

**TOWN OF NORTH CASTLE
PLANNING BOARD MEETING
15 Bedford Road
Armonk, New York 10504
September 30, 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 7:03 p.m.

APPROVAL OF MINUTES:

September 14, 2009

Dr. Matusow moved to approve the minutes from the September 14th meeting, as amended. The motion was seconded by Ms. Black and unanimously approved.

CONTINUED PUBLIC HEARING:

SHELL GAS STATION

Site Plan

375 Main Street

Section 2, Block 11, Lot 6-6

Walter Gorman, PE

Discussion (Adjourned from the April 13, 2009 meeting)

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

Mr. Douglas Mandart was present on behalf of the applicant. He explained that he had submitted a survey to the Board in response to the comments in the memo. Many issues in the memo are covered on the survey. Mr. Mandart also submitted a document that had been signed and had been previously filed in the Building Department as well as a memo from Evans Associates indicating that the wetland boundaries were accurate.

Mr. Mandart explained that one of the main concerns from the memo was the sidewalk, which the Board felt strongly should be included. He explained that Shell really did not want to construct the sidewalk due to the expense. Mr. Mandart realized that this was the only area in the main part of town that was missing a sidewalk. He argued that since this area was already paved, they should just be permitted to paint the area indicating that pedestrians could cross there. Mr. Kaufman pointed out that an actual sidewalk was one physical component, but he was also concerned about getting one curb cut, so that they can formalize the entrance and exit from Main Street.

Chairman Michelman noted that since there is no sidewalk or curbing on the site, people enter and exit from all over the site. Chairman Michelman pointed out that since this area was already paved, it wouldn't be that difficult to put in a sidewalk. This is a nonconforming use, and this is the entry point into Armonk. It is ugly, and the Board would like to encourage a continuation of a sidewalk.

Mr. Delano asked how long Shell's lease was with the owner. Mr. Mandart said he was not sure. Mr. Delano noted that the goal of the Planning Board, seeing as how this is an important entry point, is to get it to be more presentable, especially since this is a preexisting nonconforming use. He said that painting a sidewalk as Mr. Mandart suggested would be asinine. The Board would like to make sure the intensity of the use is not increased and they are just trying to make it look better. He felt that the progression of the plans actually provides less and less information. The applicant submitted a survey, but they have an opportunity to submit an actual site plan to improve this site. The plans the applicant submitted are harder to read and are less informative each time they are submitted. It is an insult to the Board, and to the community. Mr. Delano suggested that the applicant take all their information, collect it and present an actual discernable site plan that will improve the look of this site. Mr. Mandart apologized and said it was never his intention to insult the Board.

Ms. Black said she thought that this site was one of the least attractive in town. This Board is going through a great effort to improve the look of the town, and this corner is a problem. She

said that landscaping and the sidewalk would help this site greatly.

Dr. Matusow suggested that the Board might be wasting their time by continuing the public hearing. This applicant has to do a great deal more of work before the Board could even consider closing the public hearing. When he reviewed this file, he had similar thoughts as Mr. Delano. He was having a harder and harder time trying to keep up with this application because so many issues had been raised over time, but he couldn't keep track of which ones the applicant dealt with or didn't. He made a checklist (which is set forth below in its entirety) and he came up with two-dozen issues that were raised by the Board.

rec @ 9/30/09 P.B. Meeting

SHELL Service Station
375 Main Street, Armonk

9/30/09

Check List – identified issues

- 1) plan to indicate existing fuel tank to be removed with indication of method of removal and/or abandonment; applicant to provide NYSDEC documentation regarding removal of old underground fuel storage tank and ground remediation plan if needed
- 2) plan to indicate details of concrete support pad for new fuel tank to satisfaction of Town Engineer
- 3) plan to indicate protective bollards – new fuel tank/waste oil tank
- 4) WCDOH approval for proposed fuel tank installation – if required
- 5) wetlands permit application for waste oil tank/proposed rear parking/ existing 55 square foot metal shed
- 6) site plan to indicate relocation of all fencing onto actual property lines
- 7) plan indicates existing well behind building – existing use is on public water supply- may be in violation of public water supply regulations
- 8) site plan to show suitable landscaping to conform to Sec. 213-14.M
- 9) site plan to show exterior lighting plan to conform to Sec. 213-14.M
- 10) applicant to provide current survey to provide all data required by Sec. 213-35
- 11) site plan to show acceptable improvements in curbing/curb cuts to satisfaction of Town Code, Town Engineer/Planning Director/Highway Dept and Planning Board
- 12) site plan to show parking areas to conform to Sec. 213-44.B
- 13) site plan to show off-street parking for employees to conform to Sec. 213-45
- 14) site plan to show loading space to conform to Sec. 213-46
- 15) site plan to show plan for refuse disposal to conform to Sec. 213-44.O – access to satisfaction of Town Engineer
- 16) site plan to show handicapped parking space to conform to Sec. 213-44.N(2)
- 17) site plan to confirm location of gasoline storage filling manholes – provide required legal documentation if any portion of that use is to be located within the Town right-of-way
- 18) site plan to provide storm water collection and remediation plan for protection of runoff into Byram River
- 19) site plan to provide dimensions for proposed parking spaces, aisles and loading zone to comply with Town Code and to satisfaction of Town Engineer
- 20) site plan to show curbing plan to satisfy Planning Director and Town Engineer – define access from Main Street and Kent Place
- 21) site plan to provide for sidewalk along Main Street border
- 22) applicant to designate specific permitted uses and agree to list of prohibited uses for parking area behind existing building
- 23) site plan to indicate location and dimensions of all exterior signage
- 24) site plan to obtain approval of Fire Inspector regarding mitigation of all exterior and interior fire risks

Dr. Matusow said he was not sure how many have been addressed and he has no way to know. Before he agreed to close this public hearing, he would want to know from the town's professionals whether or not they've been addressed. In the meantime, he thought the Board should adjourn this application.

Chairman Michelman felt the Board had major concerns and that they should refer this back to the Conservation Board for their additional comments.

Dr. Matusow agreed, and thought that the applicant should be advised that he feels very strongly that this site plan must require a continuation of the sidewalk.

Mr. Mandart stated that Shell felt that the curbing along Kent Place would interfere with the fueling trucks and Mr. Coyne suggested raised mountable curbs. Mr. Mandart asked if the Board felt that curbing is needed there. Chairman Michelman pointed out that Mr. Coyne had also requested the turning radius requirements for the trucks so that he could evaluate this issue but he has not received it. In order for this question to be answered the applicant needed to submit the requested information.

Mr. Delano pointed out that the applicant should take a minute to read section 213-57 dealing with improvements to a nonconforming property.

Mr. Mandart stated that there was also a concern raised over the position of the dumpster. He said a possible solution is to move it toward the front of the site behind where the handicapped parking is. The trash is picked up before the site opens, so it wouldn't impact parking. He noted that this would be enclosed. Chairman Michelman said that she doubted the Board would look at that favorably, because this was the entry point to the town, and they want to make this more visually appealing. Chairman Michelman suggested that the applicant consider other options.

Mr. Sauro asked why the applicant thought to put the dumpster in the front, and Mr. Mandart stated that any other spot in the rear would take up two or three spaces. Dr. Matusow suggested an alternate location on the site (toward rear of the property near Kent Place). Ms. Black agreed. Dr. Matusow felt that the very back of the property would be the very best place for it, but if a truck can't get there, then it can't go there. Mr. Mandart said that he would anticipate complaints from the restaurant in that regard.

Dr. Matusow pointed out that this whole issue came up because Shell installed an above ground fuel tank that was in violation. The Board started talking about whether it should be in one location or another, and now the conversations have been about everything else. He thought the least important issue is the location of that tank. Whatever the Board approves, that will be the first thing on file for this property; it will "bless" whatever is on that site. The applicant has a lot of things going on there that ignore the code. The Board has to put all them in order before they approve the tank.

Ms. Black noted that both Mr. Coyne and Mr. Kaufman mentioned adding additional landscaping to make that Main Street entrance more attractive.

Mr. Delano thought that, if he was reading the code correctly, that if the Board did not like the applicant's submissions, there is a section of the code that gives the Board the right to design it

for the applicant and then submit it to the town board, at which point, if approved, the applicant would have three years to implement the plan. Mr. Baroni said he would look into that, because he was not familiar with that section of the code. (Upon his review of the code, he explained that the section of the code referenced by Mr. Delano was not applicable in relation to this situation.

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

OTHER BUSINESS:

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

Discussion

Mr. Mark Miller was present on behalf of the applicant along with Bob Roth and Anthony Nester. He explained that the applicant was before the Board on a referral from the Town Board. This is a private stable, subject to an existing special permit from the Town Board and an approved site plan from this board. The applicant is seeking an amendment to the permit and the site plan in order to enclose the existing riding ring. Originally the applicant planned to do more work, but the project has been scaled back; now they are just proposing the enclosure of the riding ring. He noted that the local law that the Board will be considering later seems to be “a solution looking for a problem.” Mr. Miller asked if the Board received a copy of the recommendation from the Building Inspector. The Board said they did not, and Mr. Miller submitted a copy.

He explained that when the Town Board referred this to the Planning Board, they requested that the Planning Board act as lead agency for both matters. The applicant would like to discuss the commencement of the SEQRA process by the Board declaring its intent, and also this Board’s recommendation back to the Town Board.

Chairman Michelman explained that the Board received a written request from Conyers Farm requesting that the Board require the applicant to go before them before this Board finalizes anything. Mr. Miller said that the applicant has spoken to them. The applicant knows that he has to get approval from them, and they plan to work the processes concurrently. The applicant would like to continue this project without having to wait for their approval. If the Town Board wanted to condition their approval on Conyers’ approval, he would not object.

Mr. Miller explained that the property is approximately 25 acres. There is an existing stable and an existing riding ring (indicated). He indicated the entrance, a secondary riding ring and an existing cottage, which is not in use. The proposal is to enclose the ring so that it can be used year round. The ring would be 100x200 and the height will comply. Additionally, they would be taking some of the existing corral / paddock areas and combining them, because the horses need more space to run around. He thought it would be fair to say that their meetings with the neighboring entities went well. There is no commercial activity on site. The permit allows 20 horses and the zoning would allow as many as 50 horses. The applicant only has six or eight

horses.

Chairman Michelman asked if the ring, once covered, would be visible to any neighbors. Mr. Miller said that it might be; they had not done any analysis on that yet. However, he pointed out that it is not required that the structure be invisible.

Chairman Michelman noted that the other issues raised by Mr. Coyne's memo were very valid. She asked about any facilities that would be going into the covered stable (i.e. any wash stalls, toilet facilities, etc.). Mr. Miller said that nothing, other than horses, would be going in the stable.

Mr. Roth explained that this was just a pole barn with a viewing area to watch people riding horses. He presented an architectural rendering. He said it would just be a barn that mimics the other stables on the property. Mr. Coyne asked if there would be a kitchen, or lounge, or a bathroom. Mr. Roth said there would not be. Dr. Matusow questioned who would come and ride the horses. Mr. Roth said the mother might come and watch her daughter ride. He noted that there was an existing bathroom in the stables. He indicated the location of the two septic areas.

Chairman Michelman noted that the applicant also needed to go to the ARB and the Board also needed to get the comments from emergency services. The Board would reach out to them. Mr. Miller said that the critical issues are SEQRA and the special permit. The applicant agrees the comments from the Town Engineer are valid issues, and they would address them.

Chairman Michelman said the Board was also concerned about contacting the Building Department regarding the existing apartments. Mr. Miller said that Mr. Fon reviewed this issue, and inspected the site. As his memo indicates there are no building permit or special permit issues. According to Mr. Fon, "the property was immaculate."

Dr. Matusow asked about the possible violations regarding commercial activity on the property. Miller said that it was a result of an ad appearing on the internet that had been placed by one of the then-employees, who had no authority to do that. The ad contained his cell phone number, not the stables. It was not the product of the stable owner. As soon as the applicant was made aware of it, they arranged for it to be taken down. The ad was for services that the applicant did not and does not provide.

Mr. Delano asked if the applicant was aware of the proposed changes in the legislation concerning the private stable. Mr. Miller said that he was, and he believed that was sparked over this application and the supposed commercial activities. The same condition is contained in the applicant's existing site plan approval and special use permit. Mr. Delano asked if there was any reason why this application could not have come in under a different section. Mr. Miller explained that having additional horses is an accessory use, which would require a principal use, which they don't have. The private stable is a standalone use. Again, the local law could be adopted, but the applicant is already restricted in this regard. He added that if another stable came in, the Board would be able to restrict them in the same way.

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

Mr. Kaufman said that his only concern was the mass of the building, and the screening for the

building. It is part of the special use permit criteria and the Town Board wants that included in the recommendation. Mr. Roth said he would provide that information.

Local Law Filing
Referral from the Town Board
Amendment to definition of Private Stables
Recommendation to the Town Board

Chairman Michelman noted that it appeared that part of the reason this was brought before the Board was because of the issue that arose with Archer Stables. In reviewing some of the changes, the general definition of private stable is not really enhanced by this revision any more than it was before. The issue of the fire safety is a very positive addition. In her opinion, the re-inspection periods in this proposal are somewhat excessive.

Mr. Kaufman said that the Board should come to some consensus as to what they recommend to change, and then vote, and then refer that back to the Town Board.

Ms. Black thought that requiring an inspection every three years seems perfectly adequate. As currently proposed, it seems excessive. Dr. Matusow agreed. He suggested that something that would also put the fire inspector on the site to make sure that the fire suppressive devices are working properly or documentation from an agency to certify that it is. Then the fire inspector could approve of that paperwork. The Board thought that this type of review could occur yearly since it wouldn't require employees to actually go there.

Dr. Matusow said that with respect to section one, he did not think the intent was to prevent the owner's from boarding or training their own horses on their property. Mr. Kaufman suggested adding for "public or commercial boarding."

Mr. Delano felt that the owner of the land needs to be able to take in horses and have horses kept there that don't necessarily live on the property. He thought that an owner should be able to get remuneration for that. Mr. Baroni pointed out that this was in a residential area. Mr. Delano recognized this but said that the fact that it is 25 acres offers substantial buffer requirements.

Dr. Matusow thought that the intent was to prohibit selling lessons and having events. He did not think they wanted to prohibit someone from keeping a horse there. Mr. Kaufman said that was exactly what the Town Board wanted. Dr. Matusow wanted to know whose horses would be there if that was the case. Mr. Kaufman said that only the property owner's horses would be allowed. Dr. Matusow said that in that case, he did not understand this law.

The Board read the current definition in the code. Chairman Michelman questioned the need to change that definition. Mr. Kaufman said it was because the Town Board thought it was necessary.

Mr. Jeff Brown (lives "across the street from the stable") said that he met with Archer Stables, and he feels this was a positive step on the property; he was not here against that. However, the interpretation that is being discussed is flipping around the intent of the Town Board. They intended to prohibit people from boarding horses on other people's property, or from training

other peoples' horses for profit. He said that the Town Board wanted a private stable to be a private stable for the owner of the property.

Chairman Michelman asked the Board to comment on Dr. Matusow's suggestions regarding the inspections. Mr. Delano said that with respect to the fire safety, there is a fairly stringent building codes in this state. It should just be the owner has to submit information in conformity with the NYS Building Code rather than to the satisfaction of the Building Inspector or the Town Engineer. Mr. Baroni agreed; the state has preempted this area and it should be made to the satisfaction of the NYS Building Code.

Mr. Delano said that with respect to the re-inspections by the Building Department, he did not have a problem with annual inspections – the purpose is to make sure the owner is complying with the conditions of the special use permit. They are now asking for additional information regarding veterinary records and that seems excessive. Chairman Michelman agreed with that last comment. Dr. Matusow and Ms. Black agreed.

Chairman Michelman thought that annual inspections seemed to place a great burden on the Building Department. Mr. Delano said he did not have a problem with an inspection every three years. Ms. Black agreed.

Ms. Black felt that the Town Board intended to have private stables not public stables. She did not have a problem with the definition in subsection 1, as long as the words "public or commercial" was added in.

Mr. Delano said he disagreed with the intent of the Town Board. He said that he was fine with a private stable being a commercial enterprise, as opposed to this definition, which takes that away. Ms. Black thought that a private stable should be for the private use only.

Chairman Michelman asked why they were considering adding to this if that is what the current law says. Mr. Baroni explained that the Town Board was looking to bolster the existing law.

Dr. Matusow said that if the Town Board felt that the private stable should be private stable, that's fine; he had no strong opinion on it one way or another. Mr. Delano pointed out that the Town Board was looking for a recommendation – and he recommended that they let private stables house other peoples' horses.

It was decided that no fire safety section was needed because it has to comply with the building code.

Mr. Delano, Chairman Michelman and Mr. Sauro felt that it was not necessary to change the definition that already existed.

Mr. Kaufman was directed to send a memo to the Town Board expressing these comments.

BERGER

Site Plan

29 Carolyn Place

Section 2, Block 2, Lot 3.D-11

Mark Miller, Esq. Veneziano & Associates

Consideration of approving extension of time site plan resolution

Mr. Miller was present on behalf of the applicant. He explained that he had read the resolution and he had no problems with it.

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

CONTE

Rock Crusher Request

3 Terrace Circle

Section 2, Block 3, Lot 2-18

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

Discussion

Mr. Barry Naderman was present on behalf of the applicant. He explained that there seems to be a lot of rock on this property. The builder was considering utilizing a rock crusher that would enable the removed rock to be crushed and used on site, rather than being hauled off site. The applicant filed an application along with information regarding the machine and the anticipated truck trips and times of day. Mr. Naderman indicated the possible locations the crusher would be. He said they believed it would take approximately 2-3 weeks but it could save several hundred truck trips on the road. The gravel would be able to be used on many locations on this site, including the driveway, the slab under the foundation, the infiltrators, etc.

Mr. Delano asked if rock crushing was prohibited in resolution of approval for site plan and Mr. Naderman said it was not.

Chairman Michelman said that at the site planning stage, the Board did talk about what was going to happen to all the rocks. She said that rock crushing sounds like a good idea, but this is a residential area, and this will generate substantial noise and substantial dust. The choice comes down to whether the Board should accept a lot of truck traffic, which may be annoying, or have half of the number of trucks, with the noise and dust. Mr. Naderman pointed out that there are effective ways to reduce the amount of dust. He noted that he has worked on other sites where this has been very successful. Based upon information he had on past projects, the noise level at the crusher was at 77-80 decibel level and it decreases as you go away from the machine. At 132' it was 65 decibels. He explained that a gas lawnmower at 100' is at 70 decibels. He said that they were not talking about an incredible amount of noise. He recognized that this will be heard, but they can establish times and hours of operation and prohibit weekend use. It would save an awful lot of truck traffic in the neighborhood. Mr. Naderman said that he did not think it would be as bad as the Board would perceive.

Dr. Matusow asked the alternative. Mr. Naderman said that they would have to haul the rock off the site and then haul it back to the site once it is crushed, or once they get gravel.

Chairman Michelman said that she recalled asking the question about what would happen with all this rock and she was told they would take care of it. This is not what she had in mind.

Mr. Naderman explained that just to haul the rock off the site it would take approximately 350 truckloads. Then, to get it back they would need 150 truckloads. This would be saving 150 truckloads from leaving and 150 from coming back.

Dr. Matusow said that, on its face, it sounds like sort of a wash in terms of the impacts on the neighborhood. He said that he did not hear anything that sways him one way or another but 300 truck trips less is a substantial difference.

Chairman Michelman agreed, but pointed out that they must add to that the noise and dust. There is no good choice. This was something that was not addressed properly during the site planning stage.

Mr. Sauro asked how long it would be running and Mr. Naderman said that the machine would be running approximately six hours per day.

Someone (did not identify himself) stated that crushing is a very green thing to do. He added that he has found that the crusher is less annoying than the trucks. Chairman Michelman said it would be unsatisfying whichever way they go. Dr. Matusow agreed.

Mr. Naderman said that he's worked on several houses in this area, and every one of them had a substantial amount of rock removal. Chairman Michelman asked if they used a crusher and Mr. Naderman said they did not, but this is not as bad as a rock hammer.

Dr. Matusow asked what would happen with the rock once it was crushed. Mr. Naderman said they planned to crush and reuse about half of it. Even if the applicant would not use all the rock, crushing it would still reduce the overall number truck trips.

Mr. Sauro asked if the applicant planned to contact neighbors and the applicant said he did. He added that the Board should contact the building inspector in North Salem because he is familiar with the work the applicant has done.

Mr. Sauro said he was leaning more toward letting the applicant do this, as long as he respected the wishes of the neighbors as best he could.

Chairman Michelman asked if Mr. Coyne had any comments. Mr. Coyne felt that the Board understood the issues. In his experience truck traffic in residential neighborhoods is disruptive and anything that could be done to minimize that would be good. If this is approved, perhaps the Board could require the crusher to be as far away from the neighbor as possible.

The applicant stated that he was friends with the people nearby and they said they are ok with what he was proposing.

Dr. Matusow thought that a sound barrier or a fence with hay bales might be beneficial to block some of the sound. He said that he agreed with Mr. Sauro. This is a difficult trade off, but his

inclination is to let the applicant do the crushing. Ms. Black agreed.

Dr. Matusow asked if the applicant would only crush the rock that would be used on the property and then haul the remaining rock away in large pieces. Mr. Naderman said they could do it that way, but it would be better to crush it all, use what they need, and remove the crushed rock that they don't need.

Ms. Black said that crushing the rocks on site might be beneficial, but perhaps it is not necessary to crush the rock they don't need. Dr. Matusow said they have to figure out the balance; whether it is favorable to have all the rocks crushed and taken off the site, or to have the applicant stop crushing when they are done, and save the noise and dust of the crusher. Dr. Matusow thought the Board should hear from the applicant on these issues before they make a decision.

Mr. Coyne said it might be possible to strategically locate the overburden around the stockpile so that the stockpiles become the sound barrier.

Ms. Black said she knew of areas where the residents have found the truck traffic to be very burdensome.

The applicant said they would like to begin as soon as possible.

Dr. Matusow said that a majority of the Board would be in favor of crushing, but he thought they needed more details. Additionally, if the applicant was going to crush all of the rocks, they should talk to the Town Engineer and other municipal departments, to see if they have need for the crushed rock and make it a part of the package.

Mr. Delano asked how the applicant ended up before this Board with this application. Mr. Naderman said they had made a request at the Building Department, and they were told that they should come here because it was not part of the approval. Mr. Kaufman said he did not think that the Building Department would allow the applicant to put this machine on the property because it was not on the site plan. Mr. Delano said that this was a machine that is required for construction. There is no separate permit for this from the town or the county. He did not understand why they were here. Mr. Kaufman supposed the Board could say that they were not going to review this issue, and let it go.

Dr. Matusow felt that if the Board did not vote on this then the Board might lose some of the control they might have. He thought that since it was here the Board should grab control over it, and try and make it as positive as possible. He thought the Board should have the applicant review and address these issues, and vote on it at the next meeting.

Mr. Sauro asked if there was any way to expedite this as long as they produce adequate information / documentation and hours of operation.

Mr. Delano said that the applicant already had his support. He did not think they should be here at all especially if they aren't going to be violating the noise ordinance. Mr. Sauro and Ms. Black agreed.

The applicant asked if the town needed gravel as suggested by Dr. Matusow and Chairman

Michelman said that was not relevant and had nothing to do with the Board's decision. The issue was whether they should be here at all. Mr. Kaufman said that if the Board says there was no issue, then there was no issue.

Mr. Baroni said he only recalled rock crushing at Whippoorwill Hills. At that time, the town board got involved but he never understood why. He said he agreed with Mr. Delano; it is a method of construction, and has nothing to do with the planning process.

The Board agreed. Mr. Kaufman said he would communicate this to the Building Department.

Mr. Naderman noted that the resolution of approval had a conservation easement that was to be given to the Westchester Land Trust, however, the Westchester Land Trust does not want the property. He asked if the town wanted it instead. He thought it might be better handled by a deed restriction. That was one of the conditions of signing the site plan, and he needed an answer on this. They would like to move that condition to prior to the issuance of a C.O. Mr. Baroni pointed out that would require an amendment to the resolution. The Board confirmed that if that was a condition of the site plan, the Chairman couldn't sign off on the site plan until that was met.

Mr. Baroni explained that the Board could resolve to change the resolution in this regard; it would not need a public hearing.

Dr. Matusow moved to change the condition for a conservation easement to a deed restriction to the satisfaction of the Town Engineer, the Town Attorney and Mr. Kaufman and to make the condition a requirement prior to issuance of a C.O. The motion was seconded by Ms. Black and unanimously approved.

SCAMPONE
Concept Plan Discussion Lot Line Change
Hollow Ridge Road
Michael Campbell, PE Campbell Engineering, LLP
Discussion

Mr. Dean Scampone, the owner of the property, was present for his application. He explained that he was seeking to acquire a sliver of land from a neighbor in the Town of North Castle. The Board requested that he obtain documentation from Byram Hills School District, which we did, and it was already submitted.

Mr. Baroni stated that after he received the letter he had a conversation with the attorney for the school district. He found out that they only require a sliver of property in order to be able to choose what school district the applicant wanted to send his children to, but the sliver has to be merged into the existing lot. Here, it is the boundary of the town that comes into play. They would never be able to merge a sliver of North Castle property into a Bedford lot. That does not fit the definition under the Education Law. The applicant's proposal would have worked except for the fact that they are dealing with two municipalities.

Mr. Kaufman added that the existing subdivision regulations preclude divisions of municipal

boundaries. It would create a nonconforming lot.

Mr. Scampono thought it was just a reapportionment as opposed to a subdivision. Mr. Kaufman said that under the Town Code, it is the same thing.

Ms. Black noted that the issue raised by Mr. Baroni seemed to be insurmountable. Mr. Scampono said he'd like to speak to his own attorney. The Board said that he should absolutely do that, and if they came up with anything, they should submit it to the Town Attorney. Mr. Delano pointed out that there was still the subdivision issue raised by Mr. Kaufman. He did not see this Board approving a 926 sq. ft. nonbuildable lot. The goal of subdivision is not to create nonconforming lots. He thought that this was a dead end regardless of what the attorneys say.

Dr. Matusow said that if this was not a dead end (and he thought it might be) the letter from the school district didn't answer the Board's question from the last meeting, which was whether it would be in the best interest of the school district for this to happen and whether they would like it to happen. Mr. Scampono believed that the letter the Board received was as far as the District was willing to go.

Mr. Baroni added that as for the issue of how the taxes would be handled, the Bedford School District would collect the taxes from New Castle, and then they would turn the full amount over to Byram Hills upon request of Byram Hills.

Chairman Michelman said that the applicant's attorney should clarify the issues with the Town Attorney. However, the likelihood of this happening is near zero.

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

Mr. Barry Naderman was present on behalf of the applicant. He explained that the original house was a little larger and based upon the site walk, the applicant was urged to move everything in the back forward and to make the house narrower and add more screening. The plan represents reduction in floor area and they have moved everything up 10'. The applicant will schedule a meeting with the Health Department for the test holes. There is still a substantial rear yard, and the property behind the applicant's house is a maintenance garage. The applicant has approximately 80' of clear land in the back of the property. He presented the landscaping plan and indicated the existing heavy screening and the screening that was added.

Mr. Naderman presented the elevations of the house. He explained that they have removed the second floor off the garage and noted that he had previously submitted updated floor plans.

Chairman Michelman said that the Board appreciated the reductions. They have helped a lot. She would like the applicant to add the structures on the adjoining properties to the landscaping plan. Mr. Delano agreed. Mr. Naderman asked if that could be submitted for the public hearing

and the Board said that it could be.

Ms. Black asked Mr. Naderman to indicate the undisturbed area and he did. He also indicated the trees that would be removed for the septic and expansion area, and said that he could add more there.

Mr. Kaufman said that the Board would need the architectural plans and the applicant would need to go to the ARB. He added that they would also need to show the clearing and grading limit line on the plans, and after that, the Board could schedule the public hearing.

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

Chairman Michelman explained that this was on the agenda so the Board could discuss Mr. Kaufman's memo. Mr. Kaufman explained that at the last meeting, they discussed the recommendation to the Town Board regarding the text amendments. The Board was not comfortable with making a recommendation without seeing a draft and the Board has that draft now, which summarizes their position.

Mr. Edward Nolan and Mark Gratz were present on behalf of the applicant. Mr. Nolan explained that the applicant would like the Board to make its recommendation to the Town Board, schedule a public hearing and make an environmental determination. The applicant would like to proceed with the site plan irrespective of the text amendment. The Board did not have a problem with scheduling a public hearing with the site plan.

Mr. Delano noted that Dr. Matusow had been concerned with the socioeconomic aspect of having a hotel, and there was nothing in the memo in that regard. Mr. Kaufman noted that in the section talking about the Town Comprehensive Plan, it is already contemplated that it would be appropriate; the DOB 20A and the OB districts are very similar. Dr. Matusow agreed. He noted that it is a given that the Town Board will hear from people who are for or against having this in town. Chairman Michelman suggested utilizing the word "socioeconomic" in the memo. The Board agreed and Mr. Kaufman made a note.

There were no other comments on the memo.

Dr. Matusow moved to approve this memo as amended for recommendation to the Town Board. Ms. Black seconded the motion and it was unanimously approved.

The Board would schedule the applicant for a public hearing on October 26th.

SULLIVAN

**Preliminary Subdivision
24 Glendale Avenue
Section 2, Block 13, Lot 17-18
Barry Naderman, PE Land Planning & Engineering PC
Discussion**

Mr. Barry Naderman was present on behalf of the applicant. He explained that this was a subdivision that had been previously approved, but due to the economic climate the owner didn't want to tear down the house to finalize the plans. He is now in the position to do that, so he is reapplying. The applicant already has the plat approved by the Health Department. Mr. Naderman explained that they are below the new basics, so they might not need site plan approval. Mr. Kaufman agreed.

Chairman Michelman asked if the Board would be issuing a new approval of the previously approved subdivision and Mr. Kaufman said that was correct. Chairman Michelman asked if they needed to have a public hearing and Mr. Kaufman said they did. Mr. Delano noted that under state law, the approval is good for 6 months, and they have unlimited opportunities to renew. If they don't, it expires but it is not revoked (Section 276(5)(h)). Mr. Baroni said he would look into that but he was not sure if that was true.

Mr. Delano suggested that they make a motion to reinstate, and add conditions as stated by Mr. Coyne. Mr. Baroni pointed out that the applicant would lose time because he would have to research the legality of this.

Mr. Kaufman explained that he has this set up so that it could be approved at the next meeting. Mr. Naderman said that the applicant would prefer to just go ahead and have the public hearing.

Mr. Naderman said that with respect to the grading easement, the house would have to be taken down, and the property has to be leveled off prior to filing the plat. Once the lots are created, there is no grading on the adjoining lands, so he did not think they needed a grading easement at all. Mr. Coyne said that made sense and they could remove that condition in its entirety.

Mr. Coyne asked about the sewer and the wetland boundary and Mr. Naderman said that he had a letter from the Water and Sewer Department indicating that the property is in the sewer district and can handle the capacity. It does not say anything about the sewer connection and he will look into this further. Mr. Coyne said that he did not know whether this was a plat change per se, he just wanted to raise the issue.

Mr. Naderman said that the note about the wetland buffer was something that had been requested in the past. There is a note in response to an old comment and he could take it off if the Board wanted.

**11 NEW KING STREET PARKING
Site Plan
Section 3, Block 4, Lot 14.B
11 New King Street
Steven Gates, AKRF Environmental & Planning**

Consideration of Positive Declaration Schedule Scoping Session

Mr. William Knull from Cuddy and Feder was present on behalf of the applicant. He explained the applicant was seeking a declaration under SEQRA and to schedule a public scoping session. The Board had agreed to have the scoping session on November 30th.

Dr. Matusow moved to consider a positive declaration. The motion was seconded by Ms. Black and unanimously approved.

Chairman Michelman explained that the scoping session would be held at 7:00 p.m. on November 30th at Whippoorwill Hall. Mr. Knull asked how he should handle the notice. Mr. Kaufman said that it was part of the positive declaration.

The Board acknowledged receipt of the Sierra Club documentation.

LASHINS

Site Plan Section 2, Block 1J, Lot 6B

1 Hidden Oak Road

Rich Williams, P.E. – Bibbo Associates

Consideration of approving 2nd extension of time resolution

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

CAFÉ NORMA

Change of Use

Section 2, Block 11, Lot 3.H

387 Main Street William O'Neill, AIA O'Neill Architects

Consideration of approving extension of time site plan resolution

Chairman Michelman asked the applicant if 90 days was enough time for an extension and the applicant said he was not sure. He explained that he was trying to work out the issue with his landlord on the parking issues so he was not sure what length of time is appropriate. He said he hoped that 90 days would be sufficient, but he was not sure.

The Board considered granting him a one-year extension of time instead.

Chairman Michelman thought that the landlord had signed off on everything before and the applicant explained that he had been working with the landlords' son and apparently it is his parents that are having an issue. Mr. Baroni pointed out that the applicant has already perfected the site plan; the chairs and the tables are in the store. The Board should want to finish this sooner rather than later, because the applicant is already benefitting from this. This could get

lost if they give it too long, so they might not want to grant a year. Dr. Matusow pointed out that 90 days wouldn't really be 90 days because of the upcoming holidays.

Mr. Baroni explained that the document has been drafted. If the owner absolutely refuses to sign it, then the applicant would have to come back and seek other relief. The applicant said the owner has indicated that they are not going to sign. Chairman Michelman said that she understood the Town Attorney's point, and thought the Board should stick with the 90 days. If the landlord does not sign the document, then the applicant would come back here and they move forward from that point.

Mr. Kaufman asked what alternatives the applicant was considering. The applicant said they were talking about leasing parking spaces or possibly seeking a variance from the ZBA. MR. Kaufman told the applicant to keep in mind that the landbank agreement would mean they would not need to lease spaces. The applicant understood, but the owners won't agree to it. Mr. Baroni said he'd be happy to speak to the owner if it would help.

Mr. Delano moved to approve the 90-day extension of time. The motion was seconded by Ms. Black and unanimously approved.

The meeting was adjourned at 9:35 p.m.
