

**TOWN OF NORTH CASTLE**

**PLANNING BOARD MEETING**

**15 Bedford Road**

**Armonk, New York 10504**

**September 13, 2010**

**7:00 p.m.**

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**PLANNING BOARD MEMBERS PRESENT:**

Peg Michelman, Chairman  
Steve Sauro  
Jane Black  
Beata Tatka  
John Delano

**ALSO PRESENT:**

Adam Kaufman  
Town Planner

Roland A. Baroni, Jr., Esq. Town Counsel  
Stephens, Baroni, Reilly & Lewis, LLP  
(Arrived at 7:13)

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

Valerie Desimone  
Planning Board Secretary

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

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**APPROVAL OF MINUTES**

*August 2, 2010*

Mr. Delano moved to approve the minutes from the August 2<sup>nd</sup> meeting, as amended. The motion was seconded by Ms. Black and unanimously approved, by all except for Chairman Michelman and Ms. Tatka, who abstained due to their absence at that meeting.

**DISCUSSION:**

**BEDROCK PLAZA  
Site Plan Waiver  
Section 7, Block 2, Lot 4  
731 North Broadway  
Discussion of Site Plan Waiver  
Pete Monteleone**

Mr. Peter Monteleone and Mr. William McClure were present for the application. Mr. McClure explained they were applying to have a carry out deli. They submitted a plan to the Building Inspector, who said he was fine with the plan, but told the applicant to come to this Board and get a parking waiver.

Mr. Kaufman explained that that this application was for a change of use to a carry out restaurant. There were no issues, and no increased parking requirement. Under the code, the Board has the power to waive site plan approval.

Ms. Black moved to approve the site plan waiver. The motion was seconded by Ms. Tatka and unanimously approved.

**SHANGHAI MOON (Elide Plaza)  
Site Plan  
111 Bedford Road  
Section 2, Block 16, Lot 11A  
Bob Peake, AICP John Meyer Consulting Discussion  
Referral to ZBA**

Mr. Bob Peake was present for the application together with the applicant, Mr. Alex Lee. Mr. Peake explained that the applicant has had a take out Chinese restaurant in a 1,200 sq. ft. space for some time in this plaza. He wants a change of use to a sit-down, 36-seat restaurant. The applicant submitted new plan to the Board that obviates the need to go to the ZBA.

Mr. Peake explained that they would have total of 89 tenant spaces, and 92 spaces are required under the code. They were able to add three land-banked spaces and show a total of 92 spaces on the property. Mr. Peake noted that his own office is across the street, and he has never seen the lot full, so it is unlikely they would need to build the land-banked spaces. If this Board approved the land-banked spaces, there would be no need to go to the ZBA.

Chairman Michelman said that the Board agreed that they'd never seen the lot full. She noted that the new revised plan makes a lot of sense, but Mr. Kaufman still needed to evaluate the plan. The Board was prepared to schedule a public hearing for the next meeting, with a resolution for the same night, subject to Mr. Kaufman verifying all the calculations.

The Board had no issues with this application.

**RATZON**  
**Site Plan**  
**5 Carusso Place**  
**Section 2, Block 11, Lot 8-3**  
**Ted Strauss, Architect Planning Consultants**  
**Consideration of Resolution**

Mr. Ted Strauss was present for the application. He explained that the applicant proposes to modify the existing deck by reducing it by 3' and adding an on-grade patio. The Board had a site walk and saw that it would be in conformance. The applicant has received approval from all the neighbors. Unfortunately the HOA Board would not meet until the end of the week, but the applicant had been assured they would issue their approval.

Mr. Kaufman noted that this did not need a public hearing and the HOA approval was a condition of this approval. Chairman Michelman noted that there was a mistake on the address in the resolution.

Ms. Black pointed out that the requirement that the applicant get the HOA approval is in a "whereas" clause, and not a condition. Mr. Kaufman said that was standard; this Board didn't enforce the HOA conditions.

Mr. Sauro pointed out that since the applicant was going to use Trex for the new deck, they should be aware that it is a much softer material, and it will probably bounce. The applicant might need to double up the joists to prevent this. Mr. Strauss said he would look into this issue, and thanked Mr. Sauro for his comment.

Mr. Strauss said he saw the resolution and had no issues. Ms. Black moved to approve the resolution as amended. The motion was seconded by Mr. Delano and unanimously approved.

**KESSLER**  
**Special Use**  
**Section 1, Block 1, Lot 17**  
**14 Middle Patent Road**  
**Robert Sherwood, Landscape Architect LLC**  
**Discussion**

Mr. Chuck Banks and Mr. Rob Sherwood were present for the application.

Mr. Banks explained that this was an application for a special use permit for an accessory apartment. There is a three-bedroom cottage that has been on the property since the mid 19<sup>th</sup> century. It is 1,497 sq. ft., including the addition of a second floor bedroom. It has an existing special use permit that was issued in 2008 approving 10 horses. The applicant's total property consists of about 42 acres. The main house is approximately 6,700 sq. ft. and the septic has been approved by the Health Department.

Chairman Michelman said that the Board heard all of that information at the site walk, but they had not seen anything. Mr. Banks said that they had a copy and would submit it to the Board.

Ms. Desimone said that the original was on file in the Planning Department.

Mr. Banks explained that the cottage was the only additional dwelling on site. There was no office on the site and all setbacks were met by the structures on the site. He requested that the Board schedule a public hearing after this presentation. They understood that it had to be referred to the County Planning Board. Chairman Michelman said that had already been done by Mr. Kaufman. Mr. Banks explained that they had been to the ARB, but they were "grumpy" about the application and decided to leave it up to this Board since it was already constructed. Chairman Michelman asked if there were any minutes on this issue from the ARB. Ms. Desimone said that she was not sure and would look into it.

Mr. Banks recognized Mr. Kaufman made a comment regarding graphic depictions. Mr. Sherwood did them and they would be filed next week. They will more than adequately meet Mr. Kaufman's concerns.

Chairman Michelman noted that the referrals to the Building Inspector and Fire Inspector would be done soon, but the Board couldn't have a public hearing until they heard from them. Mr. Banks said he understood.

Chairman Michelman said that the Board didn't have a problem with this building.

Mr. Sherwood presented plans to the Board. He explained that the applicant had been before the Board for the approval for the barn. They are so far under the basic coverage; they are allowed more than 35,000 and they were at 18,000.

There were no issues from the Board. Chairman Michelman said that once the Board received the letters from the Building Inspector and Fire Inspector, a public hearing would be scheduled. The Board did not foresee any problems with this application.

## **GIZZI**

### **Special Use Permit**

#### **Section 2, Block 5C, Lot 1.-2.A**

#### **7 Hunter Drive**

**Peder W. Scott, PE, RA , P.W. Scott, Engineering & Architecture, P.C.**

#### **Discussion**

Ms. Melanie Hansen was present for the application. She explained that the applicant was seeking a special use permit for the increase of impervious surface over the basic allowable. Even with the additional square footage, they were still under the maximum allowable.

Chairman Michelman said that the main issue concerned the easement. There is an easement on the property that existed before the driveway was built, but the driveway goes into a part of the easement. That is really the only issue that requires discussion. This has to be resolved in some way.

Mr. Kaufman said the easiest way to resolve this would be to move the easement to where the driveway is. The other, more difficult way, is to move the driveway to the easement area.

Chairman Michelman said that was the only issue the Board saw with this application. She said they didn't see a problem with the addition or the special use permit, but they wouldn't be able to approve anything until the easement issue was clarified.

Mr. Kaufman explained that this could be made a condition of approval. The Board could schedule a public hearing, and hopefully in the interim the applicant can decide what is going to be done about the easement.

Ms. Hansen asked about the referral to the County Planning Board, and Mr. Kaufman explained that was something he took care of, and it had already been done.

Ms. Desimone said that this application could be scheduled for the October 13<sup>th</sup> meeting. The Board agreed and said that a resolution could be prepared for the same night.

Mr. Kaufman confirmed with Mr. Baroni that the easement issue was something that needed to be taken care of for this approval. Mr. Baroni said that he thought it was.

**MACKEN**  
**Site Plan**  
**23 Washington Place East**  
**Section 6, Block 3, Lot 1**  
**Ralph Mastromonaco, PE PC**  
**Discussion**

Mr. Macken was present for the application. He presented a site plan to the Board and explained that they moved four spaces, per his discussion with the Board. He said that it was understanding that Mr. Kaufman was working on a resolution.

Chairman Michelman said that Denim Place was better for the spaces. They have to confirm the gross land coverage numbers on 23 because Mr. Kaufman thought there was a mistake. The applicant is slightly over the basic, and under the maximum, but that would still require a special use permit, which requires a public hearing. She did not know if the layout would be different for the new location. Mr. Macken thought the space would be the same regardless, but he would have my engineer check it again. Mr. Kaufman said that the applicant was definitely under the maximum, so that is not an issue. The way the applicant calculated the permitted amounts was not correct, that is where the problem arose. He said he could discuss this with the applicant and his engineer in the office. It was not going to be an issue.

Mr. Macken said that he was probably going to revise the plans so that he definitely wouldn't need a public hearing.

The Board explained that there should only be one more meeting, regardless of which way it goes. If no public hearing is required, they might be able to get on the September 27<sup>th</sup> meeting.

**MACKEN**  
**Curb Cut**  
**17 Washington Place East**  
**Section 6, Block 2, Lot 13**  
**Ralph Mastromonaco, PE PC**  
**Discussion**

Mr. Macken was present for the application. He explained that this was just a simple curb cut application and he presented a plan to the Board. The Board said that there were no issues,

**428 – 436 MAIN STREET**  
**Site Plan Amendment**  
**Section 2, Block 13, Lot 8**  
**428-436 Main Street**  
**Michael Piccirillo, AIA**  
**Discussion**

Mr. Dan Hollis was present for the application, together with the applicant's architect and Megan Smith. Mr. Hollis said that they had a site walk the week before. He told the Board that they had revised the plans to show retail on the first floor and the resulting parking changes. They picked up on some errors on the plan, and they would correct them for the next submission.

Mr. Hollis explained that the applicant needed three variances: north side yard variance, one for the overhang, and one for the parking problem. The applicant wanted this Board to refer them to the ZBA as soon as they get the revised plans in, if not sooner.

Mr. Hollis explained that they had not had a chance to speak to Mr. Baroni yet, but perhaps a conditional resolution conditioned upon the applicant joining in any parking district that is formed in this area. The applicant was concerned about being the lead person on this, and having to be 100% responsible. However, they would be willing to pay their pro rata share.

Mr. Kaufman said that he was very concerned with proceeding in that fashion. Chairman Michelman agreed. The Planning Department would be willing to arrange a meeting with the neighbors to discuss this issue. He explained that the Board was in favor of what this will bring to this corner and what it will bring to Armonk, but they needed to consider this issue closely. Mr. Hollis reminded the Board that this approval couldn't be conditioned upon the other two property owners buying into the district. The Board understood this. Mr. Hollis asked if he'd be allowed to continue with this application and the ZBA referral.

Mr. Delano noted that the zoning application would be for a lesser variance for the office. Mr. Hollis said that they would require more spaces for the retail space, so the variance will be greater. Mr. Kaufman said that the application came in with office and he did not think that was the best use for that space. He thought retail would be better. He proposed an off street parking requirement incentive if people participated in the parking district (i.e. a substantially reduced variance or no variance). That is what he was proposing to the Board.

Mr. Hollis said that he would like to present both alternatives to the ZBA, and explain that they

would need one of those variances. Mr. Kaufman said that the ZBA might want to know what the parking variance would be for the office. Mr. Hollis said that his client was no longer interested in having an office space in that area. They are going to submit revised plans, and that will be the only plan we will present to the ZBA.

Ms. Tatka stated that the applicant should probably go to the ARB for the overhang. If the ARB decides the overhang should be removed, the applicant might not need that variance. Mr. Hollis pointed out that the ARB was only advisory and if this Board liked the overhang they could still approve it.

Mr. Kaufman impressed upon the Board that this was the opportunity to get this parking district formed. If it doesn't happen now, it would be like all the other times they've discussed the parking district issues since the 60's. He hoped the Board was successful.

Mr. Piccarillo presented an architectural rendering to the Board. In converting the building from mixed retail and office to all retail on the first floor, they had to look at the parking issue. There are three "vague" spots that are currently used, and then some ungraded areas that are not used for parking. They tried to find every possible space to use for parking in the rear of the property. They tried to form a handicapped space in the back, and created a large ramp on the side that come up and provided a way to get pedestrians to access the front of the property. He indicated the proposed dumpster area and explained that they would look at the topography as per Town Engineer's comments. This was a challenging nonconforming site. Mr. Piccarillo said that this project would enhance the area. The ramp is an architecturally pleasing feature. The applicant wanted to make this a favorable, prominent part of the town.

Mr. Coyne said that he questioned the slope of the handicapped ramp and compliance with the code. He said that it might meet code, but if it doesn't it might need to get wider and / or longer. If that happens, it might affect the parking requirement.

The applicant said that he understood.

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

Mr. Dan Hollis present. He explained that there was a public hearing opened on this application on February 22<sup>nd</sup>. As a result of comments received from the staff and Board, and the issue of the dam being a concern for the Board, the applicant was referred to the Conservation Board to deal with the dam effectively. The Conservation board were pleased with the revisions that were made.

Mr. Hollis explained that the plan was revised to deal with those issues. He added that Mr. Ryan, Mr. Aiello and Ms. Megan Smith were present to address any questions from the Board.

Chairman Michelman noted that the revised plan calls for the removal of the dam and creation of some kind of pond. Mr. Hollis said that was incorrect. Mr. Aiello explained that they had two meetings with the Conservation Board where two options were discussed. One included the removal of the dam and the construction of a berm behind where it was to provide stormwater runoff. The point was to protect downstream residents. The downside was that it would require more disturbance and ongoing maintenance in the wetland area. The second plan, which was submitted to this Board for consideration, includes the removal of the dam and reestablishment of stream corridor in that area. On the turn, they would provide some boulders and different armoring for the area. It takes care of the dam, and reestablishes the corridor, but they still wanted to provide for the runoff. So they made the pond on lots 4 and 5 about 20% larger. The Conservation Board was satisfied with that plan, and it is reflected in their memo. This has a little more disturbance in the buffer, but they have increased the mitigation accordingly.

Mr. Hollis said they would like to continue the public hearing, preferably to the 13<sup>th</sup> of October. Ms. Desimone noted that since this was a continued public hearing, no additional notices were required, so they could be on the September 27<sup>th</sup> meeting.

Mr. Hollis understood that the Conservation Board wanted fewer lots, but the applicant was insistent that they should have the additional lot. Chairman Michelman said that they have made great improvements and progress has been made, but this is a subdivision where they are invading a lot of wetland buffers. Chairman Michelman said that as far as she went back in the file, in every professional memo she saw, the recommendation was, from a planning perspective, this would be a far superior four-lot subdivision than a five-lot subdivision. She thought that five lots were too many. It is squeezed in as tightly as it can be and it would not age well.

Mr. Hollis respectfully disagreed with that. He pointed out that the Conservation Board, however reluctantly, approved the five-lot subdivision. Chairman Michelman thought this could be dealt with when the public hearing was reconvened, but she wanted to make it known that this is a concern at least for some members of the Board. Mr. Hollis noted that the lot that is viewed as the most problematic is probably the most attractive. They have made great improvements to this plan. Although, mathematically, the Board might like the four lot instead of five, but the health, safety and welfare concerns are satisfactorily addressed.

The public hearing will be reconvened on September 27<sup>th</sup>.

**WAXMAN**  
**Special Use**  
**Section 1, Block 4, 10-430**  
**33 Thornewood Road**  
**Pete Gregory, PE**  
**Keane Coppelman Engineers, PC**  
**Discussion**

Mr. Waxman was present for his application. He explained that he had sent a note to the Board requesting an amendment to the landscaping plan in place for his property for two reasons why.

Financially, given the economy and personal things, his priority was the house and not the landscaping. Additionally, a number of things on the landscaping plan were there for aesthetic purposes. His neighbor doesn't think they are necessary. Mr. Waxman submitted his neighbor's letter in this regard.

Chairman Michelman said that the Board was faced with two distinct issues. She asked if the applicant had seen the Conservation Board's memo that came out that afternoon. Mr. Waxman said that he saw it, but thought that was a separate issue. Chairman Michelman agreed.

Chairman Michelman recognized that since the pool would not be going in, it was not necessary to landscape the pool. However, there are some areas near the foundation of the house, and one area that the Board felt, regardless of the neighbor's nonissue, needed to be landscaped. She noted that the Board did agree that the large trees were not necessary, more like small bush-like screening near the driveway area.

Ms. Black explained that the Board routinely requires some kind of screening along driveways where they are visible – usually some kind of evergreen. She agreed that what was in the plan was overkill, but thought some smaller evergreen screening would be appropriate.

Mr. Waxman noted that there were some scrubby bushes and trees in a particular area. One reason why the neighbor thought it wasn't necessary was because he was set back below, and privacy was less of a concern for him. He added that it was not a concern for him, because there is enough blockage due to the other trees that are there. Mr. Waxman agreed that there was approximately 10' space in that area that did not have as much screening.

Chairman Michelman said that at some point, she thought that should be screened. She was not saying it had to be done right away; the Board could put in a clause that says that within a certain reasonable period of time, that it be implemented. She agreed that what was in the original plan was too much – and not required.

Mr. Delano thought that they needed to modify the plan to include something that grows lower, and deal with the matter of timing by which the applicant needs to implement this.

Mr. Kaufman explained that the issue was, what would be the trigger to require the applicant to provide the screening along the driveway. Typically, the Board would use a bond or a C.O. He said he was not suggesting that the Board hold up that C.O., but they needed to do something. Mr. Delano thought that the applicant should either provide a bond, or provide the Board with a revised landscaping plan that they find acceptable.

Mr. Waxman said that he was trying to avoid doing a whole new plan. He also asked the Board to differentiate between the areas to which they were referring. He understood that he needed to plant low evergreen screening a space of approximately 10' wide. Ms. Black said that the Board usually didn't get involved with foundation plantings; mostly screening for neighbors. The Board discussed the original landscaping plan, which was shown to the Board by the applicant. Ms. Black said she would be ok with removing three particular trees. The rest of the Board agreed. They could do a text amendment to the former resolution.

Ms. Desimone pointed out that the applicant requested that the Board waive the application fee. Mr. Baroni explained that this Board didn't have the power to waive that. It is the power of the

Town Board who'd have to pass a resolution. He noted that the Planning Board would have to make a recommendation to the Town Board in that regard.

Mr. Waxman said that the final issue concerned the wetland related comments. His original request was not to do the wetland plantings. He noted that the wetland seed mix on the plan is very expensive. He'd like to use a cheaper seed mix and still maintain the no-mow zone. Mr. Waxman added that the Conservation Board comments contained comments that had nothing to do with what he was requesting.

Mr. Kaufman noted that the Conservation Board wanted some delineation in the field between the lawn and the no-mow zone. They suggested having a plant demarcation line. Mr. Waxman said that the seed mix is a very different type of growth than his lawn area, so it would be demarcated that way. Mr. Delano said that he would defer to the Conservation Board. Ms. Black agreed. She too would defer to the Conservation Board and take a fraction of the required plantings and place them at the line for the no-mow zone.

Chairman Michelman thought that the issue of the pipes was something that needed to be worked out between the applicant and the Conservation Board and the engineers. Mr. Kaufman thought this was resolved. The Board had the Conservation Board's comments on the no-mow zone and the wetland plantings, and the Board knows what they doing with the screening between the properties. The Board was going to omit the ornamental or foundation plantings, and the Town Engineer would work out the driveway issue. It can be worked out in the text of the resolution.

The Board said that the applicant didn't have to plant the whole wetlands, but would use some of those plantings along the line to more clearly demarcate the wetland boundary. Although this applicant may honor that line, it has been this Board's experience that sometimes, future owners do not honor it.

The Conservation Board representative said that they had not seen any plans regarding what the applicant really wanted to do, and what type of seed mix they want to use. Chairman Michelman said that she understood. She pointed out that the Conservation Board's comments really reduce the number of wetland plantings that would be required.

Mr. Kaufman asked whether the Board was going to send this Back to the Conservation Board. He thought he was just going to deal with the seed mix directly with the Town's Wetland Consultant. The Board thought that would be fine and the Conservation Board representative had no objection.

Mr. Kaufman revised the resolution to include language to describe the differences between the prior plan and the new plan.

Mr. Sauro said that they also needed to decide upon the trigger. Mr. Delano thought that the Board had eliminated so much planting that they should require the plantings to take place in the next planting season. He didn't think that was unreasonable. Mr. Waxman said that he had no objection to that. Mr. Coyne pointed out that if the temporary C.O. expired before a C.O. was issued, the applicant would be required to plant sooner rather than later. Mr. Waxman said that the temporary C.O. expired in November. Mr. Kaufman said that he would ask the Building

Inspector to extend the T.C.O. until the end of the spring so that the trigger wouldn't occur until next year.

Mr. Sauro said he had no problem with this Board recommending that the Town Board waive the application fees associated with this application. Other members of the Board felt that the applicant should take that up with the Town Board on his own.

Mr. Sauro moved to recommend that the Town Board waive the fees. The motion was seconded by Ms. Black and approved, by all except for Mr. Delano, who voted against it.

## **REIBELING**

### **Special Use Permit – Accessory Apartment**

**Section 7, Block 4, Lot 1-15**

**3 Roberta Place**

**Bob Law, Attorney Robert W. Pollack, AIA**

#### **Discussion**

Mr. Bob Pollack was present for the application.

Chairman Michelman explained that two things needed to be done. The Building Inspector and the Fire Department had to go and look at the apartment, and this Board would make that request the next day. She said that had to be completed first, because if the apartment didn't meet the criteria under the code, then they wouldn't have to address the parking problems. However, if the apartment meets the criteria, then they would have issues to work out on the parking.

The rest of the Board agreed that they should get a determination as to whether or not the apartment meets the necessary criteria. If there were no issues from the Building Inspector and the Fire Department a public hearing could be scheduled.

## **ZENG**

### **Site Plan**

**Section 2, Block 17, Lot 2G-1**

**46 N. Greenwich Road**

**Walter Nestler, Landscape Architect, ASLA**

#### **Discussion of Conservation Board Memo**

Mr. John Wick was present for the application together with Mr. Walter Nestler and Mr. Zeng. Mr. Wick pointed out that the Wikers were present as well, and they were the neighbors who live behind this site.

Mr. Wick explained that the applicant had been to the Board on more than one occasion, and they had been to the Conservation Board three times. He added that they would be going back to the Conservation Board again the following week. Mr. Wick explained that he was just before the Board to give them an idea of where the applicant was.

Mr. Wick explained that this was an application for a single-family house in which Mr. Zeng to live. This was a 3.5-acre parcel, and the applicant was proposing a 4,800 sq. ft. (30x100) house. The problem they are encountering in the Conservation Board is that they need to build in the buffer. Mr. Wick presented a basic plan to the Board. He indicated the wetlands and the manmade pond, the buffer, the septic and where they are proposing the house. The applicant only has a very small area where they can build the house. The Conservation Board has requested that the applicant minimize the disturbance to the buffer. He noted that the applicant would still need regulated wetlands permit.

Mr. Wick explained that there are a lot of constraints on this site, and in order to get a reasonable return on this property, it is necessary for them to seek that permit. The applicant has done what he could to minimize the disturbance. They have narrowed the driveway, moved the house 10', they have a great mitigation plan. The standard is 2:1, and they are providing approximately 3:1. Mr. Wick said that the applicant was proposing a rain garden for the stormwater retention and they would not be building a pool.

Mr. Wick stated that they have been to the ARB, reduced the size of the structure and lowered the pitches. They have done what they could to minimize the size.

Mr. Wick said that they wanted to keep the house oriented to the north / south in keeping with the pond. They are doing a geothermal system, so they need it to be on a particular angle. He added that the applicant didn't want to move closer to the street because of the noise, and how much larger it would appear.

Mr. Wick told the Board that the six adjacent houses range from 3,300 – 5,300 sq. ft. The average is approximately 4,100 sq. ft. and the applicant is building something in keeping with the houses in that area.

Mr. Wick presented a cross section of the house with a rendering. The house is situated right at the grade change and they are hoping to keep it in that area so they could minimize the grading. Ms. Black asked if they could push it forward more. Mr. Wick said that they could, but the applicant was worried about the noise. They have pushed it as far as they could go without running into problems with the setbacks.

Mr. Wick pointed out that this was a unique application for the wetlands regulated ag permit. Previously, this site had a lot of disturbance to the buffer. He presented the old survey, which showed the structures that had been in the buffer. This was never a high quality wetland. It was a manmade pond, with a lot of ornamental plantings that were not native. They were planning to take out the invasive species and would plant a meadow mix in the area. They would have a no-mow zone, and would work to improve the quality of the wetlands. Mr. Wick noted that there are numerous curb cuts on the property and the applicant would be combining them and only going to have one. He added that this would be a green house with a zero carbon footprint.

Mr. Wick told the Board that they could probably not design a house that would not be in the buffer – something would have to be in the buffer. This is the best they can do, and it is what they planned to go to the Conservation Board with.

Chairman Michelman said that the applicant's efforts were appreciated. However, just because the neighboring houses are a certain size it doesn't mean that this property is made to have the same size house as the neighbors who don't have the same difficult property with the same constraints. She noted that 50% of the house is in the buffer, 1/3 of the driveway is in the buffer and there were many other things that would be in the buffer as well. Chairman Michelman said that was a huge amount of disturbance, and regardless of the amount of the previous disturbance, this is new construction and the Board had a responsibility. She noted that the Conservation Board had asked for an alternative plan and Mr. Wick was telling the Board that wasn't going to happen. Mr. Wick agreed that the applicant would not be submitting a revised plan. They have done the best they could and they've taken into consideration the Conservation Board's comments. Mr. Wick said that this was a very small house, and this was all they could do due to the constraints of the site.

Chairman Michelman said that the Board recognized that this was a unique property that had a lot of space, and that there was not a lot of area for construction, but Mr. Zeng knew all of this when he purchased it the lot.

Ms. Black stated that the Board has seen a number of houses where a portion of the garage is moved forward and it looks like there is a portion that is not in the buffer, that the applicant has not taken advantage of. Mr. Wick said that because of the slope of the property, they want to keep it right where it is. If they moved it, they would lose the walkout basement, plus they would lose the size of the house that we'd really like to have

Ms. Tatka thought that this was a great improvement to the property. She said that usually really deferred to the Conservation Board, but thought this Board should consider the improvement to the property.

Mr. Sauro asked where the geothermal equipment was proposed. Mr. Wick indicated the area, and said that this would be a completely self-sufficient house. Mr. Sauro thought that was a terrific feature. He noted that if the applicant moved the garage as Ms. Black suggested, that would impact the geothermal system.

Mr. Nestler talked about the elevations and said that they were planning to take advantage of that. He said that they were really trying to minimize the grading disturbance. He added that the main reason for this size of the house, was because the applicant's parents live with them, along with the applicant's children.

Chairman Michelman asked about the engineering issues. Mr. Wick recognized that there were some issues, but schematically, they had to deal with this before they dealt with the engineering issues. Chairman Michelman said that these issues had to be discussed with the Town Engineer sooner rather than later. She would imagine that the Conservation Board would be interested in the engineering impacts too.

Mr. Coyne pointed out that the applicant submitted an appropriately sized rain garden plan. It was in the wetland buffer on the wetland side of the fence that would delineate the clearing and grading limit line. He believed that the Conservation Board wanted it to move, but it doesn't look like it would be. Mr. Wick said that would be revised. Mr. Nestler said that they would also probably be moving it in 10' closer to the house.

Ms. Black noted the Conservation Board's comment regarding the missing information. Mr. Nestler said that they had a maintenance plan and how they were proposing to do the mitigation plan. The applicant was proposing to mitigate the entire wetland buffer and wetland. The overall improvement to the quality of the site is commendable.

Ms. Black said that the Board still needed additional input from the Conservation Board. The Conservation Board representative asked if the applicant sent this information over to them, and noted that the Conservation Board still wanted to have a site walk. Mr. Nestler said it was his understanding that before they had another site walk, they wanted to get comfortable with this going in the right direction. The Board understood and thanked the applicant for their efforts.

## **114 COX AVENUE**

### **Site Plan**

### **114 Cox Avenue**

### **Section 2, Block 5, Lot 20.D01**

### **Jerry Barrett, RLA J.D Barrett & Associates**

### **Discussion**

Mr. Jerry Barrett was present for the application. He explained that the applicant was constructing a new home. During the construction process, there was a request to clear some old buildings and brush. As the contractors started working, they didn't realize they were working in a buffer. Mr. Barrett said he was not really sure what the explanation was, but one plausible explanation was that this is an unusual case. The property slopes up, then drops back down and perhaps the contractors were thrown by that.

Mr. Barrett indicated the wetland line, marked a line of disturbance, and a soil berm. He also indicated the 100' wetland buffer. Mr. Barrett said that there is they are disturbing .24 acres of the wetland and .2 acres of the wetland buffer. The applicant put together a mitigation plan that was originally sent to the RPRC, and then to this Board. He presented the plan to the Board.

Mr. Barrett said that they tried to reestablish the planted area and use native species. They also tried to make it attractive for the homeowners. Mr. Barrett explained the plan to the Board.

Mr. Barrett recognized that there was a 2:1 mitigation requirement, but this is a 1:1 plan. If some remediation at 1:1 can be approved, applicant would be willing to contribute to an offsite mitigation. Mr. Baroni said that he didn't see anywhere in the code where the Board was allowed to permit off-site mitigation. There was an appeal procedure to the Town Board and perhaps the Town Board would be willing to consider that. Mr. Baroni said that this plan was not approvable by this Board; they would have to refer it to the Town Board, and the applicant would be able to make the same presentation and proposal to that Board and argue that granting the appeal is appropriate.

Chairman Michelman asked if Mr. Barrett saw what the property looked like prior to the disturbance and Mr. Barrett said that he did not, but he did see the earlier satellite photographs. Chairman Michelman pointed out that prior to the disturbance, the area was much fuller and

denser; it did not look like what the applicant is proposing. She asked if there was any way to get more mitigation in order to make it denser, so it would be more like it was before. She did not believe that what the applicant was proposing was replacing what was destroyed. She noted that this would be wide open, and people will be able to use it. Mr. Baroni noted that the 2:1 requirement is based upon the land mass and not the number of plantings. The Board thought that the number of plantings might need to be increased. There were multiple discussions over what the site looked like before, versus what it looks like now.

Mr. Barrett said that the future buyer would like to build a pool and the RPRC seemed ok with that, but noted that the project couldn't move forward until this issue was resolved. Mr. Baroni asked if the RPRC had actually approved this project. Mr. Kaufman said that they had, with certain conditions, including an approved remediation plan. The Board pointed out that they could not approve this mitigation plan because it is only 1:1. The applicant needed to show 2:1 mitigation or get relief from the Town Board.

Mr. Delano noted that the mitigation requirement was based upon the applicant wanting to do an improvement in the wetland, or based upon them violating the buffer. Mr. Baroni didn't think there was really a distinction. Mr. Kaufman read from the town code. Mr. Barrett asked if the 2:1 replacement was something that can be considered and Mr. Kaufman said that the Board has done that when it was physically impossible on site. Mr. Barrett said he could probably get more area for mitigation, but he would not be able to get to 2:1. Mr. Baroni thought that may be what has been done in the past, but he didn't think the code could be read that way. This is rather a significant violation so he thought the best way was to go and appeal to the Town Board.

The Board said that the applicant should seek relief from the Town Board before the details on the remediation plan are worked out.

Mr. Kaufman said that this was unusual in the scale of the impacts. Usually the Board is dealing with a small portion of the wetland or a buffer, but here they were talking about a vast majority of the wetland and buffer. Providing additional mitigation outside of the wetland and the buffer seems strange.

Mr. Barrett asked about the process. Mr. Kaufman said that it makes sense to talk to the Conservation Board. Mr. Baroni said that if the applicant could get the Conservation Board and this Board to identify a site that they'd recommend for offsite mitigation, that would make the applicant's road to the Town Board easier.

## **LASHINS**

### **Site Plan**

#### **Section 2, Block 1J, Lot 6B**

#### **1 Hidden Oak Road Rich Williams, P.E. – Bibbo Associates**

#### **Consideration of approving 3<sup>rd</sup> extension of time resolution**

Chairman Michelman explained that the applicant requested a third one-year extension for their resolution. She cautioned that she was not sure how many more extensions could be obtained. Ms. Black moved to approve the resolution. The motion was seconded by Ms. Tatka and unanimously approved.

**SCOTT**

**Subdivision**

**80 Mianus River Road**

**Section 1, Block 7, Lot 4**

**Jerry Barrett, RLA – J.D Barrett & Associates**

**Discussion**

Mr. Jerry Barrett was present for the application. Mr. Kaufman noted that this application was originally filed in 2003. Mr. Barrett said that the Board is faced with an applicant who really didn't want to build this out. Mr. Kaufman said that they haven't progressed that far since the last time. The issue is what are they are doing with the phantom 6-lot subdivision that neither the applicant nor the Town wants built. Because the applicant is unwilling to deed restrict that land, the Board has to consider, under SEQRA, what the impacts would be if it was developed to its full extent. The problem was that the Planning Board had to base their environmental review on that six-lot plan. The question is whether that six-lot plan would have a significant impact on the environment. If yes, then they needed an EIS.

The Board discussed the basics of the five-lot plan versus the six-lot plan. Mr. Kaufman thought they would have had a resolution some time ago, where they considered having a code revision to have a compound-type subdivision, but now, the applicant didn't want to do that. Mr. Barrett said that was initially the applicant's plan, but over the years, he realized that he did not want to go that route.

Mr. Barrett said that this application concerned five lots off of Mianus River Road. The cottage would be turned into a workshop. There is a long "boot" shaped property that would be the logical piece that the applicant would probably donate to the gorge at some point in his life. They plan for a common drive for lots two and three. Lot 3 would be the applicant's and Lot 4 would have another house. Lot 5 would be a smaller house off of Mianus River Road. He added that they were able to get the required frontage.

Mr. Delano thought that if the Board approved this, and the applicant built the five-lot subdivision, how would the sixth lot come into existence if they couldn't get the required frontage. Mr. Coyne said that the applicant could build a town road. Mr. Delano said that they would have to have an agreement with the neighbors.

Mr. Kaufman asked if they could do a conditional neg dec. He noted that the Board has analyzed this, the town doesn't want it, and the applicant doesn't want it. Mr. Baroni asked how the applicant would be able to come back and do the sixth lot later if they were not building the public road. Mr. Barrett said that they would have to purchase more property and make Lot 2 noncompliant because that whole front yard would be taken up by the right of way. They would have to have control over each one of the properties in order to get the town road built. Mr. Baroni pointed out that the applicant would have control of all the lots if he didn't sell them.

Mr. Baroni suggested that they could put a note on the plan that indicated it was not a buildable lot. Mr. Kaufman said that the applicant's attorney has indicated that would not be acceptable for tax purposes. Mr. Baroni said that it would not be a building lot unless the Board approved a plat. Multiple discussions were had at this time.

Mr. Kaufman said that the Board was comfortable with the five-lot subdivision. If the "boot" can be deemed a non-buildable lot, then this could be resolved. At one point they had reached this point, and he noted that this was the easy way to handle this. However, for some reason it was not acceptable to the applicant. If it was now acceptable, then this was no longer an issue.

Mr. Barrett said that unfortunately, neither the applicant nor the applicant's attorney could be present for the meeting, so he'd have to talk to them the next day.

Mr. Kaufman suggested that this should be dealt with over the next few weeks so that this would not lose the momentum.

Mr. Barrett said that he would talk to the applicant.

There were other issues that needed to be discussed. Mr. Barrett said that they provided a utility plan and they propose to bury the line for the house and put three poles in. They were asked to look at the driveway to Lot 5, and consider an alternative. They propose to come in via an easement over Lot 4 (indicated). The alternative they selected (on other side of the lot) was shorter, but went right through the wetland. Mr. Barrett did not think this was an improvement. He explained the grading plan to the Board.

Mr. Barrett said that he received a memo from the Town's Wetland Consultant regarding the onsite wetlands. The DEC validation block indicated the wetlands were designated in 2005. Mr. Barrett planned to call the state to see if they were going to come look again, but nothing has changed. The town's consultant indicated that there seemed to be an offsite wetland, so they should request permission from the Gorge to delineate it. They could get what we did re-verified, but he did not think it was right for the applicant to have to go off site to verify what has been on file for 10 years.

Mr. Kaufman said that, regardless of whether it has changed, the Board has to have the right information on the plan. Mr. Coyne explained that the Town's Wetland Consultant talked to the applicant's consultant and there are two areas he wants to review. One that Mr. Barrett was discussing, and one on Lot 5. In the context of this application it matters because of the common driveway and the stormwater basin. Mr. Barrett said that they were willing to meet and try to work this out.

**Acting Planning Board Chair  
Consideration of approving Acting Planning Board Chair 2010 & 2011**

Chairman Michelman explained that the Board needed to appoint a member to act as chairman in the event that Chairman Michelman wasn't available. Ms. Black moved to appoint Mr. Delano as the Acting Planning Board Chair for 2010 and 2011. The motion was seconded by Mr. Sauro and unanimously approved by all except for Mr. Delano, who abstained.

**SULLIVAN**  
**Final Subdivision**  
**24 Glendale Avenue**  
**Section 2, Block 13, Lot 17-18**  
**Barry Naderman, PE Land Planning & Engineering PC**  
**Consideration of approving 2<sup>nd</sup> extension of time final subdivision resolution**

Chairman Michelman noted that this was the second and final extension; no others will be permitted. The applicant is requesting the extension because they still haven't torn down the house. Mr. Delano moved to approve the resolution. The motion was seconded by Ms. Black and unanimously approved.

**MILLER**  
**Subdivision**  
**Section 1, Block 11, Lot 11-9 & 11-6**  
**7 & 9 Ashfields Lane**  
**Barry Naderman, PE Naderman Land Planning & Engineering**  
**Consideration of approving preliminary subdivision extension of time resolution**

Ms. Desimone noted that the applicant turned in the final plan that day. Mr. Delano moved to approve the resolution. The motion was seconded by Ms. Black and unanimously approved.

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The meeting was adjourned at 9:40 p.m.

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