

when traffic flow is significant, or when road incline grades are significant, it results in better public safety.

Multiple curb cuts are accepted in most cases where they are unavoidable to permit reasonable access, and when they are required to protect the privacy of an adjacent property.

A second curb cut will not help to preserve the rural atmosphere of Hickory Kingdom Road. Although the location proposed for a second curb cut is on the most level short section of the road, it is in the middle of a significant downgrade well recognized as dangerous in poor weather. A second curb cut at that location is not the best choice in terms of public safety.

A second curb cut is not required to permit easy access to the lots being created.

Utilization of a single curb cut at its existing location will do nothing to degrade the privacy of the existing residence and will create no substantial hardship to the applicant.

Utilization of a single curb cut at its existing location would require only minimal adjustment to a plan of access that was drawn by the applicant and is favored by the Planning Board.

The Wolfe application is unique, in that by existing agreements, the applicant may not develop the new lots until 2022 – 15 years. He felt that in 15 years, traffic on Hickory Kingdom Road will be significantly heavier than today. The slope of the roadway will still be steep and dangerous. A decision by this Board to allow a second curb cut in the proposed location will be binding upon the Planning Board in 2022, and in retrospect, look like a very poor decision at that time.

Dr. Matusow moved to approve the minutes as amended. The motion was seconded by Mr. Simonetti and unanimously approved, with the exception of Mr. Delano, who abstained.

DISCUSSION:

WOLFE

Subdivision

Section 1, Block 2, Lot 12

10 Hickory Kingdom Road

James DeLalla – DeLalla & Von Ohlsen, LLC

Discussion

Jim DeLalla was present on behalf of the applicants. He submitted an aerial photograph demonstrating that the applicant's request for a second driveway entrance will not overburden the road or cause traffic conflicts. They have adequate site distance, and there is approximately 6% grade in that location. He explained that the two driveways would be approximately 125 feet apart, and the single drive would provide access to the Wolfe's home. He reminded the Board that the applicants have established a 14-acre estate lot, and would like to avoid a common drive. He added that the applicants originally wanted the drive off of Bedford Banksville Road, but the Board did not like that proposal, and therefore, they developed this alternative. This proposal minimized the impacts, and they have demonstrated that there are very few driveways on that side of Hickory Kingdom Road. He said that this would be the 4th driveway on the north side.

Mr. DeLalla explained that when the applicant's purchased the lot, they agreed to restrict construction to three lots, despite the potential to have as many as 7 or 8 lots. He felt that the current proposal is not unreasonable. He said that the applicant has proven himself to be willing to compromise with the Board, and has spent a considerable amount of money doing studies for the site. In planning the property, they have minimized potential impacts to the greatest extent possible. He was of the opinion that the applicants have come up with a plan that addresses the concerns of the Board, the Town and the code.

Chairman Michelman pointed out that they were not there to rehash the last conversation. She agreed that the applicant has made great strides in meeting some of the Board's requirements and requests. However, the second driveway remained the problem. She felt that the subdivision itself was not the problem, just the access. She reminded that four members of the Board were "tied" at the last meeting, Mr. Delano should be heard.

Mr. Delano stated that he did not disagree with the applicant, but he did not agree with his position. Large lot subdivisions are the vehicle for the Town to prevent intrusive development. Instead of making individual access points for the houses across the water near the applicant, they made shared driveways. Limiting curb cuts is a way the Board can promote this policy. Mr. Delano stated that he had preferred option number 4, which was also the plan that had the support of the Town Planner. He felt that number 4 reduced impervious surface, was out of the buffers, and had one of, if not the, lowest impact to the steep slopes. Mr. Delano supported the single driveway proposed in

alternative number four. Mr. Delano added that he did not think this issue centered on the number of driveways on the road. He felt that a single driveway would be less intrusive on the land, the environment and the aesthetics.

Mr. Simonetti stated that the members sit as a Board to apply the guidelines in a way that is sympathetic with the applicants. He felt that without any major safety issues or other significant concerns, the Board should support the applicant's desire. He felt that the amount of disturbance is miniscule in comparison to the lot and there is nothing really negative to weigh against it.

Mr. DeLalla felt that if the Board denied the applicant's request for two driveways, the Board would be sending a message to other landowners in Town to not come to the Board with any type of conservation easement, but to come with a full build-out, and use it as a negotiating tool. Mr. DeLalla felt that this applicant did the right thing by limiting the development from the beginning and the Board's position that he can't have separate access is unfair. He added that because of this experience, he would not recommend to his clients to place conservation easements on the property ahead of time, but wait and use it as a bargaining chip. He said he was sorry that he advised his client to go down this path.

Chairman Michelman stated that she hoped people do not do things solely for the credit they hope to receive. She pointed out that in order to approve this subdivision, an access was needed. The site plans will need to come back for approval at the site plan development stage. Therefore she did not want to put a future Board in an awkward position by approving two driveways now.

Mr. DeLalla reiterated that the applicants have restricted this site for no further subdivision. It is not likely there will be many more driveways in the area. This one extra driveway will not have a significant impact.

Dr. Matusow did not think that Mr. DeLalla's argument was to the point. He said that no one believed a traffic problem would come from these five lots. He stated that there is a lot of developable property near St. Mary's Church, and he believes there will be a great number of changes in that area, which may change the traffic in that area. Dr. Matusow agreed with the Chairman's point and said that he supported it. He felt that this Board should not make a decision today that would look very silly in the future. He said that it would be feasible for the applicant to approach the Board at the site development stage for a second access point.

Mr. DeLalla said that the restrictions only last as long as this applicant owns the property. The amount of cars coming in out of driveway will be the same whether there is one access or two. These cars would not have any impact on the traffic on the road. Dr. Matusow stated that it is not about the cars in and out of the driveway, but the cars on the road.

Mr. Kaufman said that the Board could provide the applicant with guidance, and then have the applicant come back with a revised plan. Chairman Michelman asked the

Board for a consensus for the applicant. Mr. Simonetti supported the applicant's desire for two access points. The rest of the Board was in favor of only one access point.

PUBLIC HEARING:

BELLANTONI

Site Plan

Section 6, Block 8, Lot 15B

142 Lafayette Avenue

Michael Bellantoni

Discussion

Consideration of site plan resolution

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

Mr. Bellantoni was present for the application. He said he had reviewed the resolution, and had no problems or issues with it. Mr. Kaufman and Mr. Schroeder said they had no comments. Mr. Simonetti and Mr. Adelman had no comments as well.

Mr. Delano recognized that the police department provided a memo, which stated they would be enforcing the parking in that area, and he appreciated that. He also asked if there could be any striping or pattern that would prevent parking in the area outside the applicant's fence. Mr. Kaufman stated that if that area were in the right-of-way, there would have to be discussions with the Highway Department. Mr. Bellantoni reminded the Board that his employees do not and will not park there; he also offered to remove the stripes, if he was permitted.

Chairman Michelman stated that one of the main reasons the applicant was before the Board was because of the blue tent that was on the property. She pointed out that the applicant is proposing storage bins that will contain sand and pebbles; she asked if the applicant would have any problem with putting a cover over the sand bin, to prevent runoff. Mr. Bellantoni explained that this was covered. Dr. Matusow asked if the Board should require the covers for them as part of the approval. Mr. Bellantoni stated that the only real purpose for the tent was to have dry material in the rainy season. He added that in 20 years, he has never had an issue with any runoff. He explained that the property is enclosed, and well maintained. The Board decided against requiring covers as part of the approval.

Mr. Adelman moved to close the public hearing. Mr. Simonetti seconded the motion. A member in the audience asked if the Board would take any comments from the public. The Board stated that they were not aware there was anyone present for this application.

Robert Dean, a resident of the Town, was present and asked to be heard. He asked what type of business they were dealing with. Mr. Bellantoni explained that this was a landscaping company that is run out of this location, and 20 years ago when the building

was built, there was a tent on the property that was not on the site plan. Last year he received a summons for the tent, and this was an application to correct the problem and put it on the site plan.

Mr. Dean pointed out that the original site plan had a note that said 'no outside storage' and wanted to know how they come up with the decision to permit this as an accessory use to a permitted use. Mr. Kaufman explained that his original memo recommended that the Board not approve the outside storage, but the Planning Board felt that it was an acceptable use in the IND-A district, and decided to eliminate that note on the site plan, thus allowing the outside storage.

Mr. Dean asked what the permitted principal use was for this property. Mr. Adelman reminded Mr. Dean that this was an IND-A district. Mr. Kaufman said that the principal use is a warehouse and an office. Mr. Dean asked if this was a landscaping business, or if it was being used as a landscaping business. Mr. Kaufman said that he believed the applicant runs a landscaping business out of the warehouse and office.

Dr. Matusow asked Mr. Dean the purpose of his questions. Mr. Dean said that he was only bringing this up because on one site plan it is depicted as a storage building and an office, and he was trying to get clarification because in this district, an accessory use has to be ". . . outdoor storage and materials and equipment only when determined by the Planning Board as an accessory essential to a permitted use and only when such storage is 15% of the lot area." He was trying to figure out how the Board came to its decision on how the outside storage was accessory to an office and a storage building. Chairman Michelman said that the business is a landscaping business in an IND-A district that has been there for 20 years. It was not intrusive in any way, and from our perspective made sense from a business point of view. Mr. Dean asked for clarification on what the accessory use was related to. Chairman Michelman said that it was accessory to a landscaping business. Mr. Dean asked if this was an essential part of the applicant's business, and Chairman Michelman said yes.

Mr. Adelman moved to close the public hearing. Mr. Simonetti seconded the motion and was unanimously approved.

Chairman Michelman asked if the applicant agreed to all conditions, and he did.

Mr. Adelman moved to approve the resolution. The motion was seconded by Mr. Simonetti and unanimously approved.

NEIGHBOR NOTIFICATION & PUBLIC HEARING:

IRVINGTON BUILDERS

Site Plan

Section 2, Block 3, Lot 2-9

9 Hollow Ridge

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

Consideration of site plan resolution

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

Mr. Naderman was present for the application. Mr. Naderman expressed his sentiment over Mr. Simonetti's leaving the Board. He explained that the application was for amended site plan to relocate a pool. Chairman Michelman asked if he looked at the resolution. Mr. Naderman said he had, and had no problems with it.

Chairman Michelman asked if anyone else had any comments or issues. There were no comments from the professionals or the Board members. Mr. Kaufman explained that there were no significant conditions in the resolution either.

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

Mr. Adelman moved to approve the resolution and the special use permit. The motion was seconded by Mr. Simonetti and unanimously approved.

NEIGHBOR NOTIFICATION:

FRANKEL

Site Plan

Section 2, Block 11, Lot 8-3

5 Caruso Place

Theodore Strauss – Theodore Laurence Strauss, Assoc.

Consideration of site plan resolution

Ms. Desimone noted that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application, and there were not.

Mr. Strauss was present for the applicant. Chairman Michelman asked if he had reviewed the resolution. Mr. Strauss had not. Mr. Kaufman said that there are no conditions of consequence. Mr. Strauss asked if the Board received a copy of the ZBA approval. The Board said that they did.

The Board gave the applicant time to review the resolution. Mr. Strauss stated that the only issue he had was with the last item (#10), which addressed a proposed driveway. Mr. Kaufman agreed that this was an error and should be removed. Mr. Strauss said that he had no other issues.

Dr. Matusow moved to approve as amended. The motion was seconded by Mr. Simonetti and unanimously approved.

NEIGHBOR NOTIFICATION & PUBLIC HEARING:

VALEV

Site Plan

Section 7, Block 04, Lot 1L

18 Nethermont Avenue

Teodor A. Valev, P.E.

Discussion of second site walk

Mr. Valev was present for the application. He asked to be pushed to after 8:00 p.m. to provide his architect time to appear. The Board agreed. Mr. Valev thanked the Board and apologized to the neighbors. When Ms. Ascher arrived, she and Mr. Naderman were present with the applicant.

Chairman Michelman asked the neighbors to identify themselves. Mr. & Mrs. Loberman (42 Nethermont), Ken Dylan (45 Nethermont), Christine VonDonop (Grove Road), Harry & Doris Bunker (42 Grove Road) and Richard Sosnovy (15 Nethermont) were present for the application.

Chairman Michelman explained that, based upon the comments from the neighbors at the last meeting, the Board conducted another site walk. She added that the public hearing would continue, but advised that it would not be a repeat of all the comments from the last meeting. She stated that new comments were welcome.

Ms. Ascher explained that the applicant is proposing a new house at 18 Nethermont. She presented the public with a rendering of the home, with views from the front, the side and the back.

Chairman Michelman said that there were still issues pending. They still needed the necessary information from the Water and Sewer and the Highway Department. Mr. Valev explained that he met with these departments, and each had had one issue. The Water Department pointed out that the material of the existing water piping was not correctly shown, and wanted it corrected. Additionally, the diameter of one pipe from the connection to his property could be dropped from three inches to one inch. He felt that these were minor, technical requirements, and explained that his professionals are working to satisfy the department. He added that the Highway Department made a "verbal note" that they had one issue, which was the applicant checking the only catch basin that is available – 250' from his property. He is building more basins: three on Freedom Road and two on Nethermont. He added that the neighbors would probably benefit from these basins as well. He explained that he was not creating more water, but now that it is a building lot, he is required to accommodate the runoff. He explained all the Highway Department required was that he checks the capacity of the catch basin and trace the water where it leads. He reiterated that he would not be creating any more water, that all the water runs down hill and he would be putting most of it underground. He added that he hoped to get the official information for presentation soon.

Christine VonDonop (15 Grove Road) stated that there are additional concerns that have to do with the construction (i.e. drilling, length of time, extent), the rental property on top

of the garage and traffic concerns. She was concerned that the drilling could create an added expense for the applicant, because it is such a rocky site. She asked what would happen if the applicant cannot afford to complete the project, and the neighbors are left with a partially demolished site. She also asked if the applicant would be able to scale back the size of the garage, especially since the apartment is not currently proposed. She was also concerned about the traffic, because Nethermont is very narrow and there are dangerous hills that must be navigated. She wanted noted for the record that the neighbors will lose the green space that the applicant's property currently provides on the hill. She was concerned about the house fitting with the neighborhood, and felt that the three-car garage would increase traffic on the roads.

Ken Dylan (45 Nethermont) was also concerned about the loss of the hill. He added that another concern was the noise from the excavation of the site. He felt that prior projects have impacted the quality of outdoor living for the neighbors.

Richard Sosnovy (15 Nethermont) thanked the Board for revisiting the site. He felt that the prior constructions on the street do not fit in with the neighborhood, and was not sure this one would either. He added that he was concerned about construction staging. He pointed out that the area is very steep, and questioned where they would put trucks and equipment at the end of the day.

Chairman Michelman stated that these were all fair questions and explained that they would be addressed. She reminded the neighbors that while the Board is concerned about the neighbors, this site is going to be developed. She stated that whatever the results, the Board is going to try to accommodate the neighbors. She advised that there is no question the development would be disruptive, but hopefully it will be limited as much as possible.

Ed Loberman (42 Nethermont Avenue) asked why this had to go to the Planning Board rather than just obtaining a building permit. Chairman Michelman explained that any new residential construction over 1,500 sq. ft. requires Planning Board approval. Mr. Loberman stated that he had reviewed the minutes from the last meeting and wanted to discuss the space and height over the garage. He recalled comments that if the height was less than 7 1/2 feet it could not be considered living space. However, he found a comment made by someone disturbing: that that the collar beam could be raised a few inches, so that it could become livable. Chairman Michelman explained that he had misread the comments. She stated that there had been earlier discussions of an accessory apartment on this site, but the applicant could not meet the criteria for having one. Mr. Loberman was concerned about the stairway as well. He recalled comments that a pull-down stairway would be a deterrent for illegal apartment.

Mr. Simonetti clarified for the neighbor. He explained that there was a discussion regarding the accessory apartment and avoiding duplicate construction for the applicant. Mr. Simonetti explained that Mr. Delano had said that in the future, this is going to be proposed as housing, which meant changing the plan so that it is accessory possible now, even though it will not be done now.

Mr. Loberman added that the houses that have recently been constructed in the area, are beautiful, but are eyesores. There should have been better planning for those houses. He appreciated the Board's comments regarding concerns for the neighbors, but pointed out that the hill is solid rock and every time that rock was struck in the past, his house vibrated. He said that anything that could be done to minimize that would be appreciated.

Mr. Adelman moved to close the public hearing. Dr. Matusow seconded the motion. All but Mr. Delano voted to close the public hearing.

Mr. Delano recognized that Dr. Matusow wanted to hold this over for him to comment, and took the opportunity to speak. He said that it has been claimed several times that the applicant had two sites but the applicant had only one site. At some point during the application process, the applicant indicated the roofline was lowered, but he did not think it was lowered enough or dramatically enough. The roof positioning that was discussed did not have any improvement on the impact. The matter of economic hardship is not this Board's problem. This applicant went to the ZBA and decided not to plead an economic hardship. Mr. Delano continued that it was my suggestion to make the ceiling higher because everyone knows that there is going to be an accessory apartment application in the future. The applicant did not eliminate a lot because the applicant only had one lot to begin with; it is not like the Board took a building lot away from the applicant. He added that lighting is a proper concern of the neighbors, and there is none shown on this plan. He felt that it should be shown, and not left to the Town Planner or the Town Engineer, but approved by the Board. In Mr. Delano's opinion, there is still a concern with the size of the house, particularly the height. He felt that if the small loft over the bedroom was eliminated it would bring down the magnitude of the special use permit and would afford an opportunity to reduce the roof pitch in excess of 6' which he believed would be a tremendous benefit for the neighbors.

Mr. Delano also felt that the property is very steep, the applicant is proposing to intercept the water and divert it. He felt there are glitches in the plan, among them: the plan purports to be drawn in both 20 and 10 scale; a professional engineer did not prepare the utility design, although it indicates it was (the person who signed is actually a landscape architect). Mr. Delano stated that the applicant is a PE in structural engineering, and has offered to make an analysis of the downstream storm drainage, but doubted this was his area of expertise. Mr. Valev asked if this was necessary. Mr. Delano felt it was.

Mr. Delano went on to say that this is a lovely house, but there is too much height, and it overshadows everyone below. He said that there was a representation or insinuation made that the applicant needed this additional height to bring light into the back bedrooms. Mr. Delano did not see it functioning that way, because the back bedrooms have windows. He doubted the dormers would bring in light and serve as anything more than an architectural feature. Ms. Ascher explained that they bring light into the lofts, and that they bring light into the front. Mr. Delano felt that sacrificing the loft would reduce the height approximately 6'.

Ms. Ascher doubted it would come down that far. She explained that she did bring it down about 12-18," changed the pitch, reduced scale, and felt that they have sacrificed a substantial amount, and there is not much left to sacrifice.

Mr. Adelman felt that it was worth another attempt for the applicant to revise the plans and try to bring the height down. Mr. Naderman felt that when the Board reaches a certain comfort level, then they move toward neighbor notification / public hearings, etc. He said that because of comments at the last meeting, it was suggested that the Board could not vote because there was not a full board, particularly Mr. Delano who was interested in the site. The Board agreed to hold it over and to take another look. Mr. Adelman agreed that they wanted to wait for Mr. Delano because he had valuable information to provide. Mr. Naderman stated that if the main thing is to look at the size and the height of the house, this has been done for some time. He explained that they have worked very hard to reduce this and this house has been designed to work with the site – not like the neighboring homes.

Dr. Matusow stated that he finds it difficult to come out in support of an application where there are neighbors that are considerably concerned, but felt that there comes a point when you have to "bite the bullet." Mr. Delano has struck on the one issue that remains a great concern to many people: the height of the house. Dr. Matusow stated that he looked at it again, and did not think that they could make a great difference unless it is reduced by one story entirely, which is not an option. He said that the house is where it is; it is going to be high as it is on a hill. Dr. Matusow stated that every house overlooks another house in North White Plains. This application has been worked and reworked significantly. He felt that unless the Board was going to send it back to be revised in order to substantially reduce the size, he was prepared to move forward. He felt that this is sited in the best possible place and that this is a reasonable proposal.

Mr. Delano said that he does not disagree with the siting of the house, just that it can be dropped several feet.

Mr. Simonetti felt that reducing the height a little bit is not going to do much and that it is well sited with respect to the neighbors as much as it can be in North White Plains. There is a large open space in front of this house, which in Mr. Simonetti's opinion mitigates the height. He said that nothing is ideal in relation to these houses in North White Plains and he would be prepared to move forward.

Chairman Michelman agreed with Mr. Delano and Mr. Adelman, and wanted to see if it could be dropped as Mr. Delano suggested. Mr. Kaufman felt that it is possible to reduce the mass of the house in order to drop the height. He said that if the amount of gross floor area is in excess of what the Board wanted to approve, the Board should give that direction.

Mr. Delano asked what the difference in height between the ridge on the glass peaks and the principal roof. Ms. Ascher, using a scale, said that it is a little over six feet; reducing the roof that much would make it have almost no pitch. Mr. Delano recognized that the applicant has made concessions, but he pointed out that he has been concerned about the height from the beginning. Ms. Ascher stated that this would

completely alter this plan. Mr. Delano said that this was the point; a change of appearance and a reduction of height. Mr. Valev was concerned with the pitch for snow purposes. Mr. Delano told him that he was the structural engineer, and he could figure it out.

Mr. Adelman felt that the small reduction would still make this economically viable. Mr. Valev stated that the loft is the only sunny space in the house. The bedroom is halfway into the slope and is facing rock because he tried to keep the house as far back as possible.

Mr. Adelman felt that after the next revision, the Board would be ready to move ahead.

Chairman Michelman asked Mr. Kaufman about the construction sequencing. Mr. Kaufman explained that this could be part of the approved plans and can be reviewed by the Town Engineer. Mr. Adelman asked if this would include whether there is blasting or chipping, and Mr. Kaufman said it would not.

Chairman Michelman explained that as part of the approved plan, there would be an approved construction plan. The Board directed the applicant to begin working on this, because regardless of what is going to be built, something will be built. It should include all construction details, including timing, storage, length of time, etc.

Mr. Naderman was concerned that the new Board member may not have been following this application and he did not want to see this applicant start from scratch again. The Board did not want to either. Ms. Ascher requested a vote tonight. Mr. Adelman explained that she has basically heard the Board's informal vote – three of the members want to see it again, and only two are in favor of this application.

Mr. Simonetti stated that the application has gone back and forth so much, it is embarrassing. He questioned just what the Board was asking them to do. Mr. Adelman stated that Mr. Delano felt that removing the loft would reduce the roofline by as much as 6.' Ms. Ascher asked if the Board wanted her to remove it entirely, and Mr. Delano said yes, unless they can come up with another way to drastically reduce the height. Mr. Simonetti stated that the applicant desires the loft for light from the back and there is little light from the front. Mr. Adelman suggested skylights. Mr. Valev stated that this would light the attic, not habitable space.

Mr. Naderman asked what would happen if eliminating that loft only reduced the height by three feet, and if that three feet make a big difference for him to lose a valuable living space. He wanted to know where the balancing occurred. He pointed out that this could go back and forth forever. Mr. Adelman stated that it was the Board's request to see this exercise, and what comes out of this.

Chairman Michelman stated that, all along many of the Board members have talked about the height of the house, and while the applicant has made great concessions, there are still concerns. There was a suggestion made, and three members feel that it is worth a look. Chairman Michelman said that if it doesn't work then the Board may agree to what it is; but if we can reduce the size, that would be better.

Mr. Kaufman pointed out that it should be a real, viable alternative. The height, the size and the mass of this house have been a concern from the beginning.

Mr. Loberman said that he built his house 43 years ago, and it is at the highest point on the other end of Nethermont. In consideration of the neighbors, knowing that whatever they did was going to be higher than them, they chose to put a 3 1/2 on 12 roof to conform to houses around them so they would not be too much higher.

CONTINUING BUSINESS:

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

Discussion

Mark Miller from Veneziano & Associates was present for the application. He explained that he was really only before the Board for the Board to declare itself lead agency. He explained that, in January the Board declared its intent to be lead agency that notification was circulated appropriately. He added that he had reviewed Mr. Kaufman's memo, and that it is his understanding that no other agencies desire to act as lead agency.

Mr. Kaufman explained that, back in 2001, the previous Planning Board adopted a negative declaration regarding this project. This Board, based upon his and Mr. Baroni's opinions, decided to begin the environmental review process again and declared intent to be lead agency on January 24th. At that point, the Board circulated an EAF that was prepared by the applicant. The memo is a suggestion to the applicant to expand the EAF to enable the Board to determine what the environmental impacts are and whether an EIS would be required.

Mr. Adelman moved to declare lead agency. The motion was seconded by Dr. Matusow and unanimously approved.

Mr. Kaufman stated that it would help the Board to have more information in this regard. Mr. Miller stated that he had reviewed Mr. Kaufman's memo and the additional information that Mr. Kaufman is requesting is largely textual and they have already begun working on this. At the Town Board meeting, the applicant heard a lot of opinions regarding this project and the applicant is exploring various options to resolve the issues raised at that meeting.

Mr. Kaufman briefly described his memo. He said that for each subject that identified in the memo, the applicant is being requested to describe: existing conditions; the impacts, if any; what mitigation measures are being proposed. He added that this applies to

geology of soils; ground water resources; traffic and transportation; historic and archeological resources; storm drainage; vegetation: wildlife impacts; zoning, etc.

Mr. Miller thanked the Board.

HAVRANIAK
Site Plan
Section 2, Block 16, Lot 14N
6 Byram Brook Place
Mr. Havraniak
Consideration of site plan resolution

Mr. Havraniak was present for the application. He said that he had reviewed the resolution and had several comments. He believed that when the resolution references 216-14 it should be 216-14N. Mr. Kaufman said he'd look into it.

Additionally, in the first "whereas," there is a reference to a steep slope permit, which Mr. Havraniak did not believe should be included. Mr. Kaufman agreed, and said that should be removed.

Mr. Havraniak added that page 4 talks about repairing the fence, in front, in back and around the pond. Although he has no problem with that he would prefer not to have a mowed path to draw attention to the pond. Mr. Kaufman recommended keeping it in the resolution to enable the applicant or a future owner to have it, but Mr. Havraniak would not actually have to mow it. Mr. Havraniak agreed.

Mr. Havraniak stated that, with respect to the site plan, tree #31 has a cable that connects it to tree #30. An arborist has recommended that both trees be removed, but he had only requested #31 be removed. He would now like to remove them both. Mr. Adelman asked if he was only asking to remove them both because of the cable connecting them. Mr. Havraniak stated that they are supporting each other, and if one is removed the other will likely die. The Board agreed, and Mr. Kaufman said that he would add a condition to require tree number #30 to be added to the tree removal plan.

Mr. Havraniak asked if he could get the tree permit prior to he building permit. Mr. Kaufman explained that once the site plan is signed, the applicant would have the tree removal permit. Mr. Havraniak asked about the demolition permit, and Mr. Kaufman said that was done through the Building Department.

There were no further comments from the professionals or the Board.

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

BARON
Amended Site Plan
49 Sarles Street
Section 2, Block 4, Lot 1-15

Frank Giuliano, Landscape Architect Discussion

Frank Guiliano was present for the applicant. He explained that, previously, the applicant had proposed pool fence and a security that went around the back of the property as well as a fence along Sarles Street. During the site walk, and following meeting, the Board objected to the fencing coming down the side of the property. The Board suggested a gate with a fence enclosing the cultivated site.

He showed the Board the plan, and indicated the conservation area and the proposed fencing. He explained that, instead of the 6' wall, they were proposing a three-foot wall with a 3' picket fence on top. Additionally, Mr. Kaufman requested the applicant to move the pool and take the pavement out of the setback line. He explained that they have done this, and all of the pavement is out of the setback line. However, the pool is getting into the slope that drops into another area. The pool house was originally supposed to be in one area (indicated) but at the site walk, they realized there was a tree that used to be in the clearing and grading limit line. The Board suggested rerouting the clearing and grading limit line so the pool house can go on the other side of the pool.

There was extensive screening planned between the two properties because the neighbor's cars are parked right near the possible pool house. All other screening is deer resistant.

Mr. Giuliano stated that they have no problem with the Engineer's comments. But they were concerned with Mr. Kaufman's comments regarding moving the pool, which we've already done, and his comment to just leave it as a 3' wall.

Chairman Michelman stated that the Board appreciates the applicant listening to its comments. Mr. Kaufman stated that this is a much-improved plan and in essence, the applicant has done everything the Board has asked for and the pool location is generally acceptable.

Mr. Schroeder had no other comments, and stated that all his issues were straightforward.

Dr. Matusow agreed that this is better than what it started as, however he was concerned about the roadside fencing. He felt that a three-foot wall with a three-foot fence is really no different than a 6' wall. He said that he looked at the houses on Sarles Street and most of the walls are no more than 2' and on a rare occasion they reach 4' – but there is nothing on the road that approaches 5 or 6'. He felt that this area should be considered a little more. The Board has made efforts on numerous other properties to preserve the character of this road, and it would be out of character to have this fence as proposed.

Mr. Simonetti stated that there is one instance of a stone base with a wooded fence on top, but generally it is not that high. Aesthetically, this would be out of balance compared to what is surrounding it. He suggested a slightly higher stone wall without the fence on top.

Mr. Adelman felt that most of the walls in the area are the product of neglect, and this wall would have to be maintained in good condition to support the picket fence on top. He felt that it would improve the aesthetic and set a model for the neighborhood.

Mr. Giuliano pointed out that this meets the code standard. Dr. Matusow said that he was not talking about the code, he was talking about the character of the neighborhood. This proposal is a very formal fence in an area with little formality and is much higher than those around it. He felt that the applicant will be living a great distance from the fence, and this would make little difference to him.

Mr. Giuliano asked if the neighbor across the street could put a 3' fence on top of his 3' stone wall without coming before the Board and the Board said that he could. Mr. Giuliano wondered why this applicant had to get approval for this and that neighbor would not. Mr. Simonetti felt that it was because the applicant was present as part of the whole site plan approval, and that is why the fence was subject to review.

Chairman Michelman stated that the Board was not at the resolution stage yet, and that the character of the street is an issue for the Board. She said that the Board has authority to maintain the rural character of the street, and one way to do that is to lower the wall. She asked the applicant to consider this.

Chairman Michelman asked if the pool house would be on the plan, and Mr. Giuliano said it would not. Mr. Giuliano added that they would like to change the clearing and grading limit line. Chairman Michelman stated that she had a problem with doing that now, and would rather change it at the time when it is needed. Mr. Giuliano stated that right now, everyone understands why the line is going to change, but wondered what would happen when the Board changes. Mr. Kaufman said that there is no need to change it right now. Mr. Simonetti stated that it was the overwhelming feeling of the Board to change the line.

The Board advised Mr. Giuliano that gross land coverage would be needed for neighbor notification and Mr. Giuliano said that would be done.

Mr. Kaufman added that a wetlands permit application is now needed for the pipe, and the application needed to be referred to the Conservation Board. He advised that the Board make this referral soon.

Joanne Baron, the applicant, stated that she understood that this pond / swampland was created because of the approved driveway and asked about the expenses that will be incurred because of it. Mr. Kaufman stated that he understood that, but regardless the applicant needs a permit to put the pipe in. Mr. Kaufman asked if this was part of a DEC wetland. Mr. Schroeder explained that the plan shows it as a DEC wetland. Mr. Giuliano asked if the pipe let out before the wetland boundary would they still need a permit, and Mr. Kaufman said they would not. Mr. Giuliano asked if they would be able to avoid the Conservation Board if he can get the puddle outside of the wetland. The Board said yes, and Mr. Schroeder said he would work with the applicant.

Chairman Michelman said that the Board needed the revised plans. Mr. Kaufman stated that the applicant might not need a public hearing, but the gross land coverage information was needed before the Board would be able to make that determination.

DUSANSKY
Amended Site Plan
2 Dellwood Farm Way
Section 2, Block 4, Lot 1-13
Frank Giuliano, Landscape Architect
Discussion

Mr. Giuliano was present for this application. He explained that this project proposes a swimming pool, a tennis court, a motor court and relocation of the current driveway. This is an 8.86-acre site. He presented the site plan to the Board, and explained that the orange outline represented the conservation easement. He added that the Bayswater representatives showed the abandoned retention basin as being filled in, with extensive grading, and a new basin in the rear. There are extensive woods in one area of the site, and there is a cluster of trees in another. The applicant was asked to show extensive screening from the road to the tennis court. The grading was approved by the Board as part of the prior site plan, which was never done by Bayswater. In the plat plan the basin was requested to be filled in, a new basin in the back and extensive grading, however Bayswater did not do this. The applicant has a very steep slope in one area, and an abandoned hole that was a detention basin.

Mr. Giuliano explained that they propose to keep the pool in the lower level and will make sure there is 4% grade. He has no problems with the Engineers' comments.

Mr. Giuliano recognized that the Board had an issue with the motor court. He explained that there is 110' distance between "this point" and the front door. Mr. Giuliano stated that the applicant is trying to create an area with presence, and for someone to have to walk 110' does not make much sense. The applicant still strongly desires the motorcourt.

Chairman Michelman stated that this is a very difficult site, and the applicant has done a good job as requested with the tennis court and the pool. However, having looked at the site again, Chairman Michelman felt that the motorcourt is very "in your face." She acknowledged that the road is not highly traveled, but it is not appealing and she did not feel that it could be screened sufficiently. She understood the problem, but suggested the applicant come up with an alternative. Chairman Michelman suggested a walkway from the street. Mr. Kaufman agreed that this was a good suggestion.

Mr. Schroeder asked about the turning radius. Mr. Giuliano said there is a 24' radius (48' diameter). Mr. Simonetti pointed out that this was enough room for a car to turn around. Mr. Simonetti expressed sympathy with the applicant. One hundred feet is a long distance, this is a lightly traveled road, and the applicant is proposing screening. Mr. Giuliano said that he would be willing to provide more screening. Mr. Simonetti suggested taking away the circular motorcourt, and creating a rectangular area instead. If that were not an option, he would support the motorcourt.

The applicant wanted to hear from the rest of the Board about their feelings on the motorcourt. She explained that she has a 75 year old father, who should not have to be walking 110' from the car to the front door, or to be dropped off on the main road to walk up a walkway.

Mr. Adelman stated that he would support the motorcourt with sufficient screening. The applicant said they would be happy to do that.

Dr. Matusow was leaning toward the Chairman's position of the motorcourt being "in your face" but was willing to see what the applicant could propose regarding adequate screening. He agreed that this was a difficult lot, but the large house did not leave enough room for parking. He did not like seeing the Planning Board being forced to correct problems that were created some time ago.

There were no other comments from the Board or the professionals.

WYMAN

Preliminary Subdivision

Section 2, Block 1, Lot 7

93 Whippoorwill Road

Barry Naderman, P.E. – Naderman Land Planning

Discussion

Mr. Barry Naderman and the applicant were present for this application. Mr. Wyman thanked Mr. Simonetti for his services on the Board.

Mr. Naderman explained that there were requests to modify previous plans to address the comments at the last meeting. Mr. Kaufman recognized that there was sufficient frontage on the lot. He explained that there had been a question as to whether the frontage was sufficient for picking up children because this is a private road, and buses are not allowed. He said that the Board just wanted to make sure there is a safe place at the end of the road for children to be picked up. Mr. Naderman presented a blown up section of the entrance to the private road. There had been a comment that the radii of the road should be 25' into the existing street. Mr. Wyman had made improvements in the past. There is 8' widening and the existing pavement and therefore, it is actually a little wider than what the 25' radii required. Mr. Naderman explained that the space is sufficient for larger vehicles like Navigators, and there would still be a full 11' width to get by even with a 7' vehicle. A school bus is merely going to pull up along Whippoorwill Road.

Mr. Kaufman agreed, and asked where the children would wait, and if it would be safe. Mr. Naderman stated that there is sufficient room in the front to safely wait.

Mr. Naderman noted that there had been concern about proximity to the golf course. Mr. Kaufman's memo suggests that the golf course standard is for there not be any structures within 150' of a fairway. This house is proposed on the 13th hole, on a "dog leg," and this house is beyond the 150' standard. Mr. Naderman explained that perhaps additional screening could be done at site plan approval.

Mr. Kaufman stated that he kept making this comment because he recalled the reality of the site; when the Board walked the site, they were picking up golf balls.

Mr. Wyman explained that the country club recently cut down at least four 24" diameter white pine trees, because they felt they were inappropriate landscaping for the club.

Mr. Kaufman asked that the applicant submit the plan being presented with the next submission. Mr. Naderman said he would. Mr. Kaufman said that it was important to get the feedback regarding the length of the driveway on lot 4 from the fire department. Mr. Naderman explained that he has already submitted information from the fire department, and they have requested seeing the insulation of the dry water main and a dry hydrant system. Chairman Michelman recalled this information being in her files. Mr. Kaufman said he was not aware of this, but would look into it.

Mr. Delano asked if the fire department wanted water storage tanks. Mr. Naderman said they did not, but rather they would hook up to another hydrant. Mr. Delano felt that would take a lot of water to fill the water line. Mr. Naderman agreed, but believed the fire department requested this because it was better than trying to get the water trucks in the area.

Mr. Wyman explained that the fire department has had an actual experience at his home, as a result of a recent fire, and he believes that they have sufficient capacity in terms of tankers, and potable pond areas. He pointed out that there is also a 40,000-gallon pool, which is accessible for such a use.

Mr. Naderman stated that the Town Engineer had asked if the applicant was meeting the Town roadway standards. He explained that we are asked to have 1 1/2% at the beginning, and they can readily provide that. They should also meet the criteria for the curves. there were a number of comments relating to the plans prepared by Evans & Assoc. Mr. Naderman said that he had addressed them on his plans, but Mr. Schroeder wanted them on Evans' plans as well and this would not be a problem.

Mr. Naderman added that there was a concern about there being a slight increase in the drainage. In design point three, the subshed is right across a ridgeline, and the only thing that is happening in the subshed is one additional area. Evans' plans did represent an infiltration system in the back, but they did not model that as part of the stormwater calculations. This might bring the numbers down a little bit. The increases were not much at all. The two-year storm is always difficult to bring down, even a little bit, but the 100 year level, they are almost cutting in half

Mr. Kaufman stated that, in his opinion, most of the issues have been resolved. Mr. Sessions still needed to verify the wetlands and a public hearing would be required for the preliminary subdivision plat. Mr. Naderman stated that they also needed a SEQRA determination. Mr. Kaufman explained tat this would be done when the Board grants preliminary subdivision approval.

The Board felt that this was close to a public hearing. Mr. Delano asked Mr. Schroeder about the drainage. Mr. Schroeder explained that he and the applicant were still working on it. Mr. Kaufman explained that this still needed to be resolved, along with the wetlands being delineated. Mr. Schroeder stated that he wanted the drainage revisions completed before this moves much further, and said that he would work with Mr. Naderman in this regard.

Mr. Kaufman explained that they have the steep slope disturbance figures, and they are minimal and reasonable given the amount of the development. The Board still needed information on the floor area for the house on lot three. Mr. Naderman said that the minimum is 8,400 and the maximum is 15,300. Eleven thousand is what exists. Mr. Kaufman asked that the applicant submit the calculations on the worksheet.

Dr. Matusow asked if the Board was going to require a specific waiting area for the children. Mr. Kaufman felt that there is enough space in front of the walls. Mr. Wyman added that there is space in the back of the walls. There are enough parking spaces for the cars as well. Dr. Matusow agreed, but wondered if the Board was going to formalize it on the plans. Mr. Wyman said that there is plenty of space between the left side of the driveway and the stonewall. Mr. Naderman asked if it would be sufficient if a note were included on the plan that specifically designates the area for waiting that shall remain clear of vegetation and snow. This was acceptable to the Board, and they did not expect it to be a paved area.

Mr. Kaufman explained that the Board would also need a plat map to review with metes and bounds descriptions as well as updated plans for drainage. They would have the wetlands verified, and after that, as long as he could locate the letter from the fire department, a public hearing could be scheduled.

NEW BUSINESS:

PIA

Amended Site Plan

Section 1, Block 11, Lot 11-14

4 Ashfields Lane

Jason Lepro – Jay Fain & Assoc.

Discussion

Referral to ZBA

Jay Fain was present for the application. He explained that one year ago, the applicant came to the Board for site plan approval for his house and a tennis court, and now he wants a 16x20 open tennis court pavilion. Mr. Fain explained that this would be an open structure and that there would be no increase in impervious surface because it is being proposed on top of a previously built patio. They are also requesting a referral to the ZBA to get a 10' fence on either end of the tennis court.

Mr. Kaufman and Dr. Matusow had no issue with this application.

Chairman Michelman asked Mr. Baroni how the Board would refer this to the ZBA. Mr. Baroni explained that they could just refer it and that it was not necessary to make a recommendation.

Mr. Kaufman explained that a public hearing will be required because of the coverage, but the Board can wait until it hears from the ZBA. Additionally, the ARB would have to see and approve the pavilion. Mr. Fain said that it has already been presented to them. Mr. Fain asked if it was necessary to have the public hearing. Mr. Kaufman said that it was because of the new requirement in the Code that requires public hearings for this type of application.

The Board directed Mr. Kaufman to refer the application to the ZBA.

STONEWALL, LLC
Amended Site Plan Approval
Section 2, Block 16, Lot 11.B01
145 Bedford Road
Bob Roth, P.E. – John Meyer Consulting
Discussion

Bob Peake was present for the application. He explained that they were requesting an amended site plan for signage that was originally proposed on the side of the driveway along Bedford Road. The sign was never erected, but now there are tenants in the building. This is a dead end and the applicant wants to place the sign on the upper left corner of the plan, which would meet requirements. The applicant is also asking for approval of a small tool storage shed.

Chairman Michelman explained that the Board visited the site, and that the ARB has the jurisdiction over the size and design of the sign plan. This Board agrees with the plan. The shed is basically tucked away and makes sense in the proposed location.

Mr. Peake explained that they have been to the ARB, and they've asked for changes. Mr. Kaufman explained that once the ARB approval is received, they could have a public hearing.

ARMONK PROFESSIONAL CENTER
Amended Site Plan
Section 2, Block 11, Lot 7-1
355 Main Street
Peter Garville, Garville Constructors, LTD
Discussion

Peter Garville was present for the applicant. He explained that, at the site walk, the Board recommended the applicant look at alternatives for screening the units on the roof. He said that he encountered potential problems with visual effects and / or sound. The landscape architect prepared a rendering of the site from behind, which Mr. Garville presented to the Board.

Mr. Simonetti asked if the applicant had any information relating to the sound these units are making. Mr. Garville said that there is a 50-60 DBA rating from these, but he found the code confusing; when unit is at the property line, the sound cannot exceed 55 DBA. He stated that, without doing a test, they couldn't determine this. Mr. Kaufman stated that was not true because they could estimate how loud it will be using calculations. Mr. Garville recognized that, but said that the Board was also concerned with visibility.

Chairman Michelman explained that, to her, the issue was that the site plan provided for nothing on the roof in the way of air conditioning equipment, and "somehow it landed on the roof," inconsistent with the approved site plan.

Mr. Garville explained that the reason they were relocated to the roof was because they could not operate properly on the ground. Chairman Michelman felt that if the equipment that was ordered couldn't do it, than the applicant should have found some that did. She explained that when this was approved, the Board did so with the express limitation that no A/C units would be placed on the roof. The building should have been designed with that in mind. Now the units are up there, and they want the Board to agree to something that had been specifically been refused previously.

Frank Cardile, the owner of building, said that it was unfortunate that the building came out the way it did. He explained that his project was way over budget, but he beautified the area. The Board appreciated the beauty of the building, but this was mostly part of the approval, and they should stick with the issues at hand. Mr. Cardile said that the Board should appreciate his losses, and the time and money he spent going through the process. He said that the building designed and approved with the units being on the ground. The units worked when it was cold, but once it started getting warm, they stopped working. He explained that they had experts, including the manufacturer, and it was decided that the length of distance from the ground to the units was too much, and no unit would ever work on the ground. They were faced with tenants already in the building, and their professionals advised them to put the units on the roof.

Chairman Michelman asked if the applicants thought about going to the Building Department. Mr. Cardile implied that he did not want to wait an additional 6 months to get approval by going to the building department. Mrs. Cardile explained that they already had tenants in the building that were threatening to sue. They brought in engineers, and tried putting in additional equipment. She had professionals walk off the job and someone suggested putting the units on the roof. At that point, she had forgotten the restriction and that is why they just went ahead and did it.

Mr. Adelman pointed out that the neighbor has 13 condensers on the ground level. Mrs. Cardile recognized this, and said that it was the same equipment used on their site. Mr. Adelman pointed out that this is a bigger space, and they manage to have the units on the ground.

Mr. Simonetti asked if they were being told that it cannot be done with the units they have, or *any* unit at all. Mr. Cardile claimed that everyone he had at the site said that no equipment would work on the ground.

Mr. Simonetti asked why it worked in one area and not the other, and the applicant said that it was because the distance is shorter. Mr. Simonetti asked Mr. Schroeder if this seemed plausible. Mr. Schroeder stated that it seemed strange to him, and he would assume that a unit could be obtained that would work from the ground. He advised however, that he is not an HVAC an expert. The Board stated that it wanted this information from the applicant.

Mr. Adelman stated that when the units were first proposed on the roof, the Planning Board as well as the ARB, told the applicant that they could not have the units on the roof. He doubted whether the applicant ever intended to purchase units for the ground; he strongly suspected the applicant simply went ahead with his original plan.

Mrs. Cardile stated that they have a tenant that needs the air conditioning. Chairman Michelman said that she understood this, but the applicant had to understand that there are neighbors that are sensitive to this, and aesthetics and noise are both factors. Mr. Cardile said that he would be willing to screen the units. The Board told the applicant that beautifying was not an issue – the noise was a major issue as well. Mr. Cardile said that more noise comes from Route 684. Chairman Michelman said that was not the point. The site plan specifically stated because of sound and visual impacts, no units were to be located on the roof and the applicant has their units on the roof.

Mr. Garville said that he has proposed an acoustical barrier to shield the noise from the units on the roof. Dr. Matusow asked who did the construction when the decision was made to move the unit from the ground to the roof. Mrs. Cardile said that it was Taconic Heating & Air Conditioning. Dr. Matusow asked if they were a major company, and the Cardiles said they were. Dr. Matusow felt that, because they were a significant company, who has probably done work in the Town before, it would be fair to assume that they know how a Town like this works, and that they would review the approved plan. Dr. Matusow stated that, the fact is that the contractor looked at the plan and saw that the units were supposed to stay on the ground, but decided to put the units up on the roof, and deal with the problems later.

Dr. Matusow said that the Board is not insensitive to the applicant's financial problems, but the Board has other obligations to consider long before that. He felt that the applicant made a decision that the neighbors in the rear – who are at the level of the applicant's roof – are less important than the applicants' tenants. Dr. Matusow said that before the Board starts talking about how to allow the units on the roof, they should talk about why they should consider it at all, and not require the applicant to find something that works on the ground, even if they have to rebuild the building.

Dr. Matusow said that the applicant was fortunate that the Building Inspector has not decided to pull the CO for the entire building. He said that his inclination was to require the applicant to fix the entire situation.

Mrs. Cardile said that she knew they made a mistake, and that they want to rectify it, but they have already spent a lot of money. She claims that their building made Armonk nicer. Dr. Matusow stated that the record is replete with the problem that the noise would create for the people behind them, and doubted they did not know they were not

supposed to have the units on the roof. Mr. Cardile said that they did have it on the ground and even changed equipment.

Mr. Garville asked how they were going to define noise. Dr. Matusow was not sure that it was the Board's responsibility to define noise. The applicant agreed that the noise, without definition, was sufficient to put the units on the ground. There is no reason why the applicant should be able to force the Board to define the term now.

Mr. Adelman suggested that since the Town Engineer is not an expert in HVAC or noise, that the applicant be directed to retain and fund an expert (of the Board's choice), and he consult with the applicant's engineers as to whether there is an HVAC unit that can work on the ground. If there is none, then the Board can start to look at the applicant's proposal for screening the units on the roof.

Mr. Cardile felt that they had already done this, because a number of people have reviewed the equipment and they have all determined that the units would not work on the ground. The Board explained that the applicant's professionals were not neutral or independent, by virtue of the fact that the applicant hired them. The Board wanted to retain an independent professional.

Mr. Kaufman explained that the Town Code provides for this type of review; it is no different than if the Board hired an engineer, and bill the applicant for it. Mr. Baroni confirmed this, and added that any consultant that has to be retained by the Board has to be funded by the applicant.

Dr. Matusow asked how big was the units on the ground were. Mr. Cardile said they are approximately 30x30x36 (considered small). Dr. Matusow suggested moving those units inside the applicant's building. The applicant's professional stated that the units are not typically placed inside a building. Dr. Matusow stated that this does not mean they are never placed inside. The applicant said that they would not function inside.

Chairman Michelman stated that the units did not function because they were too far away. She suggested looking at the property to see if there is another area to place these ground units where they would work. Mrs. Cardile said that they already looked at other locations. Chairman Michelman said that the Board was trying to work with them, while trying to prevent these units from remaining on the roof. Letting the units remain on the roof is the last resort.

Mr. Simonetti suggested submitting all engineering information to our engineer and letting the Board take it from there.

CAFÉ NORMA

Site Plan

Section 2, Block 11, Lot 3H

287 Main Street

Bill O'Neill, AIA – O'Neill Architects

Discussion

Present for this application was Mr. Bill O'Neill. He explained that Café Norma took over the location of Dr. Produce, put in tables and received a violation. He said that the applicants have removed the tables, but now want to apply as a restaurant. Some of the problems include insufficient parking, and the applicants are requesting a fairly substantial parking waiver. Mr. O'Neill said that some of the spaces are both on and off the applicant's property. He said that there is a 1997 cross easement which was arranged between several property owners on Kent Place, which allows for parking along Kent Place, and behind the buildings on the west side of Main Street. The intention was to allow further development on the west side of Main Street. He explained that a substantial parking variance was granted to the D'Giacintos at that time, with the understanding that the mutual benefit of the combined parking areas would benefit other business owners as well. To date, no one else has been able to take advantage of that. Mr. O'Neill explained that the applicant was before the Board requesting a positive recommendation to the ZBA.

Chairman Michelman asked if the applicant had read Mr. Kaufman's memo and Mr. O'Neill said he had. She asked for his thoughts regarding the tiered criteria. Mr. O'Neill said that the applicant would be mostly in favor of it, but they are unable to apply for it now, because it is not in the code. Mr. O'Neill added that he had a conversation with Mr. Kaufman regarding going as high as 150 per space. However, they had to start somewhere, and therefore would like to go to the ZBA with a recommendation, but they are not opposed to a carry out restaurant. It is tailored to the applicant's kind of use.

Mr. Becker explained that they are only looking for approval for what they have now; they are not looking to be a restaurant and have table service, and they are not seeking to have waitered tables.

Mr. Kaufman recommended that this Board take the carry out definition and use to the Town Board and see what they say. Dr. Matusow agreed with that recommendation and asked if the time frame was pressing. The applicant said it was not. Dr. Matusow felt that this might be better to approach the Town Board. Mr. Kaufman said that even if it takes an extra month or two, there is no impact because the applicant is permitted to operate as they have been.

Mrs. Becker stated that, despite her husband and Mr. O'Neill's opinion to be willing to go with the carryout designation, she wanted to have the same options as other businesses like the pizza place, and Country Kitchen. She felt that the carry out designation would suit them for now, but might impede them in the future. She was hesitant to go through the process of having additional costs to change the law. She said they are only leasing the store, and are not owner-operated. She does not want to be faced with a hardship regarding the parking designation.

Mr. Kaufman said that he recognized Mrs. Becker's concern, and recognized the need for a parking district. Although he realizes that the Beckers are somewhat caught in the middle, he explained that he met with the Beckers before they opened their business, and told them that the store was only approved for retail, that they could not have any seats, and that there is not enough parking for a restaurant. He added that he even drafted a proposed law, but the problem is that there is not enough parking; the Town needs a parking district.

Mr. Simonetti asked if the applicant's could qualify as a take out now, would it be able to be modified to a restaurant in the future. Mr. Kaufman said that it could. Mr. Simonetti felt that the applicant would achieve the short-term objective, and still be able to become a restaurant in the future.

Chairman Michelman pointed out that there is no guarantee that the applicant would get the large parking variance. Mr. O'Neill believed that the ZBA would consider the cross easement agreements, with the specific intention that it was done in lieu of a parking district.

Dr. Matusow felt that the Board should push for the other alternative because it removes the problem of "segmentation" of the stores. The long-term goal of the Town has been to create a parking district, and while it has not happened yet, it does not mean it is out of reach. However, it could become out of reach if each store gets a parking variance. If they all have a variance, there is no reason to create a parking district. Going to the Town Board rather than the Planning Board preserves the applicant's and the town's long range options. Mr. Adelman and Chairman Michelman agreed, and felt this was the best course.

Mr. O'Neill noted that both Mr. Kaufman's and Mr. Schroeder's memos indicated that some of the parking spaces are not entirely on the applicant's lot, and therefore they should not be counted. Mr. O'Neill asked if it was their position that these spaces do not belong to anyone, and cannot be counted at all. Mr. Kaufman said that it was not his position; that they need to ensure that those spaces are never double counted. Mr. O'Neill felt that no one was benefiting from these spaces. The property owners already came to an agreement regarding cross easement parking in lieu of a parking district; the reason this was done was because these property owners received assurances from the Town that they would receive real benefits, similar to those granted to the D'Giacintos.

Mr. Baroni questioned the validity of this statement. He felt that the cross-easements were really meant as a stop-gap measure, and it has gone on longer than the Town desired. He felt the problem was that they have not been able to get the right percentage to agree to go forward with the district. Kellard Engineering had been commissioned to develop a plan of what it would look like, and when they included everything, like lighting and landscaped islands, irrigation, and the like, it resulted in a big number. He thinks that the property owners were scared to go forward, and that was when the stop-gap measure was created.

Mr. O'Neill read a portion of the earlier record, which reflected that a 60% variance was given to the D'Giacintos, and that no similar consideration was given to anyone else.

Chairman Michelman asked if it was really the applicant's desire to go to the ZBA. Mr. O'Neill said he needed to speak with his clients to answer this.

Chairman Michelman pointed out that business is continuing, and will continue at the applicant's store, despite being in violation. Mr. O'Neill realized this and said that if they were denied at the ZBA, they would always be able to come back to the Town Board. He stated that he did not mean to make this more difficult than it needed to be. After speaking to his clients, Mr. O'Neill informed the Board that they would like to go to the Town Board and present their application. He added that Mr. Kaufman had some language that he would like to use for the application. Chairman Michelman said that the Board could write a letter to the Town Board, if the applicant desired. Mr. O'Neill said that he would like a recommendation to the Town Board with a slightly different parking requirement. Mr. Kaufman said that he is not comfortable doing that yet. His current draft of the legislation has a parking requirement is 1 space for every 100sq. ft. of gross floor area. Mr. O'Neill said that they would not be able to meet this. The Board recognized this, but said they would be closer. Dr. Matusow said that this debate could be had at the Town Board level. Mr. Kaufman pointed out that the Town Board was going to want a recommendation.

Mr. Kaufman asked if the Board wanted to see a draft of the legislation. Mr. Baroni said that the Board would be able to do that, and work with the language prior to sending it to the Town Board. Mr. Kaufman felt that the Board might determine that 1 per 150 is the right number, but the Board should not tailor the law to this particular applicant. The Board agreed.

Mr. Kaufman recommended getting this on the Town Board agenda. The Board agreed. Mr. Baroni suggested the Board inform the Building Inspector, so that the violation does not ripen into an action. Mr. Kaufman agreed.

ROLLING HILLS SUBDIVISION
Construction Cost Estimate and Inspection Fees
Section 1, Block 9, Lots 13 & 13-2
103 & 111 Round Hill Road
Recommendation to Town Board

Dr. Matusow moved to recommend this application to the Town Board. The motion was seconded by Mr. Simonetti and unanimously approved.

The meeting was adjourned at 10:50 p.m.
