elevations and the layout of the house to Ms. Bernard. Mr. Naderman added that the applicant had already received ARB approval.

Mr. Naderman explained that the layout was designed to create more of a planted formal garden in the front of the house with a side driveway and apron. He asked if Ms. Bernard had any questions for him.

Ms. Bernard noted that the applicant was clear cutting 9,000 sq. ft. for the house, pool, septic, etc. and that they were cutting down approximately 79 trees. She thought that was a lot. She was concerned about the water problem on the street, and felt that it would be worsened as a result of this plan. She also wanted to know how the applicant was going to contain the runoff during construction. She said her main concern is what this will be like several years from now and what her recourse would be if this project causes water damage to my house / property.

Mr. Naderman explained that due to the slope of the property, it actually drains away from Ms. Bernard's property. He said that they will have infiltration systems throughout the site that will collect all the runoff on the site. They have done testing on the site, which has been approved by the Town Engineer; the soils are fantastic and he doubted there will ever be a problem. He pointed out that the applicant is proposing a fully buried basement on this house because the soils are so good. Mr. Naderman said that the grading associated with this house is far less than most other houses he has worked on. There are not going to be significant cuts and fills. It will not alter the drainage patterns. Yes, there are some trees that are coming out, but the site drains in the opposite direction. The applicant will be managing all of the runoff on the site. During the construction the entire property will have silt fencing. Mr. Naderman indicated the location of the silt fencing and the catch basins.

Chairman Michelman explained that one of the engineering objectives is for the applicant to manage all the runoff from any of their structures. There should not be any runoff for this project. Ms. Bernard wanted to know where all the water went, and Mr. Coyne said that it basically goes underground and dissipates.

Mr. Charles Rosenblatt (9 Hadley Road) said that his property was lower than this and he did not understand how the water could drain the way Mr. Naderman has stated. Mr. Naderman explained that it would be accomplished through drainage systems. He added that there was a little bit of an embankment in that area and that would be landscaped.

Ms. Bernard asked about the screening proposed between 7 and 9 Hadley Road, and wanted to know if the applicant would be planting trees that are more likely to absorb the water. Mr. Naderman said he did not really have an answer for that. Willows are known to have very absorbent root systems, but they could not use those trees here. In fact, the soils here would not even support those types of trees.

Mr. Rosenblatt noted that there is a berm in the driveway with fairly large trees along the drive and wanted to know if they were staying. Mr. Naderman said that they were; he added that the applicant actually changed the site plan in order to protect those trees. The applicant's landscape architect has considered this issue. The trees are appx 14-16 feet away from the edge of the driveway.

Ms. Bernard recognized that the applicant kept saying there would not be any problems but wanted to know what to do if she did have a problem. Chairman Michelman said that she could go to the Building Department and make a complaint. Mr. Delano said that the soil conditions and design basis of the infiltration systems are such that this should not cause a problem. This is designed for a 25 year storm. Dr. Matusow said that when an application gets to the point where the Board is ready to approve the resolution – the Board does not just accept the engineering plan on the word of the applicant's engineer – but by the Town's own engineer. The Board has been assured that, to the best of everyone's ability, this system is designed to work.

Mr. Delano asked if the pool house had a 2nd floor or vaulted ceiling. Mr. Naderman said that it had a vaulted ceiling. Mr. Delano noted that the square footage of the pool house was not listed in a particular section of the resolution. Mr. Kaufman said that it was included in the overall square footage.

Ms. Bernard asked where the drainage from the pool house went and Mr. Naderman indicated the drains and the infiltrator system associated with that.

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

Chairman Michelman asked if Mr. Naderman had read the resolution. He said he had and had no issues.

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

PUBLIC HEARINGS CONTINUED:

BENNIS

Special Use Permit

250 East Middle Patent Road

Section 1, Block 3, Lot 6.B

Teo Siguenza, Architect PLLC

Jerry Barrett – J.D. Barrett & Assoc. LLC

Discussion

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

Mr. Jerry Barrett and Mr. Teo Siguenza were present on behalf of the applicant. Mr. Barrett explained that he became involved with this project to deal with environmental issues. It was determined that there is a wetland on the property. The surveyor has flagged the wetland and located the 100' setback line. The garage structure was going to be in the buffer, so the applicant requires a wetland permit. He indicated the Mianus River Gorge property.

Mr. Barrett explained that at the site walk they noticed that the sides of the property are maintained as mowed grass and earth. If they could cut in and take an area and transfer that into a planted filter strip, they might be able to provide some mitigation as it runs toward the wetland area.

Mr. Barrett stated that they have identified the 25% slopes and indicated this on the site plan. Construction is proposed on the steeper slopes, so they tried to figure out how to do what was best for the structure. They initially proposed plantings and a retaining wall but have since determined they should extend the retaining wall. There are a series of landings that would be accessed by stairs.

The applicant prepared an erosion control plan with 1 on 3 grading. They will have walls of silt fences. They are proposing septic outside of the buffer and proposed infiltrators will be in the buffer with planting would be on top. Four trees would be removed.

Mr. Barrett explained that they have prepared a planting plan with a mix of native small trees and shrubs and ground coverage. They tried to choose things that would do well in shaded area. They will have deer fences for a period of time to protect the plants. Mr. Barrett said that between the plantings and the walls he believed they could provide mitigation.

Chairman Michelman asked if the septic was completely outside the buffer and Mr. Barrett said that it was, and indicated the location. Chairman Michelman asked if the only thing in the buffer were the infiltrators and basins and Mr. Barrett said that was correct.

Mr. Rod Christie, the director of Mianus River Gorge Preserve, interrupted the Chairman and said that was a very shady site and the proposed plantings will not grow. He added that the site drains from the house down to the wetland so everything that is done during construction will wash down into the wetland.

Mr. Barrett agreed with Mr. Christie that the site does drain toward the wetland. He said that there is a stone wall there and that helps to slow some of the stormwater. However, the applicant proposes to put a soil mixture down and put the plantings in. They were careful to choose species that would tolerate the dense shade. Once it becomes established, Mr. Barrett thought it would help the condition. Right now, it is basically unimpeded runoff. This might result in an improvement to the stormwater runoff.

Mr. Delano said he had raised an issue at the last meeting, but never heard back from the Building Department on the issue. In his reading of the code, the location of the building is improper and he thought that the proposed location requires a variance. There is a difference between a "front yard setback" and a "front yard." This building is located in the front yard, and accessory structures are not allowed to be in the front yard. Mr. Delano added that, in looking at the plans, it seems that there is a conspicuous absence of topography in the front where the septic system is proposed. There are no existing contours in the septic area.

Mr. Christie wanted to know what the building would be used for and Mr. Siguenza said that it was going to be a garage with an art studio and a powder room.

Mr. Siguenza said that he was not sure if Mr. Delano was reading the code correctly. Mr. Kaufman said he thought Mr. Delano was correct. Mr. Siguenza wanted to know what they should do if Mr. Delano was correct. Mr. Kaufman said that the applicant could keep the building where it is and seek a variance, or relocate the building. Mr. Siguenza wanted to know why, every time they came to a meeting, a new issue arose. Mr. Delano reiterated that he had mentioned this at a prior meeting.

Mr. Barrett asked if there were any other concerns of the Board that they should be aware of. Mr. Christie thought that if they moved the building, it would put it entirely in the wetland buffer. Mr. Barrett stated that if the applicant increased the disturbance in the buffer, then they would have to increase the mitigation proportionally.

Mr. Delano said he had a general question regarding 2:1 mitigation and felt that the Board has handled it differently on different plans. He said he was looking for clarification. He wanted to know whether, if an applicant encroaches into the buffer, he could provide the mitigation by

making changes in the buffer and wetland. Mr. Kaufman said that the code was not specific as to where the mitigation has to occur. The Board has approved plans that improve a buffer that is being disturbed. Mr. Delano wanted to know what would happen if there wasn't a "dirty wetland." Mr. Kaufman said that in that case, he doubted that the Board would approve that mitigation.

Mr. Barrett stated that he has done wetland mitigation plans in many towns in Westchester and they often provide mitigation in buffers and wetlands. That is where they will do the most good; that is where mitigation makes the most sense.

Mr. Christie said that the problem with this site is that if they tried to improve that particular buffer, that is a very shady site, so it will be difficult. Also, anything they plant, they would have to deal with the deer. Mr. Barrett said that was why they have to try and plant things that the deer won't eat. Mr. Barrett pointed out that whatever is done there will be better than what is there now. There is nothing there now. This is something he does all the time, and it is viewed as acceptable mitigation.

Chairman Michelman said that the issue now is whether the structure can be built where it is proposed in light of Mr. Delano's reading of the code. There is also the issue of the half bathroom. She said that the Conservation Board should be involved to give input about adding this facility.

Mr. Barrett said he would discuss alternative locations with the client. Mr. Baroni pointed out that the applicant would have to be able to demonstrate that there is no practical alternative in order to get a variance.

Dr. Matusow noted that this application started off with him thinking it was a very simple application, but there is no room on this site. The proposal does not work with all the constraints of this property. He said he feels bad for the applicant for having to go through all of this, over what is essentially a tiny project, but all these things have to be dealt with. He thought the applicant has to consider whether all of this is worth it.

Mr. Siguenza said that his concern is with his client. Every time they come to the Board there is a new issue. He'd like to have all the issues consolidated. He wanted to know, once they address this issue, what is next, and then what is next after that.

Dr. Matusow said he believed it was the responsibility of every applicant to read the codes and know what they're dealing with when they come to the Board. It is the Board's job to study an application as it moves along and if they then realize that something is an issue, then the applicant has to address it. It is not the Board's fault if the applicant didn't think of it before, or if a member of this Board didn't think of it first.

Mr. Sauro said that in November of last year, the applicant came to the Board, and he had made a suggestion regarding having a driveway that pulls straight in. He wanted to know if it was possible to fit this outside the buffer in that situation. Mr. Barrett said that there are some issues with the owners, who want to preserve some of the views they have and that drove the design of this plan. However, now that this new issue has come to light, he will discuss everything with the applicant to determine alternatives.

Ms. Black said that the Board was concerned with the mass and view from the street. At that time, the Board had been told that the wetland buffer was behind the structure and they have not dealt with this issue. They only realized it was an issue once the wetlands consultant confirmed the buffer. Mr. Barrett explained that this was not a result of anyone trying to deceive the Board; they didn't realize that the impact came from the wetland that was on the neighboring property. Ms. Black recognized this and said that she appreciated the applicant's attempt to break up the mass of the structure.

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

OTHER BUSINESS:

DEHMER

Site Plan

11 Annadale Street

Section 2, Block 2, Lot 23.D01

Fred Rucker, AIA Discussion

Mr. Fred Rucker was present on behalf of the applicant. He explained that after the site walk, the applicant determined the most logical location for the structure. The applicant decided to keep the driveway gravel rather than paving it. With respect to the lighting, they want to keep it as residential as possible, so they will only have a few lights. Mr. Rucker added that they would provide additional trees around the flagstone patio.

Chairman Michelman asked about additional screening on Annadale Street and Mr. Rucker said that there was really only one house that would be affected and indicated its location. Chairman Michelman said that the Board's concern was the house across the street.

Chairman Michelman asked where the truck was parked. Mr. Rucker said that it was parked on the septic tank. It is a heavy duty system and the truck has been parked there for 30 years.

Chairman Michelman asked if they had set times for the trucks to come in and out and Mr. Rucker said that would abide by the hours on the plan.

Mr. Kaufman asked about screening from Whipoorwill Road East and Mr. Rucker said he did not think it was necessary. There is approximately 80' of lawn and large trees in that area. It is almost impossible to see the back of that truck. He did not think that planting additional trees would add anything. Ms. Black suggested a fence.

Mr. Delano pointed out that the codes do not allow a driveway within 10' of a septic system. Mr. Coyne agreed. Chairman Michelman pointed out that this was an existing nonconforming site. Ms. Black asked if the septic was there in the original site plan and Mr. Rucker said it was. Chairman Michelman agreed, but pointed out that the truck was not.

Mr. Baroni asked if there was ever a site plan for this site and Mr. Kaufman and Mr. Rucker said that there was. Mr. Kaufman added that the site plan, dated 1978, specifically stated that there

could not be any outside storage. Mr. Rucker added that the house was originally built as a residence, but due to its location in the CB District, they added a business use.

Mr. Delano noted that there were some discrepancies on the plans; one of them concerned the building setback. This is preexisting nonconforming in terms of zoning setbacks. The applicant does not have an accessory apartment, they have a "dwelling unit" so they need to correct that language. He asked Mr. Kaufman if there was any difference between a 'service business' and a 'personal service business.' Mr. Kaufman said that this was really an office. Mr. Delano said that if this was a service business, then it would not be permitted. He added that there were some errors regarding the square footage numbers and the applicant needed to provide the details on the septic system.

Chairman Michelman asked if the uses of the house had been clarified yet and Mr. Kaufman said he spoke to the Building Inspector, who had walked the site and said everything looked fine. He will provide the Board with a memo to that effect.

Chairman Michelman asked what the Board should do about the truck. Mr. Coyne said that the Board could allow it as shown and refer the plan to the Health Department, or require the applicant to move the truck. Ms. Black felt that if the truck was moved in front, it would be much more visible to the neighbors.

Dr. Matusow said that since the problem concerns the septic, it might be best to start with an opinion from the Health Department. Sooner or later the Board would have to get there anyway, so there was no point of exploring this further without that input. Mr. Delano asked if the Town Engineer could refer this to the Health Department. Mr. Coyne said that he could, or the Building Department could; they do it all the time. The Board decided to ask the Building Department to refer this to the Health Department for their determination.

SCHACHTER

2 Lyons Court

Section 1, Block 4, Lot 1-16

Fred Rucker, AIA

Appeal from Determination of the Residential Project Review Committee (RPRC)

Mr. Kaufman explained that this project was below basic FAR and land coverage. It went to RPRC, who looked at the plans at this at least twice. They are concerned about the design for the proposed addition due to the mass. The RPRC gave some direction to the applicant and the applicant resubmitted their plan. At that point, the RPRC determined that the plans be reviewed by the ARB and this Board. The applicant is appealing that decision.

Mr. Fred Rucker was present on behalf of the applicant. He explained that the original concern of the RPRC had been the height, so the applicant lowered the height and modified the plan. They also wanted to do an overhang over the garage. He presented a front and side elevation. The side elevation went down approximately 2½' from the original proposal, but due to the way the site is, it is almost three stories tall. However, that is not different than any other house

nearby.

Chairman Michelman said she sat in on the RPRC meeting. The size was a concern, and that was somewhat addressed. This is a corner lot, so that makes a difference in terms of impact. That was why they thought the ARB should review this as well. Additionally, this Board thought that a landscaping plan would be beneficial and that they should see some kind of plan. That was why they thought this application should come to this Board.

Chairman Michelman asked if there was a way that the Board could refer this to the ARB without having the applicant present a whole set of plans, and just see a landscaping plan. Mr. Kaufman said the Board had multiple options; they could determine that no additional review is required and applicant could go and get building permit, or they could say that the plan needs planning Board review or ARB review, or both.

Mr. Schachter said he did not understand because he is on a corner lot, and the house right across the street is also a corner house and it is almost exactly the same as what he was proposing, and they did their work three years ago. He said that the houses on both sides of him are the same way. Mr. Kaufman said he did not think that the RPRC was concerned about the conditions of the lot, but more how it was executed.

Ms. Black said she went to the site, and she noticed that there were several neighbors that had three story structures. Most of those were hidden from view. She thought the house across the street was a little different because that house was broken up twice, which minimized the impact of the height. Mr. Schachter said he had no problems with architectural changes he just did not want to increase the footprint of the house. Ms. Black added that this site didn't really have much landscaping to minimize the impact. Mr. Schachter said he had wanted to wait to do the landscaping.

Mr. Sauro said that in his opinion, there were no issues with this application. They abide by all the building codes. This is exactly why some people in town have a negative view of the Planning Board. I think this could have been worked out by the rprc with a 10 minute conversation without having to come this far.

Mr. Delano said that the footprint was being extended little by the front porch and there is a 4' discrepancy on the plan. The issue hasn't been worked out and this should be resolved regardless of what board they end up dealing with.

Dr. Matusow thought that it would be pretty easy to set this on the right track. He'd be satisfied by telling the applicant to get the building permits from the Building Department, with the conditions requiring ARB approval and a landscaping plan that is satisfactory to the Town Planner that would protect Lyons Court.

Ms. Black thought that this was a relatively small application and she did not think it should come back for this Board's approval.

Dr. Matusow moved to refer this back to the Building Inspector with permission to issue permits with those two conditions. The motion was seconded by Mr. Sauro and unanimously approved.

SCOTT
Subdivision
80 Mianus River Road
Section 1, Block 7, Lot 4
Jerry Barrett, RLA Discussion

Mr. Scott Kurnit was present on his own behalf. He explained that the Board had been looking for maximum build out so he has shown an additional lot. He explained the site plan. He noted that the potential for the movement of the driveway and explained that the reason he had it where it was, is because of the existing stone wall. To have it come in a different way it would create more of a disturbance. He intends to leave "the leg" (which is Lot 6 on the full build out plan) as part of Lot 2 and perhaps move the lot line later and donate it to the Gorge at a later point.

Chairman Michelman noted that the 6th lot creates a significant impact. The Board has to decide whether that impact is significant enough to not allow it. Mr. Kurnit said that he was not asking for six lots, only five. Mr. Kaufman said that the Board had to determine this for purposes of their environmental review. Mr. Kurnit said he had no intention of ever doing anything like this.

Mr. Kaufman said that they had to look at the six lot subdivision for SEQRA purposes. The solution they usually take is to deed restrict it or have a conservation easement. Here they are trying to do something a little different to give flexibility to the applicant. The Board understands that the applicant is not planning to do six lots, but there is no guarantee. They have discussed possibility of a conditional neg dec, which is one way to handle this. The proposed plan seems to be a reasonable plan. There is little wetland disturbance except for the main drive.

Chairman Michelman said that the Board had to take the full build out into consideration. Mr. Kurnit said again that he was only looking for 5 lots. He realized that the Board had to look at the 6 lots for purposes of the review, but someone in the future would have to come back and get approval. Mr. Kaufman agreed, but said that the Board was being proactive here by saying that that 6th lot *would* have a significant impact. Mr. Kurnit said he just wanted to be able to have the flexibility to donate those 11 acres in the future. Mr. Kaufman said that nothing the Board was doing will prevent that.

John Aarons, the applicant's attorney, pointed out that the Board was not saying that it should be precluded, just that the potential building of that 6th lot would have to be reviewed carefully.

A neighbor asked if the Board was approving a five or six lot subdivision and Mr. Kaufman said they were going to be approving a five lot subdivision. Chairman Michelman said that the Board was trying to eliminate the potential for six lots. Mr. Delano said that they were just trying to document that six lots would have a significant impact. Mr. Kaufman stated that the Board was going to adopt a conditional neg dec that it be a six lot subdivision but if it was going to be six lots, they'd have to go through environmental review. Mr. Delano said it was like they were putting the world on notice that the potential 6th lot has been studied and it was determined that to take this from five to six lots would be a big deal.

Dr. Matusow pointed out that they were not saying the 6th lot can't be built. Mr. Kaufman agreed,

and said they could only do that with a deed restriction and the applicant does not want to do that.

Dr. Matusow said he wanted to more than say on record that they did not like the 6th lot. Chairman Michelman said that the applicant does not want to do a deed restriction. Mr. Kaufman said that the applicant is not asking for 6 lots. The alternative would be to do an EIS on a six lot subdivision and then approve the five lots. Dr. Matusow asked what the Board's typical course of conduct was. Mr. Kaufman stated that they would normally use a deed restriction or conservation easement. Dr. Matusow wanted to know why the Board was not doing that then. Mr. Kaufman explained that the Board had no authority to require the applicant to do that. Mr. Baroni explained that it all depends on whether an applicant is willing to do that, and this applicant is not willing.

Dr. Matusow said that the sixth lot would be horrible. He had no reason to doubt that the applicant has no intention of doing anything with this "leg." However, things happen, and this applicant might not own this property forever and the whole thing could change. He thought the Board should exercise all the pressures they have to make it only be a five lot subdivision.

Mr. Kurnit said he did not understand how having more land makes the five lot subdivision less viable. Dr. Matusow said it was because it makes it more likely to get six lots. Mr. Kurnit reiterated that a future owner would have to come here for approval, and this Board would not approve it. Dr. Matusow felt that the applicant was asking the Board to defer its responsibility. He said he liked the five lot subdivision, and he was inclined to trust the applicant, but he did not know what the future will bring.

Mr. Aarons said that the process suggested by Mr. Kaufman (i.e. a conditional neg dec.) would give the Board all the protection they need. That way, if in the future, someone wants to do that sixth lot they'd have to go through the entire environmental process.

Mr. Delano stated that under the five lot plan, all the lots have the minimum frontage. They would not be able to come and ask for a 6th lot without a variance for the frontage.

Mr. Baroni said that five years from now, if the applicant wants to donate it, he has to do it as a lot. Mr. Aarons said they would have to do a lot line change and added to the adjoining land. It is not an issue regarding frontage. It will not be a building lot. Mr. Baroni asked how the applicant would be preserving the value because he thought that they needed to show that it would be a conforming lot. Mr. Aarons agreed and said that the six lot plan would be enough. Mr. Aarons recognized that the numbers might not work. Dr. Matusow said if that was the case, how that would have any value. Mr. Kurnit said he was not sure.

Mr. Kaufman said that was a little different from his understanding based upon his last conversation. Mr. Kurnit said he was not looking at this as a building lot, and he was not expecting the Board to.

Chairman Michelman asked about the process. Mr. Kaufman said that if the Board was comfortable with the conditional neg dec for the five lot subdivision, that is one way of handling it, but that leaves it open. Mr. Aarons pointed out that this needed to be referred to the Conservation Board. Mr. Kaufman agreed; the Board only had preliminary comments from the

Conservation Board from two years ago.

Dr. Matusow said that they needed to find a solution; the Board was not trying to upset the applicant. However, they are still dealing with the potential of the sixth lot. He knew the applicant was not proposing it, but that potential exists, and it is a horrible place for a lot. The Board wanted to be sure that it won't happen. He knew that they had the applicant's assurance but that is not enough. Mr. Aarons suggested submitting a draft of the conditional neg dec so the board could see what he was talking about.

Mr. Aarons pointed out that previously, the Board would accept a note on the plan that said "no further subdivision without Planning Board approval." That would require a future applicant to go through this process and based upon the finding in the conditional neg dec, they would not be allowed to. Dr. Matusow said no one knew what the future would hold. They were here today with the responsibility today. He did not want to shirk that responsibility onto people in the future.

Mr. Kurnit noted that he has always said that he did not want to do anything with this property. It is this Board that encouraged him to subdivide this and show five and then six lots. He has not changed his view in all these years. Dr. Matusow said that the time has never been right for the applicant. Mr. Kurnit agreed and said it was still not right. The way to protect this property is to maintain its flexibility. He wanted to know why he should lose his rights because this Board didn't trust a planning board in the future. He is looking to hold off on doing something that he doesn't want to see done to this property.

Chairman Michelman asked what was the purpose of the Board being asked to approve a subdivision that would just sit around. Mr. Aarons said that the applicant started out talking about a family compound; a main house and some guest houses. The town code does not allow multiple dwellings on one lot, so they developed a subdivision, which is not what the applicant really wants, but it is a way to accomplish his goal on over 39 acres.

Chairman Michelman thought the applicant's goals were honorable but the Board dealing with a potential 5 lot subdivision and the ultimate goal is to have a house and guest houses that will be on the other lots as principal residences. Mr. Kurnit said the only reason they are shown as fully developed is because the Board asked him to; they started out as little two-bedroom cottages. He will only do whatever minimum is necessary to preserve the lot.

Mr. Christie asked if there was any vehicle in this town for an applicant like this and Mr. Kaufman said there was not; the closest thing dealt with servants' quarters.

Dr. Matusow suggested that the Board went back to the applicant's original idea to keep this as one parcel with more than one dwelling and then have the applicant take this plan to the ZBA and request permission to do this. Mr. Kaufman said that they could, but that is probably more of a Town Board issue. He was not sure what would support that position. Dr. Matusow suggested creating a new zone. Mr. Baroni suggested a special use permit. Mr. Kaufman reiterated that would be a Town Board issue. Dr. Matusow said he was just looking for a way to do this.

Mr. Kurnit said he was looking to do nothing, and in order to do that, he needed to maintain

flexibility.

Mr. Baroni recalled that one of the reasons the applicant went down this path was because he wanted to carve off lots one at a time and donate them. Mr. Kurnit said that was not his intent.

Dr. Matusow said that as far as the Gorge was concerned, it would not matter if there was a house and a couple of out buildings on forty acres. Mr. Christie said that would be better than if this was a five lot subdivision. Mr. Kurnit asked if this could be done and Dr. Matusow said that perhaps they could find a way.

Mr. Aarons thought the Board could propose an amendment to the zoning code. Dr. Matusow said the Board couldn't but the applicant could. Mr. Aarons pointed out that Bedford has a section in the code that would allow this. Mr. Kaufman said that they could modify the language in the section dealing with servants' quarters. Multiple discussions were had at this time.

Mr. Aarons asked if there a way to move this along multiple paths to keep this process going. Mr. Baroni said Mr. Aarons needed to formulate a petition for a zoning amendment, which could be reviewed by Mr. Kaufman and himself. Then the Town Board would refer it back to this Board for a recommendation.

Mr. Kurnit said that if this had to be redrawn it would probably be very expensive to him. He said he was reluctant to give up the viability of the "dog leg" in terms of donating capability. His intention is to donate that portion and "get out alive." He is willing to "lock this up" and be able to just build a house with a couple of outbuildings on a single lot, and be able to donate the dog leg.

Mr. Aarons asked if whether once he drafted something for review, and submitted it to the Town Board, they could continue with the application before this Board. The Board wanted to know what the applicant wanted it to do and Mr. Aarons suggested referring them to the Conservation Board. Mr. Kurnit questioned why he should show the Conservation Board a plan for something that he was not going to do. The Board agreed.

Mr. Kurnit said that he'd like to have the subdivision approved, and then have the ability to come back and essentially merge it back into one lot and donate one portion. Chairman Michelman said no one knew what the future laws would provide for. Mr. Kurnit was convinced that he would be able to turn it back into one lot.

Dr. Matusow felt the applicant was kind of talking in circles. Mr. Kaufman said that if the town created legislation to allow a compound to be developed, he thought the applicant would end up restricting future subdivision. Mr. Christie asked if the applicant was ok if he'd be able to build the houses he wants. Mr. Kurnit said that if he could build those hoses and then donate that one portion he'd be happy. Mr. Kaufman said that the legislation would probably restrict future subdivision. Multiple discussions were had at this time. Mr. Kurnit asked whether, once the code was enacted to allow this, it could be changed to preclude it. Mr. Kaufman said that was always a possibility. Mr. Baroni questioned why anyone would change it.

The applicant was advised to draw up a petition to amend the code.

Mr. Kurnit wanted to know how to make “this” a viable lot for donation purposes and Mr. Christie said that all he had to do with that lot is, at that time of the donation, do a subdivision that creates that lot, without actually getting approval from the Planning Board. That way you will have proven that you can create that lot for purposes of donation.

TURET

Preliminary Subdivision

East Lane, West Lane, Nichols Road

Tim Allen, PE – Bibbo Associates

Discussion

Mr. Tim Allen was present on behalf of the applicant. He explained the applicant has been trying to work with the Conservation Board. The applicant had another site walk and meeting with them to try and minimize the stormwater system in the wetland buffer. They looked at the trees on the property. The Conservation Board will be issuing a new memo.

Mr. Allen explained that the applicant has rerouted the drainage from the main road into a particular area for the infiltration area in the buffer area. The system is almost twice the size as it was originally. There is a slight intrusion into the buffer in a particular area. They have done all necessary testing on the site and were looking to move forward. This is a one acre zone and the lots are tight. The applicant is proposing that East Lane be improved to a town standard. Mr. Allen added that he has received the memos from Mr. Kaufman and Mr. Coyne.

Chairman Michelman noted that the Conservation Board’s memo seemed to contain some of the same concerns they had previously. Mr. Allen explained that the applicant would be meeting with the Conservation Board again because they found the memo to be “grayer” than how it was left at the meeting. It didn’t really state what went on at the meeting. Mr. Turret said that when the Conservation Board walked the site, they did so to review the trees; they said that the “whole thing is 2nd and 3rd generation reforested trees.” They couldn’t find too many specimens on the 8 acres and the few that they did find would be protected. The memo didn’t state that.

Mr. Kaufman pointed out that the Conservation Board is also required to give their recommendation in relation to the wetland permit. The Board needs final comments. Larry Nokes said that when the Conservation Board met with the applicant, the Town Engineer’s and Planner’s memos were not available. They said they would not have final comments until they had those memos. The Conservation Board has been to the site at least twice and a lot of adjustments and positive changes have been made, but at the meeting, the consensus was that they couldn’t issue final comments at that time.

Chairman Michelman stated that Lot 3 remained a problem. The applicant indicated that there is still an infiltration system in the buffer. Mr. Allen agreed. The intrusion has been reduced, but it is still there. It was determined that it is a buried system and they would not be disturbing many trees in that area. It was Mr. Allen’s impression that the Conservation Board really didn’t have a big problem with that system. Additionally, the applicant relocated the pipes for the drainage per the Conservation Board’s request. With respect to the rock outcropping (on Lot 4) they can flip the house and change the driveway location per Conservation Board’s request.

Mr. Kaufman said that the issue is that since is a one acre zone and each lot needs individual wells and septics, these are constrained lots. The result is that some of the stormwater infiltration / basins are in the buffer. The Board will need to determine whether this is appropriate with the input from the Conservation Board. He noted that the Board seems to be ok with this lot design.

Dr. Matusow liked the idea of flipping the house on Lot 4. He noted that it shortened the driveway and increased the opportunity for planting. The only big issue he had was what effect the infiltration system in the buffer had. If he could be convinced that the wetlands would not be significantly impacted then he would be ok. If that is not the case, it seems the applicant would have to eliminate that lot. If there is another choice, he'd like to see it.

Dr. Matusow asked the effect of the infiltrator and Mr. Coyne said he just got the report from Tim Miller, and the Town Wetland Consultant would review it. Dr. Matusow said that if the environment can sustain this and there is documentation in the file, then he didn't see any other real problems.

Mr. Delano noted that as part of the wetland permit application, the Board is supposed to receive alternatives to the proposed action and they don't get that information consistently. He asked if there was some alternative that took away the need for a wetland permit. Additionally, he thought that someone had to sit down and review the dimensions to make sure they would have conforming lots. Mr. Allen said they just did that; they might have to make one small adjustment but that's it.

Multiple discussions were had at this time.

Mr. Allen stated that without the additional lot, the project is not viable for the applicant and he felt the Board had to consider that factor. Mr. Delano said that the Board does not consider economic viability of a project. One of the conditions on a wetland permit is that the Board must review an alternative to the proposed action. Mr. Allen said that there is no alternative other than removing the lot. Dr. Matusow said that was his point; as long as the Board can get documentation that they can rely on that the infiltrator will not create any problem, then he wouldn't have a problem. Mr. Delano thought that the wetland consultant provided that information. The Wetland Consultant should review the issue; then the Board would have the information necessary to make a determination.

The Board members all agreed that flipping Lot 4 was a wonderful change. Mr. Allen said that there was a stand of trees on a particular lot and he had told the Conservation Board that they would try and protect it.

Mr. Delano asked if the applicant had made any progress with the DOT. Mr. Allen said that he was meeting with them the following week. Dr. Matusow asked what would happen if the DOT imposed requirements that the applicant felt were unacceptable. Mr. Allen said that they would have to convince the Highway Department and Town Engineer that they could maintain it as part of the town's drainage system. Dr. Matusow asked what effect that would have on the project and Mr. Allen said that remained to be seen.

Mr. Coyne said that the potential for drainage infrastructure is a maintenance issue and

questioned whether it would fit physically. The private road would not allow them to drain that any more than a town road would. Mr. Kaufman said that if the structures are in there, they could propose a town road, but the town might not want to accept it.

Mr. Kaufman said that, theoretically, they could have a town road built to town road standards that is not dedicated. Mr. Allen said that would still be a private road. Mr. Kaufman agreed but said it was still an option. Mr. Coyne said they need to see what the DOT says.

Mr. Kaufman said that if the applicant had any issue regarding the zoning issues, they should talk about it. If they are counting steep slopes, but discounting it, it needed to be noted.

Mr. Turret asked if he would have to go back to the Conservation Board again or whether the wetland consultant could just send a letter. Mr. Kaufman said that would be up to the Conservation Board. Mr. Allen said that he would want to go back to the Conservation Board regardless. The Board agreed and noted that the DOT needed to be dealt with first.

16 NORTH LAKE ROAD

Amended Site Plan

16 North Lake

Section 1, Block 4, Lot 10 – 66 A

Tim Allen, PE – Bibbo Associates

Discussion

Consideration of approving extension of time site plan resolution

Chairman Michelman stated that this property was disgusting. She wanted to know if the Board could require that the applicant clean it up if they grant the extension. Mr. Baroni said that was a Building Department issue. The Board could transmit a letter to the Building Inspector indicating its concerns, but they could not grant a conditional extension. Mr. Kaufman said he'd send the letter.

Ms. Black moved to approve the request for the extension of the site plan. The motion was seconded by Mr. Sauro and unanimously approved.

ARCHER STABLES (Rose Hill Farm)

Referral from the Town Board

35 – 61 Bedford Banksville Road

Section 1, Block 11, Lot 11-37

Mark P. Miller, Esq. – Veneziano & Associates

Declare lead agency intent for special use permit and legislation

Mr. Kaufman said that this was originally referred to this Board for the special use permit. The Town Board suggested changes to the town code. They want to continue with this, but they want this Board to be the lead agency. He noted that when the Board initially circulated the lead agency intent, there was no legislation involved. The new intent would include that.

Mr. Baroni pointed out that some of this Board's recommendations were adopted by the Town Board. Mr. Kaufman agreed.

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

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