



**PUBLIC HEARING:**

**JACOBS**

**Special Use**

**Section 1, Block 5, Lot 15-22**

**1 Hobby Farm Drive**

**Pete Gregory – Keane Coppelman Engineers, P.C.**

**Consideration of approving resolution**

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 10 out of 11 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for this application. There were not.

Mr. Peter Gregory was present for this application to represent the applicant. He explained that his office prepared this site plan. As a result of the proposed pool, the basic allowable land coverage is exceeded by approximately 1,342 sq. ft, requiring a special use permit from the Board.

The pool is proposed in the rear of the site, and will have a terrace that will join an existing terrace. There is a subsurface infiltration system proposed as part of this plan. It is approximately 25' from the rear property line. Access will occur from Hobby Farm Road on the western side of the house; this avoids disturbance near the wall and the septic system.

Chairman Michelman asked if Mr. Gregory had reviewed the resolution. He said that he had, and had no issues with it. Chairman Michelman pointed out that there was a typo on the first page, in the third "whereas" clause; the word "required" should be removed. Ms. Black stated that in the fourth "whereas" clause, she questioned the 500' from Bedford Road and Route 22. Mr. Kaufman said that he would have to look this up.

There were no comments from Mr. Schroeder or Mr. Kaufman. Dr. Matusow wanted to ensure that the minutes reflected that the applicant is aware this approval will leave him with only 21 sq. ft. below the maximum allowable land coverage, which means that there is little possibility that any additional approvals will be granted in terms of gross land coverage. Chairman Michelman agreed, and

Mr. Adelman moved to close the public hearing. The motion was seconded by Ms. Black and unanimously approved. Ms. Black moved to approve the resolution as amended. The motion was seconded by Mr. Adelman and unanimously approved.

**MBIA**

**Amended Site Plan**

**Section 3, Block 4, Lot 3, 3A, 3A1, 3B, 3C, 3D, 3F, 3G, 3G1, 3H, 3-1, 3-3, 3-6, 3-7, 3-8, 3-9**

**King Street, Cooney Hill, Weber Place**

**John Meyer Consulting**

**Discussion**

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 8 out of 8 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application. There were not.

Mr. Dan Hollis was present on behalf of the applicant. He explained that he made a presentation at the prior meeting. The applicant is proposing to locate a water treatment facility in the basement floor of the existing parking structure. In planning for the proposed expansion they drilled additional wells on Cooney Hill, and wanted to have some onsite treatment for that water. Of all the possible locations, the basement of the existing garage would be the best place. That facility will require the applicant to remove 9 parking spaces. As part of the proposal, they had to do a complete parking count, where it was determined that they were actually short on their parking. Therefore, they need an additional 28 spaces in the landbank, including the 9 spaces that are needed to be removed. Mr. Hollis explained that they have conducted a study, and have found that they have sufficient parking and have the capability to expand the parking in the future if need be.

Chairman Michelman asked if Mr. Schroeder had any issues. Mr. Schroeder stated that he noted that the isle width needed to be revised. Mr. Hollis acknowledged this.

Mr. Kaufman stated that he had no issues, and added that the Board is prepared to adopt a resolution as soon as they hear back from the County Planning Board. If they do not hear from them within the allotted time period, the Board can adopt the resolution. Dr. Matusow asked how long they had. Mr. Kaufman explained that they have a maximum of 30 days, but was not sure when this was referred to them, and therefore was not sure when those 30 days were up. Mr. Hollis anticipated that this would be completed in time for the September 10<sup>th</sup> meeting.

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

**CONTINUING PUBLIC HEARING AND NEIGHBOR NOTIFICATION:**

**LASHINS**

**Site Plan**

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

**1 Hidden Oak Road**

**Rich Williams, P.E. – Bibbo Associates**

**Discussion**

Chairman Michelman noted that the public hearing was first before the Board on May 21<sup>st</sup> and was held over until this agenda. She asked if there were any neighbors present for this application. Ms. Manzi of 5 Hidden Oak Lane was present. There were no other neighbors.

Mr. Tim Allen was present for this application on behalf of the applicant. He believed that the one major remaining issue was the size of the building. He said that they have provided the analysis of the neighboring lots relative to the tax information. He noted that the assessor's information does not include attic space, and in some instances, the garage information is not included. Therefore, in looking at the lot as a whole from an aerial perspective, this proposal is not out of character with the neighborhood.

He added that there is a lot of tree cover in that area. The applicant's plan will allow trees to remain, and landscaping will be added. Mr. Allen stated that the applicant did not feel this was out of character with the neighborhood, and requested that the Board approve the plan as proposed.

Chairman Michelman asked about the height of the building; the average grade comes to 29' 11" and the maximum is 30'. Mr. Allen said that was correct. Chairman Michelman felt this was pushing the envelope, and that the neighbors' views are a concern. Mr. Allen stated that they have increased the landscaping. Chairman Michelman acknowledged this and said this was appreciated. Mr. Allen pointed out that this was within the height requirements.

Chairman Michelman asked if there were any issues from the Board or the professionals. Mr. Kaufman stated that the issue is not the footprint; the amount of gross land coverage is only slightly over the basic. He noted that the main concern is the vertical mass of the house and the large attic and exposed basement. Mr. Kaufman stated that, when you take into account the amount of vegetation already existing, and the amount the applicant is proposing, the applicant has made some significant progress in attempting to screen at least the walkout basement. He felt this would do a decent job of screening the house. He noted that the slope could be a potential impact to the adjacent neighbors, and under this Code, that is supposed to be screened.

Chairman Michelman noted that the screening will likely cover the basement in the summer, however she questioned how effective that screening would be in the winter. Mr. Allen stated you would be looking at an embankment, from a curve, so that would not be very visible.

Mr. Adelman opined that the applicant has done a good job with this proposal, and he does not have a problem with this. Dr. Matusow felt that this house fits on this lot, and the landscaping is adequate. He too had no objection to this house. Ms. Black stated that her original concern was the screening, but that has been dealt with well.

Chairman Michelman noted there was a typo on page three, number four. They are dealing with gross land coverage, not floor area. Mr. Kaufman noted that the Board had received correspondence from the Westchester County Planning Board, which indicates the applicant should use "green" building technology whenever possible, provide adequate stormwater treatment (which this plan does), and attempt to minimize impervious surface.

Chairman Michelman asked if the neighbor had any questions or comments. Ms. Manzi wondered what kind of façade this building would have. Mr. Allen explained that it would be shingle with stone. The Board asked if the applicant had received approval from the ARB. Mr. Allen said that they had not yet submitted this to the ARB. The Board advised him to do so because they cannot receive an approval without ARB approval. Mr. Allen asked if a draft resolution could be prepared in the interim. The Board agreed.

Mr. Kaufman recommended that the Board hold open the public hearing, or close it and have the applicant waive the time period in which the Board has to make its decision. The applicant considered this, and decided that they would not close the public hearing.

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

**PUBLIC HEARING & NEIGHBOR NOTIFICATION:**

**MACKEY**

**Amended Site Plan**

**Section 2, Block 4, Lot 1-9**

**5 Dellwood Farm Way**

**Leonard Brandes, AIA**

**Consideration of approving resolution**

Chairman Michelman read the public notice for the record. She asked if there were any neighbors present for the application. There were not. Ms. Desimone noted that all paperwork was in order and that 23 out of 33 cards were returned.

Mr. Brandes was present on behalf of the applicant. He explained that there have been minor modifications since the last meeting including reducing the size of the air-conditioning system and the screening. They have received ARB approval and agreed to provide a copy of that approval.

Chairman Michelman asked if the applicant had reviewed the resolution. He had not. Chairman Michelman gave him a moment to do so. He pointed out that the *[inaudible]* was not part of this application, that it was approved some time ago. Mr. Kaufman pointed out that this was reflected in the resolution. He had no other issues.

Mr. Schroeder noted that there are some items in the resolution that do not apply: number eight (curbing, parking, paving) could be removed. Mr. Kaufman agreed.

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

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

**LONDON**

**Site Plan**

**Section 1, Block 5, Lot 23.C**

**175 East Middle Patent Road**

**Pete Gregory – Keane Coppelman Engineers, P.C**

**Discussion**

Chairman Michelman read the public notice for the record. She asked if there were any neighbors present for this application. There were not. Ms. Desimone noted that all paperwork was in order and that 6 out of 9 cards were returned.

Mr. Peter Gregory appeared on behalf of the applicant. He explained that they have prepared a site plan and an application to the Health Department for the proposed septic system to replace the existing system. The applicant is proposing an addition to the existing residence on East Middle Patent Road. There is an existing driveway that will be

utilized for access to the site. As part of the site plan, there will be some grading involved that will require terraced retaining walls. Mr. Gregory stated that they have tested the site for septic and received approval from the County Health Department for a two-bedroom septic system located adjacent to the driveway and detached garage structure. The existing well will be utilized (located near the entrance to the driveway near East Middle Patent Road) that will continue to serve the dwelling.

They are proposing a mitigation area to handle stormwater runoff from the roof that will be treated with drywells. Mr. Gregory added that they have looked at gross land coverage and for this application they are below the basic.

Chairman Michelman asked about the driveway. Mr. Gregory said it was already existing. The Chairman recognized this, but pointed out they discussed the guide rails and doing other improvements on the driveway Mr. Gregory agreed and stated that this would be addressed on the next submission. Chairman Michelman stated that the professionals need more specifics regarding the guide rail and the retaining walls.

Chairman Michelman asked if Mr. Schroeder had any issues. Mr. Schroeder stated that he did not, other than the driveway. Mr. Gregory explained that they would be addressed.

Chairman Michelman stated that the next step is to present the plan so the professionals can evaluate it. Then the Board could proceed to a resolution. Mr. Kaufman explained that at the last meeting, the Board had indicated that they were satisfied with the site plan, so if the Board was ready, a resolution could be prepared with these issues as conditions. Chairman Michelman preferred that Mr. Kaufman review these details before a resolution was prepared. Mr. Gregory stated he would prepare a submission for the Board to review.

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

The Board stated that they would prepare a resolution based upon those conditions.

**837 Mount Kisco Road  
Site Plan, Tree Removal, Special Permits FAR & Gross Land Coverage  
Section 2, Block 2, Lot 5A-10  
837 Mount Kisco Road  
Anthony Castillo, P.E. – SESI Consulting Engineering  
Discussion**

Ms. Desimone noted for the record that she sent the wrong Irvington Builders application to the paper. A notice for Lot 9 instead of Lot 5 was published. Mr. Baroni explained that the public notice was defective, and had to be renoticed. Chairman Michelman asked about the members of the public that were present. Mr. Baroni explained that no public hearing could be opened, it must be renoticed. He recognized that occasionally the Board has permitted neighbors to speak and incorporate comments into the record, but here there is no public hearing that has been opened.

Chuck & Barbara Dunn, 837 Mount Kisco Road were present. Mr. Castillo wanted the Board to hear some of the presentation. The neighbors wanted to hear the presentation. Mr. Baroni advised the Board that they could permit the neighbors to comment, but they would have to come back to the next meeting to have their comments be considered effective, because this was a defective public hearing.

Dr. Matusow asked Mr. Castillo if the existing driveway in the back of the property is going to be removed, and Mr. Castillo said that it was. Chairman Michelman asked the neighbors what they wanted to do. The neighbors stated that they wanted to have the public hearing then and there, and have their comments noted for the record. Chairman Michelman repeated that this was a defective public hearing and in order for their comments to be part of the official record, they would have to come back for the public hearing. The neighbors wanted to hear the presentation so that they could determine if they would need to come back.

Mr. Castillo explained that the applicant is proposing single-family house with a driveway and pool facilities on 3.1 acres. Access will be from Mount Kisco Road. He stated that it was his understanding that this property had been previously developed as some type of hotel, and that that is where the access had been located. Chairman Michelman asked if they have received approval from NYS to utilize the old driveway, and Mr. Castillo said that he had.

Mr. Castillo stated that they are seeking site plan approval, permission to remove trees, and for special permits for both gross land coverage and floor area ratio. The proposal will include a courtyard for vehicles as well as a patio at the rear and a horizon (vanishing edge) pool. The on-site well and septic field will serve the site. They applicant had previously received permits for 5 bedrooms, but the permits lapsed; they have resubmitted applications.

The proposed house, patio and pool runoff will be conveyed to stormwater chamber gallery systems. The applicant has applied for and received DEC coverage since it exceeds the minimal threshold for land disturbance. The DOT has also approved the driveway and has taken hard look at drainage on site, because currently the property drains to Mt. Kisco Road, into facilities owned by the DOT.

Mr. Castillo explained that, in terms of FAR calculations, the basic is approximately 6,787 sq. ft. and the maximum is 12,073 sq. ft. The proposed FAR of the applicant's house 10,239 sq. ft., of which approximately 500 sq. ft. is for the porch, and 1,100 sq. ft. consists of the garage. The actual space is noticeably less.

The maximum allowable on gross land coverage is 16,929 sq. ft. and the basic is 11,149 sq. ft. The proposed gross land coverage for this application is 16,660 sq. ft. Mr. Castillo explained that again, approximately 630 sq. ft. is comprised of an existing retaining wall that will remain, 490 sq. ft. of porches and 131 sq. ft. of terrace area.

Mr. Castillo stated that with respect to tree removal, Scott Cullen, an arborist was retained to walk the site in December 2005. He located the site of all regulated trees within the proposed disturbance area, along with diameter and health of those trees. He noted that there were 11 trees proposed to be removed from DOT right of way. Those are largely a result of the DOT's concerns over sight distance. They were rather healthy

trees. There are 9 trees on the site within the area of disturbance that are proposed to be removed; Mr. Cullen indicated two of those trees were dead. The applicant has attempted to minimize the number of healthy trees to be removed.

Mr. Castillo added that the applicant has received the memos / comments from Mr. Kaufman and Mr. Schroeder, and will address those concerns.

Chairman Michelman wanted to know if the applicant had any renderings of the proposed house, and how visible it would be from nearby houses. Mr. Castillo presented drawings to the neighbors, which provided different views of the house. Mr. Castillo stated that he did not have a rendering that would depict the view from the neighbors' house, but explained that from the property line to the closest proposed building corner to the north was 182'; from the south, it is approximately 200' to the property line; to Route 128 it is approximately 120' to the property line; and several hundred feet toward the west.

The neighbors had no questions for the applicant. Chairman Michelman noted that the applicant had to renotice but would be rescheduled for September 10<sup>th</sup>. She also indicated that a resolution could be prepared for the same meeting.

### **CONTINUING BUSINESS:**

#### **ARMONK RETAIL CENTER (former Bowling Alley)**

##### **Concept Plan Discussion**

##### **Section 2, Block 11, Lot 11A**

##### **Discussion of Site Walk**

##### **Michael Divney – Diney Tung Schwalbe**

Mr. Michael Fareri was present for the hearing. Chairman Michelman acknowledged receipt of the letter from the applicant that she will submit in its entirety for the record. She stated she had no other role in this.

Mr. Fareri asked if the Board wanted him to proceed with his presentation. They did. Mr. Fareri asked if the Board would read the letter publicly, but the Chairman declined, explained that it would be entered into the minutes in its entirety afterwards. The letter was copied to Hon. Reese Berman, Members of the Town Board, Adam Kaufman and Roland Baroni, Esq. The following is a verbatim transcription of the letter:

*MICHAEL E. FARERI  
4 MacDONALD AVENUE  
ARMONK, NEW YORK 10504  
(914) 273-4500*

*August 10, 2007*

*Ms. Peg Michelman  
Chair of the Planning Board  
Members of the Planning Board*

*Town of North Castle  
15 Bedford Road  
Armonk, NY 10504*

*Dear Ms. Michelman and Members of the Planning Board:*

*I have reviewed the Planning Board Agenda for it's meeting on August 13, 2007. Under "Continuing Business," the following five (5) projects are on for discussion:*

*ARMONK RETAIL CENTER  
CINE MAGNETICS  
MODERN BARN  
A&P SHOPPING CENTER  
ARMONK SQUARE*

*As you know, I have an interest in two matters, ARMONK RETAIL CENTER (owner) and CINE MAGNETICS (Contract Vendee). The other three (3) projects are projects that will or may directly impact my two (2) projects during Planning Board consideration and when there is a vote on those projects.*

*I write to you as Chair of the Planning Board to request that prior to consideration of the above projects under "Continuing Business" that Planning Board Member Eugene Matusow recuse himself from any consideration and discussion (public or private) regarding all the projects. I am sure you are aware that I have raised serious concerns regarding Mr. Matusow's [sic] position as a member of the Planning Board in light of violations by him of the Town Building Code. Mr. Matusow has publicly expressed his opinions on my concerns which clearly evidence a bias against me.*

*Accordingly, Mr. Matusow should not sit, participate in any way, or vote on any project that may directly or indirectly impact my projects. Mr. Matusow should not be permitted to publicly or privately discuss or attempt to influence any Planning Board member or other official who may be or may become involved with my projects.*

*I write this letter prior to the public meeting in order to obviate any unnecessary public discussions on this request. However, if Mr. Matusow does not recuse himself from consideration of the above matters listed under "Continuing Business," then I will be forced to raise the issue in the public forum.*

*Please let me know Mr. Matusow's position and the Planning Board's position prior to Monday's meeting.*

*Thank you.*

*Very truly yours,  
Michael Fareri*

8/13/07

**To: Peg Michelman  
Chairman  
North Castle Planning Board**

**From: Gene Matusow  
Member  
North Castle Planning Board**

**Re: Request for recusal**

I have seen a copy of the letter sent by Mr. Fareri to Chairman Michelman in which he requests that I recuse myself from participating in discussion or decision on applications in which he has any interest.

It is my intention to consider all applications made to the North Castle Planning Board with objectivity, according to the code of the Town of North Castle and in keeping with the best principles of planning as I understand them. I perceive no conflicts of interest in my participation on any matter before this Board. My votes on any applications will reflect no bias except for my commitment to the best interests of the Town.

Accordingly, I respectfully decline to accede to the applicant's request.

A handwritten signature in cursive script, appearing to read "Gene Matusow".

**Gene Matusow  
Member  
North Castle Planning Board**

Mr. Fareri gave history of the bowling alley property. He explained that there is a building lot that is approximately 8 acres, which excludes parcel B (Gavi Restaurant and the vacant property to the left). He explained that he presently owns that property as well and it consists of approximately 0.80 acres. The property fronts on Old Route 22, Labriola Court and Kaysal Court, and has frontage on the private road he owns (George Smith Place). This private road provides access to a property in the rear that he sold to DEP approximately four or five years ago.

The bowling alley consists of 40,000 sq. ft. and the building is still intact. The Gavi Restaurant has 8,000 sq. ft., which means there is approximately 50,000 sq. ft. of building on the properties. Almost everything is blacktop; the green space that is seen used to be septic area for bowling alley before it was placed on public water and sewer.

Mr. Fareri referred to the plan dated February 1999. He explained that some of the members of the Board had seen this plan when it was brought to the Planning Board for conceptual site plan approval. At that time, the applicant believed, according to indications from the town, that the zoning line ran across the back of the restaurant, that the front portion was in the RB zone, and the rear was RELIP zone. When the applicant went forward with the plan, after 9 months of work with the Board including a traffic study, the proposal received a unanimous positive recommendation from this Board to Town Board, to give the applicant the opportunity to get the property rezoned to 100% retail business zone. That proposal consisted of 60,000 sq. ft. of retail on 6.8 acres. After the review, everyone agreed that the property should be rezoned. At that time, another applicant came forward with a plan to build a supermarket on the Schultz property. They waited to see how that played out. Since then, three things happened to this applicant.

First, they purchased the property in the front, which brought the total acreage of the site to 8 acres. Additionally, they determined how that the bowling alley existed in the RELIP zone. It was ultimately discovered that when the Town revised its maps, they remeasured the maps from the new Route 22 rather than Old Route 22, which created a 300 ft. difference, which caused this discrepancy. This is similar to the Mariani property and the Modern Barn. Lastly, Kaysal Court has since become a dedicated town road, whereas before it was private.

This property is serviced by three public roads (Labriola, Kaysal and Route 22). This has been confirmed by David Portman's office. As it exists this property is almost 100% impervious.

Mr. Fareri presented an aerial photo to the Board that shows the surrounding area. He stated the photo reflected that there is no view from the residential houses. In fact, they are blocked by the existing buildings that are in place.

Mr. Fareri stated that during the moratorium when the Town was studying this particular property, there was some thought that it should be rezoned into something other than what it was. The applicant had prepared several plans/proposals with that in mind. He presented those older proposals, which included an office-building proposal, where almost 100% of the property would be converted into parking. He stated that everyone

agreed that was not a good option. He also considered property becoming all warehouse space. That proposal had a potential tenant that had some retail associated with it, which they believed would require a zoning amendment. If they had known the property was zoned the way it was, then that project may have gone forward. The applicant also considered rezoning the property into all residential, including MIUs, attached, and freestanding dwellings. Ultimately, the applicant developed the last plan: a two-storey building. When you come from Old Route 22 you'd be looking at approximately 33,500 sq. ft. of supermarket, and retail of approximately 26,300 sq. ft. total approximately 60,000 sq. ft. down Kaysal Court, 40,000 sq. ft. of warehouse use / or something that would exist in a RELIP zone. On upper level, this would be a parking deck and retail stores that would consist of 26,000 sq. ft. Mr. Fareri stated that he did not know how it would be broken up. The lower level sits underneath the building. He presented a side elevation, depicting Old Route 22, which has supermarket and below, entered from Kaysal would be the warehouse. The parking would be underground and not visible from the rear.

Mr. Fareri stated that he believed there was a significant issue. He explained he has been a resident for almost 30 years. In that time, the Town has had a supermarket that doesn't meet the needs of the community. It also does not make any sense to have two supermarkets in the town, and he recognized that there is an applicant who plans to redevelop the supermarket. His point was that he has been coming to this Board for many years to attempt to find an appropriate use for this site. He stated that he was not sure in what direction he should go. He stated that he has owned the property for close to 10 years, and pays approximately \$110,000.00 in real estate taxes. He asked the Board what the appropriate use would be for this property. He noted that he's asked that question many times.

Mr. Fareri added that he has received a new offer from the DEP and it is "within striking distance" of an economically acceptable offer. He felt it would be selfish to make that deal because if this property could be redeveloped, it would generate approximately \$500,000 in real estate taxes. He recognized that some might say that it is none of his business how much the property generates but he felt that it was a concern for him as a resident and a business owner in Town.

He stated that this is closest to a blank slate as the Board is ever going to be. He would like the Board's help to determine what is appropriate for the future for this property. He noted that he did not want to fight with the other developers, and wanted some input. He did not think that planning decisions should be made based upon politics, or even necessarily having more open space. He stated that at this point, he would almost do anything that would make sense for him economically and the community.

Chairman Michelman stated that this was supposed to be about the site walk. She noted that the Board thought the plan was interesting and creatively done. She added that it has real possibilities. She noted that the role as the Planning Board is to evaluate the properties as they are presented, and if the concept made sense, then to move forward. She agreed that ultimately, this Town probably does not need two grocery stores, but until the Town gets real concrete information, the Board cannot say which location is the best. The Board needs to consider things like how will it impact Main Street, and other areas in Town, parking issues, traffic issues, etc. She stated that the Board is not in a position to say they want the applicant to do "x."

Mr. Kaufman explained that this Board was proactive and reactive; there are two phases in terms of what the Town does in evaluating a plan. He stated that zoning and the comprehensive plan is one tool the Board has stated that the front portion is appropriate for retail business, but that is as far as they will go; meaning, they will not go into specifics by saying a particular type of store should go in. Mr. Kaufman also explained that the Board has stated the front is appropriate for retail / business and the rear is appropriate for RELIP zone. The Board is presented with a plan, and if the applicant wants to develop it as a supermarket, then the Board will evaluate whether that is appropriate zoning. Based upon the site walk and the concept plan, this is likely ready to come to the Board for official review. The same is probably true for the A&P Supermarket. Hopefully, the Board won't get to the point where they are approving both applications, but that is a possibility.

Mr. Fareri agreed with the accuracy of Mr. Kaufman's statements, but stated that he was presenting a compromised plan of retail business. They could push zoning line forward where they would not need a zoning amendment or variances, but it prevents the donation of open space to the DEP. If they did that, they would be able to rip up the macadam and create open space. Mr. Fareri stated that he is concerned about the environment, and want to enhance it.

Mr. Fareri stated that he recognized that he would not need variances, and that the traffic pattern is acceptable based upon the prior traffic studies. He said that if the Board wanted him to go forward with a formal application, he would, but he did not think it is the proper way to go about it because it would require hundreds of thousands of dollars to get to a point where nothing is definite. He explained that the studies presented for one of the prior plans reached almost half a million dollars, and he'd rather be spending the money to improve the town (i.e. sidewalks and other improvements). Mr. Fareri felt the formal application would not make much sense.

Chairman Michelman stated that the applicant has articulated things that have already been discussed, and though the Board understands his position, he owned this property and the Town's boards could not tell him what to do with it. She told Mr. Fareri that he either had to move forward with a formal application, or not. Mr. Fareri stated that if this was the Board's position, he would move forward.

Chairman Michelman stated that the Board learned from the site walk that there is a situation with the buffer and if he proceeds with this, the Board would prefer him to save as much buffer as possible. She repeated that neither she nor the Board could tell him if this is the route he ought to take. She stated that it is important for the Board not to lead anyone down the path too far; as of right now the Board has seen only conceptual plans.

Mr. Fareri pointed out that this development may not necessarily include a supermarket; it could be a retail use of another nature that conforms to the zoning code. He pointed out that anything under 5,000 sq. ft. does not require Town Board approval. He said that if he had to subdivide 60,000 sq. ft. into smaller, 5,000 sq. ft. spaces, he would.

Chairman Michelman repeated that it was not the role of this Board. Mr. Fareri asked whose role it was. Mr. Kaufman explained that the Board could evaluate, give comments and provide feedback. If the Board is reviewing two applications for supermarkets, the

Board cannot say one is better than the other without information. The Board could have conversations with both applicants and tell them which they like better and comment on the applications; however, ultimately if both applicants want to move forward with supermarkets and they meet the requirements, there is a very real possibility of having two supermarkets. He added that it is appropriate for the Board to comment and criticize the plans.

Mr. Fareri stated that he already has the information completed; it is just a matter of submitting it to the Board. He asked how far they should go because if we go much further, he would be committed and would not turn around. He stated that he would spend what is necessary to get his project approved. The other applicant could do the same thing, and the town could end up with two supermarkets.

Mr. Adelman stated that economics dictates that the Town is not going to end up with two supermarkets, so there should be a process that aids the applicants before they spend a lot of money and the Town spends a lot of time, the Town's representatives should meet with them as early on as possible to optimize these sites. Mr. Kaufman believed that was appropriate, but pointed out that the Town cannot just tell one of the applicants to go away. Mr. Fareri stated that he would be willing to go away with a condition. Chairman Michelman said that was not going to happen. Mr. Fareri asked how the Board wanted him to proceed.

Mr. Adelman felt the first step would be for the two potential supermarket applicants to meet with the Town and hash things out. Mr. Kaufman questioned what that meeting would accomplish. Mr. Adelman thought they could hash out criteria to help reach a decision. Chairman Michelman agreed that we should not lead anyone down a path, but pointed out that right now, all they had were concept plans. Mr. Adelman pointed out that the Town was faced with two applications for supermarkets in the past. Through the process of reasoning, one of the applicants withdrew. Mr. Adelman stated that Mr. Kaufman could guide it and incorporate community input. Mr. Fareri said that he had requested similar task force type input in the past. Mr. Kaufman stated that he did not know how much further they could go with these concept plans. Chairman Michelman stated that all points were well taken, but the Board has to move forward.

Mr. Fareri asked what the Board wanted him to do again. Chairman Michelman repeated that the Board cannot give him that answer. She stated that if the applicant wants to proceed, then he must submit a formal application; if he does not want to proceed, then he should not submit an application.

**VESUVIO**  
**Site Plan**  
**Section 2, Block 13, Lot 17-31**  
**34 Wampus Avenue**  
**Dennis Lowes – Ralph MacDonald Co.**  
**Discussion**

Frank Vesuvio was present for the application. He explained that he has received a wetlands permit. Chairman Michelman asked if he had seen the memos from the professionals, and he said he had not. Chairman Michelman stated that one of the issues of concern is the size of the house. She noted that it practically covers the

property from one end to another. Mr. Vesuvio said that it did not; he had 30' on one side. Chairman Michelman pointed out that the other side is non-conforming.

Mr. Kaufman explained that this is an application that seeks to double the size the house on Wampus Avenue. There is a state wetlands in the back. In situations where these types of applications have been approved, the Town requires screening and replanting of at least the wetlands buffer. Here we have a physical marker with a stonewall. In this situation, the Conservation Board has made suggestions on what to do in order to remediate the area. The Board has discussed the nonconformity on the side lot line; Mr. Kaufman explained that it was his suggestion that since the size of the house is being doubled, the Board should eliminate that problem. However, the Board has previously indicated that it is fine with the proposed condition and leaving it as it is.

Mr. Schroeder agreed with Mr. Kaufman's comments. He noted that although the applicant's engineer showed that the site was outside of the flood plain, the Town maps show this site in a flood plain. The applicant stated that he would speak to his professional on that issue. Mr. Vesuvio stated that all the other houses are at least 20-30' past him. Mr. Kaufman stated that this would have to be confirmed; as applications come to us the Board looks to see if they are accurate and seek to correct any problems.

Chairman Michelman asked if the applicant has given any thought to modifying the design. Mr. Vesuvio stated that the house is not that big of a house considering the size of the lot. He noted that moving the house and making it wider would not fit in the neighborhood. Mr. Kaufman explained that was not what the Board meant; the applicant is already at the lot line. Mr. Vesuvio believed that was what the Conservation Board was suggesting. Mr. Kaufman stated that he did not have the ability to do that. Mr. Vesuvio repeated that the house was not that big.

Mr. Kaufman said that the house was large, and pointed out that the proposal is very close to the maximum lot coverage – approximately 700' below the maximum the Board is permitted to approve. Therefore, compared to some of the older houses, this applicant is quite a bit bigger, and compared to the newer homes, he is still about 500-700 sq. ft. feet bigger. Mr. Vesuvio stated that the modular going up is bigger and they have a lot half the size of his. Mr. Kaufman stated that he would have to check the numbers.

Chairman Michelman asked if they had to do neighbor notification. Mr. Kaufman said that they did. Chairman Michelman felt that the flood plain issue should be resolved before a neighbor notification is scheduled.

Ms. Black asked about naturalizing the rear grassy area behind the stone wall. Mr. Vesuvio stated that there is a wall that goes 3/4 of the way through the property, and he is supposed to extend it through the whole property. The state has approved that plan, but it expires in December so he needs to get moving on this.

Mr. Adelman asked what changes would occur if the applicant ends up being in the flood plain. Mr. Schroeder stated that he would have to flood proof the house, by meeting certain requirements that are clearly stated in the town code.

**MODERN BARN**

**Referral from Town Board – Rezoning**

**Section 2, Block 13, Lot 39E**

**430 Bedford Road / 19 Cox Avenue**

**Dan Hollis, Esq. – Shamberg Marwell Davis & Hollis**

**Rob Aiello, PE – John Meyer Consulting**

**Discussion**

**Consideration of approving site plan approval**

Mr. Rob Aiello, and Ms. Bunan (Shamberg Marwell Davis & Hollis) were present for this application. Mr. Aiello stated that they have reviewed the resolution and have only a couple of comments. Mr. Aiello explained that some of the numbers on page 2 in the second whereas, are based upon the original application, and should correspond to current numbers. He stated that the office is 13,451 sq. ft., the retail component is 5,600 sq. ft. and the restaurant is 4,888 sq. ft. Mr. Kaufman asked if the total remains the same. Mr. Aiello stated that the existing building is 23,471 sq. ft. These numbers have been consistent and have been on the cover sheet of the plans. These are what the Board relied upon. Mr. Kaufman confirmed that the off street parking is based upon these numbers on the cover sheet. Ms. Black pointed out that it was approximately 450 sq. ft. larger than the existing, but that is due to the ADA requirements.

Mr. Aiello stated that in the second whereas clause on page 4, the reference that the DOT denied the signal is from the first letter; they've actually deferred it based upon the March letter. Mr. Kaufman agreed and stated that this would be changed it.

Mr. Aiello stated that the applicant has no issue with posting the bond for the study or installation of a traffic signal, but wondered when the bond would be released, and if that should be in the resolution too. Mr. Kaufman asked if they wanted it released upon completion of the study and installation of the light. Mr. Aiello stated that he also wanted to include language reflecting that the bond would be released upon the DOT's decision that the signal is not warranted. Mr. Kaufman wondered how to deal with that; because they may be faced with a situation where the DOT says it might be warranted in the future and it still relates to the project.

Mr. Kaufman decided that he would prefer to release the bond on the completion of project, or installation of traffic signal. Mr. Baroni pointed out that the Town could not keep the bond forever, and suggested setting a limit of years. Mr. Kaufman suggested five years from the issuance of a CO.

Mr. Aiello stated that the DOT did not want to accept projected numbers, they wanted to base it on actual numbers. He did not know if the five year time period had anything to do with their project. Ultimately, this is something that could be determined in 6-12 mos. Mr. Kaufman agreed that the Town would probably have an answer within a year. Mr. Baroni believed that the Town wanted the flexibility to go back to the DOT to convince them that the light is warranted if the DOT initially determines the light is not necessary.

Bob Roth felt that if the DOT wishes to defer it again, it would be for reasons beyond the redevelopment of the Yellow Barn. Mr. Kaufman stated that it was the Town's position

that the applicant has convinced the Town that the light is necessary and if the DOT feels that it was not warranted, the Town wanted another chance to convince them. Chairman Michelman stated that there is the possibility that when this opens, it won't be fully occupied and therefore, they would not have a full idea of what the traffic is. Bob Roth agreed that the study should be done when the building is fully occupied. Chairman Michelman said that is why the Board is selecting a reasonable period of time.

Chairman Michelman asked Mr. Schroeder if he had any issues and he did not. Neither the Board nor Mr. Kaufman had any issues.

Mr. Adelman moved to approve resolution as amended. The motion was seconded by Ms. Black and unanimously approved.

**A&P SHOPPING CENTER**  
**Concept Plan Discussion**  
**Maple Avenue**  
**David Werber**  
**Discussion**

David Werber was present for this application along with Mr. Al DelBello and Mr. Bob Roth. Mr. DelBello stated he was present for the prior discussion regarding the bowling alley concept plan. He stated that he is not interested in competing with anyone in the Town. This proposal does not consist of questions like the prior applicant considering a supermarket. This is an established entity in town that came to the Board a number of months ago with a very early concept plan because the A&P's lease expires in November of this year. The applicant can extend the lease if these plans receive some semblance of acceptance. The applicant has spoken to neighbors and Town officials, and has come up with some significant changes, that they feel are very beneficial to the site. The applicant recognizes there are a number of variances that will be needed, but they feel there is a good basis to go to the ZBA. Additionally, the applicant understands that they would need to go to the Town Board because they are over 5,000 sq. ft.

The problem is that when this lease expires, this store is inadequate for the A&P and that is why the applicant has attempted to get more square footage for them. The applicant had also proposed a drug store, but due to the reaction they received, they changed it to neighborhood retail. The applicant is essentially presenting the same local neighborhood shopping center that has been in place for 40 years, with an enlarged grocery store.

Bob Roth explained how the site currently existed. He indicated the entrance to the site and the entrance to the grocery store, and the other small shops. The redevelopment plan would be to retain the existing A&P building for a period of time, demolish the small shops and then begin the construction of the new A&P perpendicular to the existing building. This would mean that the orientation would turn toward Maple Avenue. When the new building is ready to be occupied, the older A&P would be demolished, paved over and turned into a parking lot. That would be followed by the construction of what would have been a pharmacy which would be tucked at the same elevation.

Other changes since last submission and site walk include the new recreation center that has been completed and become active. It has a small parking area and a narrow, two-way entrance. Some residents want to provide a connection between the recreation center and the A&P property. Additionally, the applicant proposes to share parking spaces because the recreation center parking is very limited. Mr. Werber stated that he was agreeable to permit recreation center patrons to park at the A&P. The notion was to build a parking lot there, and have a sidewalk connecting the two. This will also be used by the A&P shoppers from day to day.

The applicant plans to take the driveway and move it down Main Street and have it come in behind the Torlish property. The driveway would still slope down, but would not be as steep as what exists today. It would align better from the egress from the recreation center. This leaves the more central area of the lot for just parking.

In connection with the plans the applicant has drawn and submitted, there are some variances that are needed for an approvable plan. One variance would be required for parking in order to provide additional parking at the site. Although the applicant would be closing the entrance as it exists today, they would have the ramp off of main street and if additional parking was needed, the ramp would provide access to roof parking. The applicant would attempt to restrict that area to employees only. The other parking would be at street level on Main Street. They have created another 49 spaces there. When one considers parking in this zone, and what is required, certain parking is required in this district. In this case, 311 spaces are required. This site currently has 211. If the Board considers other zones in the Town (i.e. SC district) and did the calculations for those zones the Board would realize that this applicant would be in compliance. The applicant realizes that they would need to go to the ZBA for a parking variance, but believe that they have a good, logical argument for that request.

Mr. Roth stated that they would also need a rear yard setback variance and he indicated the line. He explained that the Town requires 30' and this applicant only has 6'. The FAR is within limits of the ordinance. The only other issue is the loading areas. The applicant has four loading spaces and the Code requires six. This would not require a variance; it is a waiver this Board could grant.

The Code requires 10% for interior landscaping and the applicant only has 6.5%. The code looks for landscaped islands between each isle, but this would only diminish the parking. The applicant would be amenable to additional landscaping if it did not create parking issues. He pointed out that curbed islands in grocery store parking lots are not practical. They would be willing to do tree islands rather than doing a whole row of curbing.

Mr. Roth recognized that Mr. Kaufman had several issues with the application. Mr. Kaufman stated that the most significant for him is where the retail space was going to be on the site. He said that he would rather try to integrate the retail portion with the rest of the hamlet, so he would suggest putting the retail at grade on Main Street and have parking underneath. That may resolve his other issue: the relationship between the supermarket building and the retail building. He noted that is a sloped embankment, and the ramp going up will bury a portion of the supermarket and that will not look good. Additionally, the retail building slightly overlaps the supermarket. He recognized that the applicant, when it was proposed to be a drug store, was working with a minimum square

footage. Now, the applicant might have the ability to shave a few feet off the building, and create a little more open space in that area. Mr. Kaufman noted that he did not mean open space in terms of environmental / green open space.

Mr. Roth responded to Mr. Kaufman's comment regarding burying the store with the ramp. He said that they have been able to reduce three feet of height, so the ramp doesn't have to be as long, and the toe of the ramp moves. Mr. Roth added that they are having plans drawn up to present that view. Mr. DeBello felt that, regarding bringing retail up to street level most retail customers want parking easily accessible to them and retail at grade would not permit that.

Mr. Kaufman pointed out that on street parking is permitted there. Mr. DeBello recognized this, and Mr. Roth added that the DOT could take away those spaces at any time.

Dr. Matusow stated that if the applicant was correct that a good reason for keeping the store at the lower level was to have parking at the lower level for the stores, doesn't that take away parking that you require for the supermarket, and putting spaces on the roof, where people would have a hard time getting to either the retail or the supermarket with the spaces on the roof. Mr. DeBello believed the parking requirement is far in excess than what is required for this area and this type of retail center. There are national standards, and now local standards for parking requirements. The Town came much closer to the national standard under the shopping center zone, and recognized the various types of activities that occur there. The applicant has excess parking when you calculate the parking under the shopping center requirements. The applicant feels quite certain that the parking lot has never been full. He does not believe there will be a problem with leasing the space with this type of parking; plus the roof parking becomes perfect employee parking.

Mr. Roth stated that the A&P parking lot today only has 143 parking spaces, and this site already has a variance of 31 spaces from a 1988 site plan. He explained that A&Ps in nearby towns require fewer spaces. There is a lot of information that could be formulated and put into a report for the ZBA, but this requirement is somewhat antiquated for a grocery store in the CB zone.

Ms. Black stated that she was concerned about how the rooftop parking would look. Mr. Roth explained that they would provide a prospective for visualization. He attempted to describe it verbally: it would be roughly at the elevation of Main Street. Mr. Werber pointed out that it could be buffered too. The applicant could do planting and fencing, or a combination thereof. They could tinker with screening this. These buildings are virtually invisible from Main Street. Mr. Roth stated that they would try to integrate this into the streetscape. People will be able to walk from the hamlet and walk onto the deck to a set of stairs and an elevator to get into the supermarket. Mr. Werber felt this would be an improvement because there would be a pedestrian access to the shopping center, whereas now, people are competing with cars because there is no sidewalk.

Dr. Matusow pointed out that there is still the problem with loading into the supermarket. Mr. Werber explained that the applicant is contemplating closing that area off with a garage door and concealing it. Mr. Roth recognized that Mr. Kaufman had raised that issue. He stated that loading is not possible from around the building; the applicant

would like to be able to bring the building forward to do that, but then they would not be able to keep the existing A&P while building the new one.

Mr. Werber's representative stated that easements would be entered into accordingly. Chairman Michelman asked if the access from Maple Avenue would be widened. Mr. Roth said that it did not need to be. Dr. Matusow asked if this was an option even if it is not needed. The applicant seemed to indicate that it would be possible. Ms. Black suggested including pedestrian access there as well. Mr. Kaufman agreed.

Mr. Adelman pointed out that the reason why the current parking is more than adequate is because lots of people in Town do not like that market and do not shop there. The applicant understood, and stated they would incorporate all the comments and move forward with their application.

**ARMONK SQUARE (formerly known as Pembroke Square and Heritage Square)**  
**Site Plan**  
**Section 2, Block 14, Lots 3, 8 and 9**  
**Main Street, Maple Avenue, Bedford Road**  
**Joe Beninati**  
**Discussion**  
**Schedule Public Hearing**

The Board began discussing when they would be able to schedule the special public hearing for this application. Mr. Kaufman suggested that the Board determine whether it is appropriate to schedule public hearing, and if so, then they could set a tentative date for this. They came up with the possibility of October 1<sup>st</sup> 7:00 p.m.

Chairman Michelman asked if they needed a motion to schedule the public hearing. Mr. Baroni said that they did not if they were all in general agreement, subject to confirmation. They were.

**NEW BUSINESS:**

**STOBSKY**  
**Amended Site Plan, Special Use FAR & Gross Land Coverage**  
**Section 2, Block 17, Lot 4J01**  
**20 Sterling Road South**  
**Adam Stobsky**  
**Discussion**

Mr. & Mrs. Stobsky and Walter Pantino (the architect on project) were present for the application. Mr. Pantino explained that the site walk had been conducted, and there was a discussion regarding reducing the breadth of the house. This has been reviewed, with concentration on the library area. Ultimately, after several days of review and revision, the owners had a problem with the design layouts as they did not conform to their needs and schedule. They are back with a 93' long house, which is five feet less than previously submitted. They are about 5' from setback and 30' from property line but the application conforms to all other requirements.

Mr. Pantino added that the macadam on the driveway side would be between 27' and 28' from the house. The existing macadam on the south side is approximately 27'. It was tight, but it worked. On the north side, the 35' would lend itself to having a 27'-28' macadam strip and then a 7-8' buffer where trees and shrubs could be planted alongside the existing landscaping.

Mr. Pantino explained that the house is approximately 170' from the road and they are proposing landscaping to try and dress up the area.

Chairman Michelman explained that the Board's comments and concerns were clearly articulated and they are real concerns. They are very concerned with the location, the size and the proximity of the house to the neighbors. The Board appreciates the effort that went into the revisions, but the end result does not resolve anything. Mr. Stobsky stated that when they bought the house, it was done with an approval. That had impact on their decision and the price that they paid for it. He felt that it was not fair for someone else to have gotten that approval and for them to be denied. Mr. Kaufman explained that the biggest problem is that the laws have changed between the time of the Mack approval and this request. Mr. Stobsky asserted that they still comply with the Code. Mr. Kaufman pointed out that the applicant needs a special permit and the Town Board has given that power to this Board. Mr. Kaufman went on to state that the applicant is hearing some level of concern from the Board that this house is too massive in light of its location on the site.

Dr. Matusow felt that it was not just the mass of the house and that he, personally would not take offense to the mass itself. He stated that essentially, there is a blank slate here. The lot is shaped one way, and the house is shaped another. He said that has a problem with the way the house is shaped. The Board has the opportunity to correct mistakes it may have made in the past.

Chairman Michelman stated the concerns are where the house is located and the size of it in relation to the rest of the property. She pointed out that the applicant is within the maximum allowable land coverage. Mr. Stobsky stated that was still less than the maximum. Chairman Michelman felt this was pushing the envelope. Mr. Stobsky stated that the Town established the envelope and they were working within the guidelines set by this Board. Mr. Kaufman explained that the guidelines indicate that anything under the basic is appropriate, but anything above the basic is when the Board has to take into consideration the property line, how it relates to the other properties and where it is located. The Code allows someone to go up to a maximum if the Board approves. However, if the Board deems it inappropriate to go up to the maximum, then they can require something less in order to screen it, or make it look appropriate in relation to the neighborhood, etc. He noted that if this was a 10-acre lot, and far from the neighbors, this may be an appropriate proposal.

Mr. Stobsky asked if the Board was concerned with the immediate neighbors, or all the neighbors on the street. Mr. Kaufman explained that the Board needed to discuss this. Mr. Stobsky stated that the immediate neighbors have no issues with this application. Chairman Michelman explained that the Board is concerned with the abutting neighbors on either side. Mrs. Stobsky stated that they tried very hard to work with the site and that most houses that are 6,000 sq. ft. (this is approximately 7,700 sq. ft.) are 110 –120' long. She claimed that they went to great lengths to keep it at the length that was previously

approved by this Board. She said that it was not a long house and that she really wanted it to be longer, but she recognized that that could not work.

Mr. Pantino stated that set back 170' which provides, what he believes to be a good separation. He also felt that, there is ample room on both sides of the house. He noted that the support areas add to the square footage of the house; the house itself is "only" 7,700 sq. ft. living space. Of that amount, there is a 900 sq. ft. unfinished storage space in the attic and a garage of approximately 900 sq. ft. Chairman Michelman explained that these areas still needed to be considered.

Ms. Black explained that while it may only be 7,700 sq. ft. of living space, the Board is concerned with the appearance of the mass. Mr. Stobsky said he recognized this, but set it back even further 70'. Mr. Pantino stated that they are proposing a great deal of landscaping. Mr. Stobsky said that he was hoping the Board would look at this as an improved version of what was already approved because the prior plan didn't really have any landscaping.

Mr. Adelman felt that the landscaping would provide adequate screening to the house on the side, and that setting it back an additional 70' was also a plus. He pointed out that this was an evolving neighborhood, and that older houses would probably not remain. He felt this was an approvable plan, and did not have a big problem with the proposal.

Mr. Stobsky stated that he was sorry the Board felt the house was too large, but after trying to satisfy the Board, it changed it aesthetically, and the plan just didn't work. Chairman Michelman stated she did not know where to go from here.

Mr. Stobsky felt that the setbacks were established for a reason, and this is within those setbacks; this should not be an issue. He stated the house would not appear as large as it seems, and it is not the largest home on the street. The neighborhood has changed a lot since the homes were built in the 50s / 60s. He noted that there is more than 200' from one side of this to the neighboring house. Chairman Michelman pointed out that the neighbor on the other side would be impacted. Mr. Stobsky stated that he has already worked out the screening with that neighbor, and he did not think this neighbor will be a problem.

Dr. Matusow stated that the Board recognizes that this is a very personal project for the applicant, but pointed out that the Board looks at it as a house on the street and it really doesn't matter how much this particular neighbor likes or dislikes this plan. The Board has to look at this in a broader sense, i.e. whether this house fits on the lot, and whether it fits in the neighborhood, regardless of who lives there. His concerns do not center on the current neighbors. Dr. Matusow noted that he does not object to the square footage, but the shape of the house on the shape of the lot. To him, it is diametrically opposite.

Mr. Poudier stated that the approval the Macks had for their house was based upon the existing footprint. The way Mr. Stobsky has characterized this as an improvement. They are keeping the existing driveway so that they would not have a view directly into the site. He added that all the existing trees remain. From a visual impact, it is substantially different and improved from what was originally approved. Programmatically, it is the same. The approved project had a pool, and was the same width. The house is larger, but the additional space has been pushed to the rear away from the neighbors. This is

stepped back from one house, and basically in line with the other one. The garages are facing, which is better than having a living space facing the garage.

Chairman Michelman stated that the Board still needed to see more. Mr. Stobsky asked if the Board could tell him whether they wanted him to set it back more from the setback. Chairman Michelman stated that the Board would not tell him that. Mr. Stobsky felt that the Board was implying that was what it wanted, and if it was what they wanted, he would try to do it, but it would not be able to be this house; it would have to be something completely different. Chairman Michelman stated that there was a real possibility that this house might not be appropriate. Mr. Stobsky stated that they went through several revisions and that the applicants were not going to build a house that they did not like. Mr. Stobsky asked again if the Board wanted them to bring the house in additional feet; Mrs. Stobsky said that could not be done. Chairman Michelman stated that the Board would like to see some evidence of reducing the bulk of this house. Mr. Stobsky repeated that a 93' long house was approved in January and they are proposing a 93' long house. Chairman Michelman pointed out that the house that was approved in January was entirely different.

Mrs. Stobsky stated that Dr. Matusow was not concerned with the overall square footage of the house. Dr. Matusow advised the applicant that was just his opinion, and that there were other members of the Board to consider. Mrs. Stobsky stated that they worked hard to keep this plan within the Code requirements and limit it to this length.

Mr. Kaufman stated that the Board has to be proactive and grant a special use permit for this sized house with this amount of gross land coverage. He explained that in order to be completely outside the realm of a special use permit, the applicant would have to be below the basic allowable FAR and gross land coverage. The applicant is asking to exceed that amount and therefore, needs a special permit from this Board. In this situation it is appropriate for this Board to review location, the site, the size and the setback.

Mrs. Stobsky asked if the Board thought it was fair for the applicant to have to a 40' setback when the plans they purchased had a 30' setback. Mr. Kaufman explained that that plan was the Mack plan that the applicants could have built, but chose not to. Mr. Kaufman repeated that that approval had expired. Mr. and Mrs. Stobsky stated that Mr. Kaufman told them to let the approval expire. Mr. Kaufman stated that Mrs. Stobsky repeated that they did not change the setbacks. Mr. Kaufman explained that the applicant had indicated that they were not interested in building that plan.

Chairman Michelman stated that when the applicant said they planned to amend the Mack plan, they were told they would have to come before the Board and get approval. Mr. Stobsky again made reference to the setbacks. Mr. Kaufman explained that Board was not talking about the setbacks. Chairman Michelman stated that if the applicant bought the plan and built the plan that was approved by the Board for the Macks, the Board would not have had an issue; but the applicant did not want to and now the original approval expired. Mr. Stobsky said that he was trying to build something very similar, and that he even used the same professionals the Macks had used. The applicants stated that they have to be up front because they have spent a lot of money developing this, and if the Board wants larger setbacks, he needed to know.

Mr. Kaufman reiterated that this was not just a setback issue; it was also the size and mass of the house, and the location on the site and the relation of the house to the site and the neighborhood. Mr. Kaufman explained that the Town has come up with an analysis to compare the five nearest homes and take an average. He explained that the applicant has input from the Board indicating that the members were not comfortable with the configuration of this house on this lot, and giving you reasons and suggestions on what to do to make them comfortable with issuing the special use permits. Mr. Stobsky suggested the Town change the setback requirements for houses more than a certain square footage. Mr. Kaufman repeated once again that this was not a setback issue.

Dr. Matusow said this Board has no authority to make these rules and regulations; they only apply them. What is concerning the Chairman is the mass of the house. He stated that what concerned him was how the house sits on the lot. He stated that the Board was trying to work with the applicant to build the house, and everyone wants a solution to this problem; however, the Board wants something that is going to stand up to the test of time and meet the code. He noted that 30' does not automatically mean the applicant can go to 30'; just that he can't go above that.

Mrs. Stobsky repeated they were essentially building the same plan, but an improved variation thereof. She stated that they had abandoned the original approved site plan based upon the Board's recommendation. The Board said this was not true. Mr. Stobsky wanted the Board to explain how it could approve one plan and not the other. Chairman Michelman stated that the Board has tried to explain that several times already. She repeated that the regulations changed and the original plan that was approved has expired. She repeated that the applicant barely comes under the maximum allowable, and only by 14'. She added that there is an issue with the backup area for the driveway from the professional's point of view is insufficient. There is a concern that the deck surrounding the pool is insufficient. Mrs. Stobsky stated that she like the grass around the pool. Chairman Michelman stated that this might be the case, but was a concern for the Board. Mr. Stobsky felt that Chairman was implying something and the Chairman said she was not implying anything. She said she was merely pointing out that the applicants seemed to have reduced things that should not be reduced in order meet the bare minimum of the code, and to get what they want. Mr. Stobsky stated that they are forced to comply with the Town Code, and the applicant really wanted to build a larger home.

Chairman Michelman stated that this issue had to be resolved and the Board had to move forward. She said that the Board needed to see some alternative; the Board has not seen anything other than 'this is what we want.' Mr. Stobsky said that if they changed the house and the setback, the Board still might not like it. Dr. Matusow agreed that it is not fair for this Board to say 'keep trying until we like it' and that they should try and meet some consensus. The applicant has heard that the Board is concerned about the mass, the siting of the house and that in order to meet the Gross Land Coverage requirements, the applicant has skimped on some areas that the Board feels should not be skimped on. He suggested that, perhaps the house has to be smaller in order to get all the other things the applicant wants on the property. The applicant may not be able to get what they want, just because they want it.

Dr. Matusow stated that this Board has to apply their judgment and make sure this is code compliant. The applicants stated that they are within the code and felt the Board was applying their judgment arbitrarily. Dr. Matusow disagreed. He asked a question, which was inaudible. Mr. Schroeder said that he would not recommend anything less than 30' for a back up area. Dr. Matusow said that this 30' and a 10' buffer is required in Town. Mrs. Stobsky said there is an additional 10' of buffer required. Mr. Stobsky asked if this was in the Code and Dr. Matusow said it was not, and that was not how the system worked.

Ms. Black stated that some of the other houses on the street, while large, do not appear to have the same mass as the proposal. Mr. Pantino reminded the Board that those photos were not done to scale. He added that this proposal meets the height and mass requirements; he added that it is the same as the Mack house. Ms. Black stated that it is not just the requirements, but how this particular house on this particular street in this particular neighborhood. Mr. Pantino stated that it was not that tall; he acknowledged that the older houses were not this tall, but felt that over the next few years, they are going to get taller.

Chairman Michelman stated that this was at a stalemate; she asked if this needed neighbor notification and public hearing. Mr. Kaufman said that it did. Dr. Matusow did not think this application was ready for that step. He felt that there needed to be some additional changes. Mr. Kaufman stated that the Board needed to evaluate the proposal and see where they stood. Chairman Michelman pointed out that three of the four members feel that some change is needed. Mr. Kaufman said that if the Board could give the applicant some direction, the Board could request this and move in that direction.

Chairman Michelman stated that the Board was not trying to penalize anyone. Mrs. Stobsky stated that there was no more room left to tweak this application. Mr. Stobsky said that they could not just take a piece off because it would change the whole symmetry of the house. He said that his biggest argument was that the Board had already approved an almost identical house that appeared larger in terms of mass because it was 70' closer to the road. He stated that if the neighbors were the concern for the Board, then the neighbors should be present to comment. Chairman Michelman stated that while the Board would welcome that input, the neighbors' opinions do not dictate the Board's decision.

Dr. Matusow felt that there was nothing productive in having another meeting; he felt that the applicant's professionals, the Chairman, and the Town's professionals should sit down and talk through this. Mr. Stobsky said that he tried to do that. Dr. Matusow recognized this, but pointed out that the Board was still split, and there has to be some type of new direction and resolution.

Chairman Michelman asked if the applicant spoke with the Town's professionals when they were considering the changes. It seems that they did not. Chairman Michelman pointed out that this was tweaked without any input from this Board. Mr. Kaufman stated the problem is that these applicants designed this house before the Board reached the design stage. The applicants skipped to an end point based upon the prior approval and developed something that they cannot let go.

Mrs. Stobsky reiterated that there is nothing left for them to tweak. He claimed that they have already worked for days in attempting to make some revisions. Mr. Kaufman repeated that the Board has given some alternatives and the applicant is going to revise the plans, or not. Then a public hearing could be scheduled; those are the options available to the applicant.

Dr. Matusow implored the applicant to try and think about this scenario. He asked what they would do after a public hearing was conducted, and the applicant was still not able to convince three members of the Board that this is the right thing to do. He thought that they could make some accommodations. Mr. Stobsky felt that the accommodation would be to trash these plans. He repeated that they are within the setbacks established in the Code and that they went with the plan that was already approved by the Board. He felt the Board was asking them to start over from scratch. He felt this was unfair especially because they paid a premium for this lot and plan because they thought they bought it with an approved plan.

Dr. Matusow stated he had no more suggestions. Mr. Stobsky asked where they went from here. Mr. Baroni explained that if the applicant really wants it, the Board cannot deny him a public hearing. The Board said they would not deny it. Mrs. Stobsky stated that it did not seem that it would bode well for them. She repeated her prior positions. Chairman Michelman repeated that she has tried to answer her and Mr. Stobsky; but the applicant has taken the position that they are building the same house that was previously approved. Mrs. Stobsky repeated that the Board told her to scrap the original plans. The Board corrected her and stated that originally, the Board told her that unless the applicant was prepared to build the house *exactly* as designed in the approved plans, they would need to come back and start over under the new regulations.

Chairman Michelman repeated that this needed to move forward; a public hearing would be scheduled. Ms. Desimone stated that she would need to check the schedule.

Mr. Stobsky asked for the Board to clarify the differences in the thinking that went into approving the Mack plan versus this plan. Chairman Michelman stated that she has not looked at the Mack plan in many months, but that essentially, the house was not in the same place, and it did not have the same massed look. Dr. Matusow pointed out that the Mack plan did not require the special permit approval. Mr. Kaufman stated that this was the real difference.

Mr. Adelman stated that he did not recall the Board saying, 'this is too big, I wish we had some type of legislation to limit the size.'

Dr. Matusow wanted the minutes from the Mack meetings along with the relevant memos. He felt this would help the Board.

Chairman Michelman recommended that the applicant's professionals meet with the Town professionals.

**SOLOWAY**

**Site Plan**

**Section 1, Block 5, Lot 13.K-1**

**9 Jackson Road**

**Dennis Lowes – Ralph MacDonald Engineers & Surveyors**

Christine Giuliani, Designer from Pete Marchetti Engineers and Todd Soloway were present for this application. Christine Giuliani explained that the house is located at Jackson Road and the addition consists of a 2<sup>nd</sup> floor addition. They are proposing to increase the envelope of the building by 276 sq. ft. The existing driveway has a turnaround / loop and one of the propositions is to turn the garage so that it does not face the front of the house. They added 4.5' to that side of the property. One of the concerns of the Board at the site walk was that there would be too much impervious surface. Therefore, the applicant has offered to mitigate; the 1,200' that they've added has been taken away from another area.

Christine Giuliani presented site plans to the Board. She explained that they have received ARB approval with two recommendations. One suggestion was to add a planter in the front. One of the ARB's concerns with the plan as it had been proposed was that, from the road, the height of the house appeared large even though the building height does not exceed the Code. The house right next to the applicant's is tall as well. It is the way the property is configured. There are quite a bit of trees. She showed the location of the existing trees. Mr. Soloway had suggested to the ARB that if they were concerned with the height, he would plant evergreens to shield the view; however, there is a steep grade, so it was a question as to how many trees could be planted, and how effective they would be. Because this is only 276 sq. ft. the applicant is not required to retain a landscape architect.

Mr. Kaufman asked about the grade change from the road elevation to the first floor elevation. Christine Giuliani the existing garage slab is at 48 and at the edge of the road 454. Mr. Kaufman stated that if the board is concerned about screening, the screening should be at the side of the house between the two houses. There would probably no effective method of screening the front. Mr. Soloway stated that one member of the ARB was concerned because one portion of the house might be visible from Jackson Road. Mr. Kaufman said that it might, but the addition on this lot is not excessive. Christine Giuliani said that they have tried very hard to stay within the envelope, and it wasn't easy. The applicant tried not to disturb the site.

Ms. Black asked about additional screening to the right of the driveway. Mr. Soloway said that this area had an easement that runs through his neighbor's property. Additionally, that is a very dense area. Mr. Kaufman asked if the neighbors were using that easement and pointed out they may not even need it. Mr. Soloway indicated they do not appear to be using it.

Dr. Matusow said that it still looked like there was a lot of impervious surface in the front of the house. Christine Giuliani said that they took out what was added. Mr. Soloway noted that when this is viewed from overhead, it might appear to be larger than it is. When it is approached from the front, it will not look that bad. The applicant explained that he needed some backup space to come down.

Chairman Michelman asked if there were any other issues. There were none.

Chairman Michelman asked about the FAR calculations. Mr. Kaufman explained that in terms of gross land coverage, they are right in the middle of the basic and maximum. In terms of the gross floor area, they are below the basic.

The Board will schedule a neighbor notification and a public hearing as soon as the schedule permits. The Board directed Mr. Kaufman to prepare a resolution at the same meeting.

#### **MERMELSTEIN**

##### **Special Use Permit**

##### **Section 2, Block 2, Lot 17.B-3**

##### **88 Whippoorwill Road East**

##### **Discussion**

##### **Bruce Bohlander EIT – John Meyer Consulting**

##### **Discussion**

Mr. Bruce Bohlander was present representing the applicants. He stated that he was requesting a special use permit for this proposal. The gross land coverage falls between the basic and the maximum. They are proposing to reconstruct a driveway in the same footprint, but propose to add a turnaround. Currently, it is difficult to maneuver in that area.

Mr. Kaufman did not believe the Board had a real issue with this application. The applicant has received Conservation Board permit for work within the buffer. Because they are above the basic allowable the applicant needs a special use permit and at that time, this Board becomes the issuing Board for the wetlands permit. He would interpret the issuance of the permit as the Conservation Board's recommendation to this Board. Mr. Baroni said that was acceptable.

A public hearing, neighbor notification and a resolution would be prepared for the September 10<sup>th</sup> agenda (this had been previously slotted for that agenda).

#### **BIALSKY**

##### **Amended Site Plan**

##### **Section 2, Block 3, Lot 2-5**

##### **4 Wrights Mill Road**

##### **Barry Naderman, P.E.**

##### **Discussion**

Mr. Barry Naderman was present on behalf of the applicant. He explained that the applicant is seeking an amended site plan approval and special permits for exceeding the basic in both gross floor area and FAR.

Mr. Naderman explained that, with minor modifications to the pavement, they were able to stay under the maximum on the coverages in order to facilitate the pool and the garage. The pool is shown at 630 sq. ft. and the garage / pool house is 758 sq. ft. There is 150 sq. ft. of additional pavement in order to get into the garage. There are two small

areas so as to take away 270 sq. ft. of pavement to get it approximately 78 sq. ft. under the maximum allowed.

Mr. Kaufman recalled that they also discussed having a reserve area for a future deck. Mr. Naderman agreed that a 4' deck around a portion of the pool represents about 250 sq. ft. He reminded the Board that the applicant has no intention of doing that. Mr. Bialski is a builder, and two of the pool companies he deals with most sent him examples of deckless pools. Mr. Naderman presented some photos of this type of pool and noted that this was a trend right now. He recognized that a future owner might want a deck around the pool, so the applicant explored having banked pavement. If the remainder of the front apron is removed, that would take away an additional 450' or so. Again, the applicant has no intention of doing that, but is willing to do whatever this Board recommends to notify any future owner that, should they want additional decking, something would have to be removed.

Mr. Kaufman did not feel this needed to be included in a deed; the Code is in place, and having it contained in the resolution would probably be sufficient.

Mr. Naderman repeated that the applicant has no intention of having decking around the pool, but the Board seems to have an influx of applications with pools with no decks and the applicant is willing to do whatever it takes.

Another issue is the treatment of the property in one area, and that the ground covering and underbrush seemed to have been removed. Mr. Naderman stated that he had come across documents that were prepared for the original site plan approval submission. Most of the area was graded for the construction of the road, and are not in any natural state. The remainder is scruffy and overgrown, and Mr. Naderman believed that the Board noticed how much the applicant had done to improve the area. He pointed out that this is an area where the homeowners are meticulous about their properties. With the improvements made by the applicant, it was undesirable to permit the area to remain ragged.

Mr. Naderman explained that the applicant did not remove trees and that he had planted wildflowers that did not grow the following season. Mr. Naderman presented a landscaping plan, which depicted the intention to leave it as "non-lawn." It is difficult for that scruffiness to be the first thing someone sees when approaching this house. The applicant has a clearing and grading limit line and there was no clearing of trees, and no grading. If it is the Town's intention that the owners are not allowed to do anything in that area, including removal of poison ivy, then the Board should let them know. Mr. Kaufman explained that the professionally prepared plan, and the plan approved by the Board differed.

Mr. Naderman questioned whether the approval said "natural;" he did not think it did. Mr. Kaufman looked it up and noted that it said that the wooded areas should remain.

Ms. Black asked why the wildflowers didn't take and Mr. Naderman said that they weren't watered. Ms. Black asked if the applicant intended to replant the wildflowers. Mr. Naderman said that they did.

Chairman Michelman found it difficult to believe that a builder for the Hamptons does not understand what a site plan means. She noted that no one stated that they had a problem with what was done, just that it was not in accordance with the approved plan.

Chairman Michelman asked how the Board could deal with landbanking a future deck for the pool. Mr. Kaufman asked if Mr. Naderman had prepared a plan indicating this proposal. Mr. Naderman said that he made the calculations to show this and would provide an exhibit that shows what those numbers are. Chairman Michelman asked if that would be within the land coverage requirements and Mr. Naderman said that it would.

Mr. Baroni asked how the Town would have knowledge of the future construction of a deck. Dr. Matusow felt that a future screening committee might do the trick. Mr. Kaufman said that was not necessarily the case. Mr. Kaufman explained it to the satisfaction of Mr. Baroni.

Chairman Michelman asked if the pool house showed countertops and nothing else. Mr. Naderman said that he would have to check the plans and would have to find out if it is countertop or shelving. Chairman Michelman said that she would like some clarification because it is unusual to have counters without something in it or under it. Mr. Naderman stated that he would clarify; it could just be cabinets with a top for storage.

Chairman Michelman asked if the pool house had to go to the ARB. Mr. Kaufman said that if construction costs were more than \$4,000.00, then it would; he assumed that it would. He noted that because of the square footage (over 64 sq. ft.), it had to go to the ARB for approval.

Chairman Michelman noted this applicant is close to the maximum gross land coverage as well. Dr. Matusow recognized this, and stated that was why they were taking pieces off the driveway.

Mr. Baroni stated that the Board should not be conditioning approvals on the ARB; the ARB has to recommend to this Board, rather than separately approving. Once this Board receives that approval, they can be scheduled for public hearing and resolution.

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The meeting was adjourned at 11:01 p.m.

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