



Board had approved a specific plan and asked if the Stobsky's (as the new owners) were planning to build the same plan.

The applicants explained that they took title on January 1<sup>st</sup> and they were planning on making some revisions to the plan. Mr. Stobsky explained that the footprint will be almost the same, and the size will not change. Mr. Stobsky added that they were working with the same professionals as the prior owners.

Chairman Michelman asked him to bring in the new plans and Mr. Stobsky said they would but that the changes are not that dramatic.

Mr. Kaufman explained that he had a preliminary discussion with the applicant about the site. Chairman Michelman suggested that once the plans are in place, the applicant should meet with Mr. Kaufman for further guidance. Mr. Kaufman explained that they had essentially already had that conversation.

Mr. Kaufman stated that he had made recommendations relating to the septic system and the location of the pool. He added that the next step was for the applicant to prepare a plan, and for the Board to review it.

Dr. Matusow asked if it made a difference if the Board required the applicant to come in with a new plan, or if the Board should work with the approved plan. Mr. Kaufman did not think it made a difference. Dr. Matusow asked if the applicants were going to be subject to the new regulations if they come in with a new application or simply amend the old application. Mr. Kaufman said that if they reapprove the Mack application, then that would continue until the approval expired. If a new application was made the new application would have to abide by the new code. If the applicant comes in and asks to amend the Mack plan, the new plan must also comply with the new regulations. The only way the applicant would not have to comply with the new code is if they build the Mack plan and pull a building permit.

Mr. Kaufman pointed out that it was not logical to keep extending a site plan that the applicant had no intention of building.

Mr. Stobsky explained that they would not be able to have plans prepared by the next meeting, and asked if there could be an extension so that their options remain open. The Board was comfortable with this.

## **MARIANI**

### **Site Plan & Wetland Permit**

**Section 2, Block 16, Lot 3.A – 45 Bedford Road**

**Section 2, Block 16, Lot 9-2 – 49 Bedford Road**

**Dan Hollis, Esq.**

### **Consideration of site plan approval**

Present for this application was Dan Hollis, Megan Raymond (landscape architect), Jim Sciotino (architect), Rob Aiello, PE John Meyer Consulting and Mr. Mariani.

Mr. Hollis explained that they had reviewed the resolution. He noted that there is a typographical error on page nine: it was not a temporary site plan, simply a site plan. Additionally, in the section "prior to signing of the site plan" on page ten, he had an issue with the note that says SP4 should be revised to depict continuous fencing to satisfaction of the Town Planner. It was his recollection that this was discussed at the last meeting, and it was resolved that they would have raised monuments around the boundary and move the irrigation post. He requested that this be removed or modified. The Board had the same recollection, and decided that the condition could be removed because these things are already marked on the plan.

Additionally, condition number one on page 11, "prior to issuance of building permit," the applicant has no problem with complying with this condition, but would request that it be moved to "prior to the issuance of a C.O." Mr. Hollis explained that the applicant would leave these trees alone or relocate them if the Town Board desires. Mr. Hollis asked Mr. Baroni how this could be dealt with. Mr. Baroni explained that this could be done with a letter and a license agreement. The Board decided that this condition could be moved.

Dr. Matusow asked if the Board resolved the issue of having a conversation / maintenance agreement regarding the trees, and pointed out that there was nothing in the resolution on this. Mr. Hollis explained that this would be addressed in the license agreement. Dr. Matusow did not want to leave the issue with the Town Board and asked if it could be dealt with in the resolution. Mr. Kaufman said that it could.

It was also requested that condition number 6 on page 12 would be moved to the C.O. category as opposed to prior to the issuance of the building permit. Mr. Hollis explained that they would submit written guarantees to the satisfaction of Mr. Baroni. Ms. Michelman asked if Mr. Kaufman was comfortable with this. Mr. Kaufman said that if the license agreement does not get filed, then it should not be moved. Chairman noted that the spaces have to be built until the documentation is complete. It was decided this condition would be left in its location.

Mr. Hollis asked if the performance bond could be posted in cash as opposed to going to a surety company. Mr. Schroeder and Mr. Kaufman said yes. Dr. Matusow advised that the figure may change, and the applicant recognized this.

Mr. Kaufman pointed out that there were two changes that were discussed with the Board. On page 8, the "whereas" clause should be modified to read that it was the Planning Board that requested that large trucks be prohibited on Sundays. Additionally, condition number 4 on page 10 there was an incomplete sentence. Mr. Simonetti asked if the change in language of the condition dealing with truck traffic would still prohibit the large truck traffic. Mr. Kaufman said that it would.

Mr. Schroeder recommended an additional comment in the section "prior to signing of site plan." The Town Engineers recommend that the applicant provide compensatory storage to make up for the lost volume due to the fact that they are filling in the flood plain. Mr. Hollis suggested including the phrase "to the maximum extent possible." Mr. Schroeder said that they would need to review this to see how much they could get. Mr. Hollis felt that this was included in note 14. Mr. Schroeder explained that chapter 109

does not require compensatory storage. Mr. Hollis asked if would not be practical to do it, if it be waived. Mr. Hollis suggested having the engineers work it out. Mr. Schroeder said that this would need to be done prior to the signing of the site plan. Dr. Matusow suggested combining the language to read to the extent practicable to the satisfaction of the Town Engineer.

Mr. Kaufman suggested that that the new condition read that the 'plans shall be revised to depict compensatory storage for lost flood plain to the satisfaction of the Town Engineer.' Everyone accepted this.

For clarification, Dr. Matusow asked if the Board had ever received the letter from the water department. Mr. Kaufman explained that the letter has still not been received, but that he spoke with a representative from the water department, and they have reviewed the resolution and are comfortable with it. Dr. Matusow asked how the water department would know that it was the garden center drawing more water than deemed prudent. Mr. Kaufman explained that the water department has explained that they are going to have to look at the meter more often and pay more attention to the situation. If it becomes a problem, the applicant will be advised that they cannot use the water for irrigation.

Dr. Matusow asked if the well could be turned off. Mr. Kaufman said that he was not sure. Dr. Matusow explained that he was not looking to hold up the application, and that he wanted it to be approved. However he wanted to know how the Town would define and deal with a problem, if there becomes a problem. Mr. Kaufman noted that the mechanism is in place. The Board has asked for the water department's comments, and their solution is that they will monitor the situation. Mr. Kaufman asked Mr. Baroni if they needed something in writing. Mr. Baroni stated that he was concerned that this was singling out one user. He suggested that if the applicant would be willing to put a covenant on the property that can be filed, then the Town would have something that could be enforced. Mr. Hollis agreed to have a declaration of restriction recorded against the property.

Dr. Matusow asked if this issue was to be resolved to satisfaction of the Town Attorney. Mr. Baroni instructed Mr. Kaufman to include the typical language regarding covenants. Mr. Kaufman explained that this was not needed prior to site plan signing. Mr. Baroni suggested including it in the section entitled prior to issuance of a CO. This satisfied Dr. Matusow.

Chairman Michelman noted for the record that she supported the resolution, however she wanted it clearly understood that no work was to take place on the property until she and the engineer signed the appropriate forms. Mr. Hollis said that he understood. Chairman Michelman noted that this might take some time due to the conditions that have to be met.

Dr. Matusow moved that the resolution be adopted with the amendments as discussed. Mr. Adelman seconded the motion and it was unanimously approved.

**VALEV**  
**Site Plan**  
**Section 7, Block 04, Lot 1L**  
**18 Nethermont Avenue**  
**Teodor Valev, P.E.**  
**Discussion**

Present for the application was Mr. Valev, Gail Asher (architect), and Barry Naderman, P.E.

Mr. Valev reminded the Board that it had referred the applicant to the ZBA to get a variance for the time reduction for the accessory apartment. Based upon his meetings with the ZBA, he did not believe that they would be willing to grant his request, as they were hesitant to accept his financial argument. He explained that at the last meeting, the ZBA had requested a more legal argument, and he decided to withdraw his application from the ZBA and find a quicker way to get his project approved.

Ms. Asher presented a home with no accessory apartment, and instead an attic space with height below 7' 5" that would act as storage. She explained that the only significant change was that the accessory apartment had been eliminated, and replaced with accessible storage without a pull down staircase.

Ms. Asher explained that she had submitted a written response to Mr. Kaufman's memo. She noted that the area of the house is in conformance with the Town Code, and that it is less than the maximum allowed. She explained that the top space is at 7'6" but they would ensure that there is no habitable space there. The applicant was seeking to have the walk up storage space for ease of access. She noted that the height is in compliance with the code.

Ms. Asher added that they were in the process of researching the area of the nearest five houses per the Code. She said that she would present the calculations to the Building Inspector and request a letter indicating that they meet the requirements of the revised Town Code. She added that they would submit the revised plans as soon as possible.

Mr. Kaufman pointed out that the applicant had specifically made the height of the space above the garage 7'5" and that makes it not habitable, making it excludable from the gross floor area. Ms. Asher recognized this and said that they were not included in her figures, and that was why her figures are lower than those in Mr. Kaufman's memo.

Mr. Kaufman accepted that explanation. He added that the Board has always had concerns about the mass of the house, but that the applicant has done a good job in reducing it. He explained that many of the comments in his memo were technical and that the applicant really only needed to demonstrate conformance with the new laws. He asked how the Board wanted to handle the issue of the walk up stairs to the space above the attic. He stated that he would be more comfortable with having that area with a pull down staircase, because that would make it more difficult to convert. Ms. Asher explained that having a pull down would be very difficult because it would come down in

the middle of the three-car garage. Mr. Kaufman acknowledged this. Mr. Simonetti was comfortable with the full staircase.

Mr. Simonetti asked what if rebuilding the area would be necessary in the future if the applicant wanted to convert the space to an apartment. Ms. Asher explained that he could remove the collar ties and raise them an inch, and after the appropriate amount of time passed, he could convert the space to habitable.

Dr. Matusow agreed that having useful attic space requires that there be useful access, which meant a walk up staircase. He felt that it was more of an enforcement issue, and if anything illegal happens in that space, it would be up to the Building Department to correct it.

Mr. Delano pointed out that since the applicant is putting the ceiling in at 7' 6" and the Board is willing to give that much height, they might as well make that the proposal and apply for the additional floor area variance. He felt that it was "silly" to decrease the ceiling by one inch and then be forced to come back to the Board and that by doing it this way, the applicant could have the space ready for what he wanted to do, and only have to go for the special permit. He added that he still thinks the house is too high.

Ms. Asher appreciated this suggestion and pointed out that she still had to do the calculations to see if that would meet the square footage requirement. Mr. Delano felt that they would. Chairman Michelman supported Mr. Delano's suggestion.

Mr. Naderman pointed out that the project was below the maximum permitted gross coverage.

Chairman Michelman asked if they were ready to schedule neighbor notification. Mr. Kaufman said that they were. Ms. Desimone reminded the applicant that they would have to submit a revised plan, and demonstrate conformance with the regulations. Neighbor notification was scheduled for February 26<sup>th</sup>.

Mr. Naderman asked if a steep slope permit was included with that. Mr. Kaufman said that it was. Mr. Naderman showed a plan of regulating the slopes over 25%. Mr. Kaufman noted that all along the applicant has tried to minimize the impacts on the steep slopes, and the Board has been aware of the slope issue even before it became a law. Mr. Kaufman added that this would be quantified in the resolution. Mr. Naderman explained that they would be disturbing approximately 10,290 sq. ft. of steep slope.

Richard Sosnovi, a neighbor at 15 Nethermont Avenue provided the board with pictures of the property and of the neighboring property. He did not realize that this was not a public hearing, and he offered to come back at the appropriate time to discuss the application further.

Mr. Schroeder asked if the applicant had heard back from water and sewer department. Mr. Naderman said they had not, and Mr. Schroeder suggested they follow up with them. One member of the Board asked if a formal referral was required for the Conservation Board and Mr. Kaufman said there was not.

**HAVRANIAK**

**Site Plan**

**Section 2, Block 16, Lot 14N**

**6 Byram Brook Place**

**Mr. Havraniak**

**Discussion**

Present for the application was Mr. Havraniak. Chairman Michelman said that they needed to address the issues that were raised in the memos from the Town Planner and the Town Engineer. Mr. Havraniak stated that he received a letter from Kellard Engineering indicating that the wetlands they defined were correct.

With respect to Mr. Kaufman's comment regarding the first three trees, Mr. Havraniak explained that they are dead and after his conversation with the engineer, it was his understanding that they would not be replaced. He added that the existing fence is in poor shape and will be taken down. He had not yet decided if it would be replaced. Chairman Michelman asked if screening would be planted there if the fence is not replaced. Mr. Havraniak explained that the property slopes upward, the difference in height is 20-30' and there are huge pines that are already there. He said that he could plant spruce in the area, but they probably would not grow. Chairman Michelman recalled that they had discussed delineation of the property. Mr. Havraniak explained that there is really no need to replace it because of the slope of the property, the stone wall that runs the length of the property and the very large pines in the area. Chairman Michelman felt that there should be some delineation other than the trees. Mr. Havraniak agreed to replace the post and rail fence along the rear.

Mr. Havraniak explained that although he filed for a tree removal permit, it is incorrect on the plan. He added that he would update the plan, that will show that the first four trees in front of house will be removed and one in the back. He stated that he would try to save the tree the Board has requested, but noted that it is in harms' way with the repaving of the driveway. Mr. Havraniak stated that he would try to shift the driveway in that location.

Mr. Havraniak recalled that the issue with the electrical pole and the underground utility was resolved at the last meeting. Chairman Michelman thought that there would have to be a pole there anyway, so having 50% underground would be adequate. Mr. Schroeder agreed.

Mr. Schroeder explained that his issues dealt mainly with the drainage, and that the applicant's engineer is addressing them. He added that there was an issue regarding the steepness of the drive; typically they do not allow grades more than 4% for the first 35 feet. He pointed out that this grade is being reduced from 15.5%, and asked if the Board had the ability to waive the requirement.

Dr. Matusow pointed out that they were not creating a new drive, but was improving the existing one. Mr. Delano agreed. Mr. Schroeder said that he would look into it. Mr.

Kaufman recalled that there was a provision in the code that provided latitude for a lot that was already improved, and that he would also look into this issue.

Mr. Havraniak added that the Conservation Board would be conducting its site walk the following weekend. He noted that Westchester County has already done the soil tests, and everything was satisfactory.

Mr. Kaufman explained that additional information would be needed due to the new regulations, so the applicant has to submit those calculations. Mr. Havraniak asked if this was considered a new lot and Mr. Kaufman said no. Mr. Havraniak asked if he would still be subject to the new laws. Mr. Kaufman said that he would be because he does not fit into any of the exceptions.

Mr. Havraniak had a question about calculating the square footage and if it included the proposed increased delta. Mr. Kaufman explained that it depended on the situation, but the applicant should not "double count." Chairman Michelman said that if he had any questions he should contact Mr. Kaufman.

The Board informed the applicant that once the necessary information is received, the Board would have the public hearing and neighbor notification. They pointed out that they also needed to get comments from the Conservation Board.

The Board decided that neighbor notification, a public hearing and a resolution would be scheduled for February 26<sup>th</sup>.

The applicant asked where to get the information he needed to compare the five neighboring houses. Mr. Kaufman told him that he could get it from either the assessor or the building department.

**ARMONK SQUARE (formerly known as Pembroke Square and Heritage Square)**

**Site Plan**

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

**Main Street, Maple Avenue, Bedford Road**

**Joe Beninati**

**Declare lead agency intent**

No representative was present for this application due to the fact that it was an administrative action.

Mr. Kaufman explained that back in 2001 the Planning Board adopted a negative declaration, and essentially the project is the same except for the configuration of the buildings. Therefore it is recommended that the Board begin the SEQRA process again, and the first step is to declare intent to be lead agency, and circulate the EAF.

The applicant submitted the EAF, and the cover letter talks about an unlisted action. Mr. Kaufman explained that this is not an unlisted action, but a type one action. He also noted that part 2 of the EAF was filled out and completed by the applicant, which is

something that the lead agency has to do. He explained that the Board could use the applicant's form as a guide.

Mr. Simonetti made the motion to declare intent to be lead agency. The motion was seconded by Mr. Adelman and unanimously approved.

### **NEW BUSINESS:**

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

Al DelBello, Esq. was present for the application, along with Roy Rosenbaum, architect, and David Werber, owner. Mr. DelBello explained that the lease for the A&P will be terminating in November and it is the applicant's desire to demolish and rebuild a more appropriate grocery store. The current store is 20,000 sq. ft. and the proposal is for a 35,400 sq. ft. grocery store with an additional store of 14,900 sq. ft.

Chairman Michelman explained that the Board was concerned about the issue of parking. Even though the plan looks good, she wanted to know how the applicant would address the lack of sufficient parking according to the regulations.

Mr. DelBello explained that 205 spaces are proposed, making them short 47 spaces. He pointed out that the current store is 31 spaces short and he did not believe there was ever a problem. He believed this would function.

Mr. Kaufman asked if the applicant had a variance for those 31 spaces, and the applicant was not sure. One of the applicant's representatives explained that the plans approved by the "city" indicate there was a variance. Mr. Kaufman stated that this is something that could be researched, and if there were an existing variance it would continue. Mr. Baroni stated that he was not sure the variance would continue; a new variance may be required.

Mr. Simonetti stated that if there is a variance it might not apply to the situation. Just because there is no problem now, does not mean this additional space would not create a problem.

Chairman Michelman recognized that the Town needs a grocery store but the parking issue needs to be resolved. Mr. DelBello stated that they would do all the necessary studies.

Mr. Kaufman explained that they have transmitted the firehouse site plan to the applicant to see if there can be cross access easements across the property. Mr. DelBello said that he had discussed this issue with Mr. Baroni and he was informed that there had been a modification made to the restrictive covenant.

Mr. Baroni explained that when the City of New York sold the property to the Board of fire commissioners, it put a right of reverter in, so that if the property ever ceased to be used as a firehouse, it would revert back to the city. In order for the town to purchase the old firehouse, they approached the City and changed the language. So, while there can be an easement to access into the rear parking, I do not think that it could be used for shared parking, because it would no longer be "solely to municipal uses." Mr. DelBello explained that they would work on the design to see how that would work.

Mr. Simonetti pointed out that it would be difficult to maneuver a large truck in the dock area because of the customer parking in that area. Mr. DelBello said that they have addressed this and this was the only way. With the limited space that there is, in order to provide the maximum number of parking spaces, the only way it could be done is by tucking it back, and out of the way of customer use. He added that the store would be getting about 7 trailer trucks / week and this may be able to be accommodated off-hours.

Dr. Matusow stated that, by itself the plan seems logical, but was concerned about the broader picture. He noted that there are several properties in town that are being considered for development for grocery stores, and he would not like to see the town making plans for supermarkets without some process to consider the whole area. He suggested this be done at the Town Board level. He wanted to find a way to discuss this issue, and recognized that it was not the applicant's responsibility.

Mr. Kaufman noted that the only other site that would be considered for a supermarket is the old bowling alley site. Dr. Matusow recognized this, and wanted to raise the issue to ensure it is discussed. Mr. Kaufman stated that the Board could have that discussion but it did not have the power to require another property owner to submit a plan for possible development.

Chairman Michelman acknowledged Dr. Matusow's point, but stated that this issue has been discussed with both of the property owners. The town wants a new supermarket, but does not want two; every potential site owner already knows that. She stated that this was a start and the Board could not hold up this applicant for the possibility of another location.

Mr. Simonetti agreed with Chairman Michelman. With the exception of size, the end result is not going to be that different from what we have now.

Mr. Kaufman stated that they are still faced with the significant obstacle of the parking. This will be a significant hurdle the applicant will have to address. This could make or break this application. The applicant recognized this, and would submit all the necessary calculations.

Mr. Fareri was present in the audience. He wanted to comment on the potential of the bowling alley site for a grocery store. He agreed with the Board that the town should be developed in a proper fashion. He added that there is a third site for a supermarket and he was going to appear before the Town Board on the following night. He felt that the Town Board should have some kind of work session committee to be able to review all

the different development potential – so that all the developers are not competing with each other. He added that he was not trying to preclude the applicant from moving forward with his application.

Mr. Kaufman noted that he would support having a work session, and it could only be beneficial if the multiple landowners involved would participate.

Chairman Michelman asked what the next step was. Mr. Kaufman explained that the Board had given the applicant a preliminary direction, and if the Board wanted to, there could be another preliminary discussion. There was also the idea of a joint work session, and of course, the applicant could make a formal application to the Board.

Mr. DeBello noted that they would move forward with an application and any discussions that should be had would be had simultaneously.

## **HOSSAIN**

### **Site Plan**

#### **Section 2, Block 17, Lot 2G1**

#### **46 Greenwich Road**

#### **Nyron Hall, P.E.**

### **Discussion**

Mr. Jerry Barrett, landscape architect, was present on behalf of the applicant. He explained that they recently had Steven Coleman delineate the wetlands, and the wetland and the buffer are indicated on the plan. They received the survey the week before, but were unable to get the information together for the Board.

He explained that they used the survey from the applicant's surveyor. They used the survey information, and they now have two foot contours, locations of trees, wetland and buffer lines, building setbacks, hatched existing structures, and added the proposed structure.

Mr. Barrett stated that he had asked his engineers to get involved in order to find a new septic. He Mr. Campbell has been out there and the most logical area is outside the 100' setback and there seems to be a workable area.

Mr. Barrett said that he had received the memos from the Town Engineer and the Town Planner. He said that he would address these issues.

Mr. Kaufman asked the locations of the wetland boundary and buffer, and Mr. Barrett indicated the locations on the plan. Mr. Kaufman pointed out that most of the house is in the buffer. Mr. Barrett acknowledged this.

Chairman Michelman asked if the home would be reconfigured for the next submission and Mr. Barrett said that things were likely to change and that the house may be relocated. He added that he would try to bring the plans as close to conformity with the memo.

Mr. Kaufman stated that there were two other issues to consider (1) mass; this is a relatively large house located rather close to the road; and (2) a very unique design; the ARB should get involved early on in the process.

Dr. Matusow asked the footprint of the dilapidated house. Mr. Barrett said that it was about 1,530 sq. ft. and the proposed footprint is 130x80. Dr. Matusow noted that the proposed house is seven times larger, and wanted to know what was driving the decision to build a house of this size on this property. Mr. Barrett did not know how to answer that. Dr. Matusow pointed out that in order to build a house of this size, the applicant would have to build much of the house in the buffer. He wanted to know why the Board should consider this, and said that there had to be a compelling reason to consider this.

Mr. Barrett said that he wanted to do the calculations to see where he falls with respect to the coverage. Dr. Matusow said that he just wanted to give the applicant his point of view to think about, because it will come up again.

Mr. Barrett asked if he could move forward with the ARB concurrently with this Board. Mr. Kaufman said that he encouraged them to do so. Dr. Matusow felt this could present a problem, because if the ARB says they like it, it may give the application a momentum that may not be beneficial. He noted that just because the ARB likes it does not mean this Board has to approve it.

Mr. Simonetti noted that the shape of the pond was unusual and wanted to know how it got that shape. Mr. Barrett believed it was manmade; a dug out wetland with a masonry component on all sides. Mr. Simonetti asked if the buffer was dry and Mr. Barrett said that it was flat, and at the toe of the slope, it goes up, as you go up the hill it gets drier, but at the bottom it is moister. Mr. Simonetti asked if it was a swamp or if wildlife would be impacted. Mr. Barrett said that it is not necessarily a sensitive buffer as it has been disturbed in the past. Mr. Kaufman recognized that it has been disturbed, but pointed out that this does not mean it is invaluable. He said that the Conservation Board would have to visit the site.

## **SISKIN**

### **Amended site plan**

### **Section 2, Block 4, Lot 1-10**

### **53 Hammond Ridge Road**

### **Dan Sherman, Architect**

### **Discussion**

Howard Siskin was present for the application. He said that he wanted to address Dr. Matusow's concerns about the wetland in front of the house. He was told that the topical map at the Bayswater office represented what was on the proposed grading plan prior to building. The office also informed him that it was not on the final grading plan. He said that the wetland is not there anymore. Mr. Kaufman acknowledged this, and the Board noted that this was not an issue.

Mr. Siskin recognized that there were two issues, one in the front and one in the back. Chairman Michelman asked that he address the problem with the front first. Mr. Mercurio, from the architect's office presented the plan. He explained that the slopes in front are approximately 25% and that some of the grading being proposed is outside the previously approved clearing and grading limit line. Chairman Michelman asked what he was planning to do there. Mr. Mercurio explained that the idea is to return the grade to a more reasonable slope in the front (around 10%) and revegetate it. He said that they would plant some native oak species, lawn, and have a planted island. He noted that the trees and brush in the front would be cleared.

Mr. Kaufman stated that, given the slope in the front it is doubtful they would be able to get to a 10% slope – it would probably be more. Mr. Mercurio said that it was only an approximation but anything will be better than what is there.

Mr. Kaufman explained that the clearing and grading limit line was probably established to protect the vegetation, but the quality of those plants does not seem that significant. He and Mr. Schroeder agreed that this would be more visually appealing.

Chairman Michelman asked if the Board accepted the improvements in the front. The Board members did, but wanted to make it subject to Mr. Kaufman's approval of the landscape plan. The Board explained that nothing further was needed on this issue.

Mr. Siskin explained that, with respect to the rear he was concerned because he does not have one piece of level land – everything slopes. He said that he was not looking to level the entire thing, but right now, he is unable to have a useful area. Mr. Mercurio presented a proposed plan for the rear. He explained that the goal would be to integrate the natural conditions.

He noted that there was a natural outcropping in the back, and the applicant wanted to have a water feature in that area. He explained that this was inside the conservation easement area, but outside the prior clearing and grading limit line. He added that it was the rock outcropping that dictated the location of the pool.

Chairman Michelman recognized that the plan was beautiful, but pointed out that it may not be practical. She realized there is need for improvement, but they have to figure out how far that will go.

Mr. Kaufman explained that the real issue is the clearing and grading limit line, which was established at the subdivision stage, and used for the environmental review of the project. It was the amount of disturbance that was believed to occur. In reviewing site plans, it is appropriate to modify the clearing and grading limit lines to make the site work better. The same rules should apply to the rear. They could modify the clearing and grading limit line, and the applicant could consider a pool that will not modify the line. Mr. Kaufman pointed out that this plan creates a lot of fill and a lot of disturbance – more than any plan reviewed by the Board. He suggested that the project be reduced; the site could be improved, and the applicant could have some of the desired amenities, but there would be less of an impact.

Mr. Siskin explained that the whole concept revolved around the rocks and worked back to the house; he asked if the Board was asking him to start at the house and stop at the rock. Mr. Delano agreed. The Board would review submissions in that regard.

Mr. Mercurio pointed out that there are invasive species in that area, and they are proposing less invasive plantings.

Mr. Adelman asked if the Conservation Board was involved. Mr. Kaufman said that they were not involved formally, but the Board could ask them to review the plan for their input.

Mr. Adelman recognized that the invasive species is taking up space and asked the applicant to put together several iterations for the Board to review.

The applicant was advised that when new plans are submitted, he would be placed on the next available agenda.

## **18 BEDFORD BANKSVILLE ROAD**

### **Site Plan**

### **Section 1, Block 12, Lot 3.G**

### **18 Bedford Banksville Road**

### **Bill O'Neill, AIA**

### **Discussion**

Mr. Bill O'Neill was present on behalf of the applicants. He explained that he had received the comments from the Town Engineer and the Town Planner, and there are several issues that could be clarified.

With respect to the easements, they do have some easements and the site plan indicates that they have access to the dirt road. They also have an absolute right to use the strip of land that includes the intrusions into the setbacks given that they are existing.

Mr. Kaufman asked if Mr. O'Neil is indicating that several portions of the existing building project or are physically located outside of the Applicant's property. Mr. O'Neill said that, as he understood it, the easements allow the applicant to maintain those intrusions into the area. The easement is not solely for ingress and egress – it also allows those things to remain and to use the existing parking. It does not allow enough parking as indicated on the 1997 site plan.

Mr. O'Neill explained that, with respect to Mr. Schroeder's comments, they are showing 39 spaces and not 37. He added that they do conform. With respect to the handicapped spaces, the zoning ordinance does not have the 8' isle. He realized that he needed to review the state code, and he would revise the plans accordingly.

There was concern that the two parallel parking spaces might naturally want to go in one direction. Mr. O'Neill said that if they had to, they could remove those two spaces. Mr. Kaufman suggested that they be reserved for employee parking, as they were not optimal spaces. Mr. O'Neill agreed.

Mr. O'Neill explained that one of Mr. Schroeder's comments claimed that there was no mitigation regarding impervious surface. Mr. O'Neill pointed out that he is showing two catch basins. Mr. Schroeder explained that the dimensions of the pipes and related information are not shown. Mr. O'Neill said that he would provide any additional information if necessary. Mr. O'Neill added that he did not believe there were any underground utilities.

With respect to the comment about improving the dirt roadway, Mr. O'Neill said that because it was not the applicant's property, he could not make such improvements. Mr. O'Neill said that if the Board made it a condition, they would be willing to speak to the owner, but currently, the plan is to leave it alone. Mr. Kaufman said that this might be addressed in the easement. Mr. Baroni said he'd have to review it.

With respect to Mr. Schroeder's memo regarding no site lighting, the plan does show the poles, but don't have the height of the light pole. Mr. O'Neill added that a model has been chosen, and it is similar to what was suggested by Mr. Kaufman.

Mr. O'Neill added that the applicants would move their sign. Mr. O'Neill felt that there was nothing in Mr. Kaufman's memo that he needed to comment on.

Chairman Michelman noted that the real issue is to resolve the easements with Mr. Baroni once they are located. Mr. O'Neill said that would not be a problem.

Mr. Kaufman said that there was another concern - whether the Board wanted to see the spaces landbanked rather than constructed. All of the other details would be put in place, but the Board has the ability not to require those spaces to be built. He recalled that there had been a discussion that the parking demand was not significant.

Dr. Matusow explained that landbanking would not work without the knowledge of the easements. Mr. O'Neill recognized that they needed to meet all the requirements and he would address all the issues, and obtain any additional required information.

Mr. Kaufman said that he would coordinate with the other agencies and send out the information to the police department.

## **ROSENBLUM**

### **Site Plan**

#### **Section 1, Block 4, Lot 10-420**

#### **4 Thorne Lane**

#### **Nick Pouder – Pouder Design Group**

#### **Discussion**

Mr. Nick Pouder and Mr. Lucio DeLeo (architect) were present for the applicant. Mr. Pouder explained that the gray area on the site plan represented the existing house, the red area represented the proposed house and the blue represented the proposed porch. He pointed out that a portion of the porch would be screened, and the rest is a wraparound porch.

He explained that the proposal is for an addition to an existing four-bedroom home. The building as proposed will have a new fifth bedroom, and handicapped access for a member of the family. He added that the new septic has been approved by the county, and he indicated the locations of the existing and proposed septic areas. He pointed out that the proposed septic would require the removal of two rows of spruce trees; leaving three rows remaining.

Mr. Pouder explained that this was upland from a town-regulated wetland, and the buffer clips the corner of the site, and the edge of the building. With the exception of the footing drains from the building, that is the only intrusion and there is no impact. Additionally, a portion of the reserve field of the septic is in the buffer, but the primary field is entirely out of the buffer. He said that if the reserve area were ever used, that would require less than 2,000 feet of intrusion.

Mr. Pouder said that he had received comments from the Town Engineer and the Town Planner and would respond for the next submission.

Chairman Michelman said that she was concerned about the new worksheets that are required for the new regulations. Based upon Mr. Kaufman's calculations, the size of the gross floor area exceeds the maximum. Mr. Pouder said that it exceeds the basic, and a special permit would be needed. Mr. Kaufman agreed.

Mr. Pouder explained that they were under the basic for the lot coverage, but in terms of the FAR, the basic is 5,342, and the proposed is 7,414. Mr. Kaufman explained that they still needed to look at the five surrounding houses, and that the Board would have discretion to determine if a house of this size is appropriate in the neighborhood.

Chairman Michelman said that the next step is to figure out how it fits in the neighborhood. Mr. Kaufman said that the assessor's data would probably give a "worst-case scenario" because basements and attics with 7 1/2 feet would not be reflected in the assessor's data, and therefore it would probably be reflected as a smaller house. Another alternative would be for them to use the information from the Building Department and do their own calculations based upon the floor plans. The applicant asked if the comparison was only for the five immediate homes, and Mr. Kaufman said yes. Mr. Kaufman noted that just because the immediate homes have not been

expanded, it does not mean that this proposed home is inappropriate. The applicant asked if they could submit information for more than five houses and the Board said they could.

Mr. Kaufman said that his primary issue is the location of the proposed septic system, and the number of trees that are required to be removed for the primary system, and then the number of trees to be removed if the expansion area is necessary, plus the potential impact on the Town-regulated wetland buffer if the expansion area is constructed. Mr. Kaufman recommended that the septic system be relocated to the existing rear yard (impacting the large tulip tree) and utilize a pumped septic system. Mr. Kaufman said that the rest of the site plan was fine, and that he had no issues with it. The Board appreciated the design of the porch and the retaining wall.

Mr. Adelman asked why the Board would want to consider moving the septic to the back when it would require such obvious negatives. Mr. Kaufman said that the Board might not want to consider it. Chairman Michelman felt that it was one tree versus thirty, and that is why it should be considered. Mr. Pouder pointed out that the tulip tree is a very nice, and is considered a town significant tree. He added that the spruces are not near the value aesthetically.

The applicant's engineer was told that they do not have to clear the expansion area. Mr. Kaufman agreed that they do not have to clear it, but wanted the Board to understand the potential impact. If the expansion area was cleared, approximately 6-7 more trees would come out. Mr. Adelman asked the applicant to identify the trees so that the Board could weigh the value.

Dr. Matusow noted that the spruce trees, while living, are not great specimens. They are bare from the ground up 30.' His feeling is that it would be better to remove those than the tulip tree. Mr. Adelman agreed.

Chairman Michelman asked how many trees would be left standing (she asked this question out of concern raised on another site where some trees were removed and the remaining were not stable enough to survive). Mr. Pouder noted that this was a valid concern, but that was not a danger here. Chairman Michelman asked him to look into these issues.

Mr. Simonetti asked if the applicant would be installing a brand-new septic and Mr. Pouder said they were. Mr. Simonetti asked the likelihood that they would have to utilize the expansion area. Mr. Pouder said that was very small, and Mr. Schroeder said that it would not be for 30 – 50 years. Mr. Simonetti pointed out that, for all practical purposes, expansion is not likely anytime soon.

Mr. Delano noted that the proposed expansion area has already been cut and filled and the expansion will probably not be necessary. In his opinion, the removal of the spruce trees would be better. Mr. Pouder said that he would bring in an arborist for input regarding the removal of trees.

Chairman Michelman reminded him that the Board also needed the new regulation worksheet.

**DiCAPUA**  
**Amended Site Plan**  
**Section 2, Block 5C, Lot 15**  
**74 Byram Ridge Road**  
**Alan Pilch, P.E., RLA – Evans Associates**  
**Discussion**

Mr. and Mrs. DiCapua were present for the application along with their attorney, Joseph DiSalvo.

Chairman Michelman stated that the Board was at the site, and they were aware of what happened and some of the reasoning as to why it happened. She pointed out that construction is not to begin under any circumstances without a signed plan, and that was ignored here.

Mr. DiSalvo said that a mistake was made with respect to tree #63. That tree was supposed to be retained and it was removed by mistake. When they went back to the resolution and the site plan referenced by the Board when the resolution was passed, it referred to the September 20, 2006 map, and on those plans, those trees were marked for removal. At the time the resolution was passed, two of the trees were marked for removal. He believed that the attempt coordinate the site plan and the landscaping plan, an inventory dated October 31 that showed those trees were to remain. Mr. DiSalvo said he believed it was done to accommodate the client's preference to retain the tree if possible, but their preference was to do that in the field.

Mr. DiSalvo added that the applicant has attempted to be very careful. There was a mistake on 63, but 12 and 79 should have been removed, and they were. He noted that the applicants have done more than what is required, including expanding the enhancement area on the south side, and having denser plantings on south and north side. They've planted 15 additional rhododendron, 6 andromeda, 9 azaleas, 6 hollies, 3 large bayberries, a spruce and a juniper. This is a cost to the applicant of approximately \$19,000.00

The applicant has proposed a mitigation plan that constitutes six 8" spruce trees and two 7" red maple trees. He pointed out that this totals 62" and the trees removed were 61" total.

Chairman Michelman asked the Board for comments. Mr. Kaufman stated that the applicant is proposing replacing the lost trees at a 1:1 DBH to DBH. He pointed out that the trees that were taken down were much larger than what is being proposed. Therefore, he thinks it would be appropriate to get the 1:1, increase the buffer by 10' and put a demarcation line in that area. In his opinion, this would be a reasonable mitigation for the removal.

Mr. Simonetti asked if amended site plan approval was needed. Mr. Kaufman believed that the Board was only revisiting the tree removal plan. Mr. Simonetti wanted a firm answer because he wanted to know if the Board had to revisit the site development under the new code. Mr. Baroni informed him that the application was grandfathered and the new regulations would not apply here. Mr. Simonetti felt that the plan was acceptable.

Mr. Pilch noted that the buffer has been expanded on the south side in excess of 10' and what the Board proposed seemed like a penalty to him. He said that the applicant is already spending \$19,000 in replacement trees to compensate for one 15" tree. The applicants felt that because they have increased on their own, the Town Planner's further requirements were somewhat inappropriate; the applicant did not want to make the site look less natural.

Mr. Adelman felt that the plan proposed by the applicant was sufficient. Mr. Delano agreed. He pointed out that the Board is getting back 4x more than what was removed, and the applicant has been very conscientious in the management of the landscape. He did not feel like the Board should try to get anymore than they would have gotten in the original process, and therefore, he would not expand buffer. Mr. Simonetti agreed.

Dr. Matusow supported Mr. Kaufman's position. In his opinion, the cost has nothing to do with dollars. He stated that this was not just any application; it was before this Board for months and caused a great deal of controversy and faced a great deal of opposition from the neighbors. Despite that, the Board gave the applicant almost everything he wanted. Dr. Matusow said that every time the applicant appeared before the Board, he came with his team of professionals, and now they are claiming that someone could not read the plan. He said this was hard for him to believe, and wanted to know which one of the applicant's professionals could not read the plan. He said that the applicant has lost credibility with the Board, and the Board has lost credibility with the town – and that is the real cost. He said that he did not care about the applicant's arguments regarding the fairness or unfairness of the planner's proposed mitigation, because Dr. Matusow believed that they would never make up the problem they have caused.

Mr. Pilch pointed out that the applicant's have done tremendous things at the site, and this was only one mistake. He added that they would be even more careful in the future.

Chairman Michelman asked how Mr. Kaufman's proposal differed from the applicant's. Mr. Kaufman explained that his proposal called for an expansion of buffer by 10' and requiring a demarcation of the property line.

Mr. Simonetti noted that sometimes, instead of boulders, the Board would utilize bushes or other plantings, which would have a border establishing quality and look more natural. He suggested the Board make that compromise. Mr. Adelman pointed out that this site has a water view and is not something that should be obstructed.

Mr. Rau, the applicant's landscape architect, did not feel that boulders were necessary because the no mow area with the meadow grass would serve to demarcate. Chairman

Michelman said that she could accept that with an extra 10' buffer. Mr. Adelman accepted the meadow grass even without the 10'.

Dr. Matusow asked how the Board would enforce a no mow area. Chairman Michelman said that it is something that is policed by good citizenry. She recognized that Dr. Matusow was upset, but pointed out they were trying to come to a solution.

Mr. Kaufman felt that was why demarcation was necessary, because a no mow area is hard to enforce. Mr. Adelman felt that they should not require a demarcated line that obstructs the view, and that differentiating grasses should be enough. He added that he felt the additional 10' was a ridiculous penalty.

Mr. Adelman and Mr. Delano felt that no boulders and no fence should be installed on the line. Dr. Matusow, Chairman Michelman and Mr. Simonetti wanted a demarcation line that would stand up to a lawnmower.

Mr. DiCapua took offense to Dr. Matusow's comments regarding his credibility. He explained that this process took more than one year and as part of the resolution, he was asked to do an enhancement planting, prior to getting a building permit. This had to be done in December, otherwise they would have had to wait until next season, which would have necessitated an extension. He did not understand why the Board was judging him for the one mistake he made, and ignoring the good things they have done on the site. He did not think they needed to go as far as it wanted to.

Dr. Matusow made a motion to adopt the resolution as revised by the recommendation of the Town Planner in his January 19<sup>th</sup> memo, and to include a provision that the mitigation plan must meet the satisfaction of the Town Planner. Mr. Simonetti seconded the motion. Chairman Michelman, Mr. Simonetti and Dr. Matusow voted aye, and Mr. Adelman and Mr. Delano voted no.

Mr. DiCapua asked if he could get any guidance as to what type of demarcation would be required. Dr. Matusow explained that it would ultimately be the decision of Mr. Kaufman, whether it be boulders, a wall or a fence. Mr. Kaufman explained that they need something that could not be mowed over, but he would discuss it with the applicant.

Mr. Simonetti stated that this is something that happens here frequently; it is mitigation and not a penalty. Mr. DiCapua stated that everything he has done on his site has improved the environment and the idea of putting up a boulder line or a wall would only detract from the naturalness. He said that he would understand if the Board directed him to add more trees, but this made no sense. He felt that having a meadow is logical, but rocks, walls and fences are not.

Chairman Michelman assured Mr. DiCapua that it would not be anything obtrusive, but more preventive. She added that he would not need to return to the Board.

Mr. Kaufman said that he would prepare a resolution for the next meeting, and that the applicant would not have to be present. Mr. Baroni pointed out that the Board has

already voted to approve the resolution, and Mr. Kaufman should fashion a clause that runs along the lines of the memo. At that point, it would only need signing.

Mr. Simonetti asked if the applicant was stopped from doing any work, and Mr. DiCapua said that he was. Mr. Simonetti asked if the Board could give him permission to begin again, and Mr. Kaufman said that he would advise the Building Inspector.

Ms. Desimone pointed out that the Board was going to need the revised plan for signature to reflect the changed conditions.

Mr. Dicapua said that a wall or stones was not going to prevent someone from entering the no mow zone, and what would stop the lawn mower are good citizens. Mr. Kaufman said that they would not require a large structure. Mr. Baroni suggested the demarcation be done with monuments. The Board and Mr. Kaufman agreed. The applicant accepted with this compromise.

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The meeting was adjourned at 9:59 p.m.

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