



**Robert Sherwood, Landscape AIA**

**Discussion**

**Consideration of special use permit resolution**

Chairman Michelman read the public notice for the record. She asked if there were any neighbors present for the application. Mr. Daniel Samuels of 4 Hadley Road, Ms. Fran Veja of 1 Hadley Road were present. Ms. Desimone noted that 6 out of 10 cards were returned and that all paperwork was in order.

Mr. Robert Sherwood was present on behalf of the applicant. The applicants are proposing a swimming pool that will be located in the rear of the yard. He presented the plan for the neighbors and indicated the locations of the existing drive, the residence and the proposed pool. It is within the setback regulations. The pool is 60' from the rear property line and 55' from the side property line. Mr. Sherwood explained that the terrace comes closer: approximately 49' from the rear property line and "40-something" feet from the side property line. It does fall within the gross land coverage calculation; it is approximately 2,300 sq. ft. above the minimum and 2,100 below the maximum.

Chairman Michelman asked Mr. Schroeder if he had any issues. Mr. Schroeder said that he was still waiting for the official soil tests to be completed. Mr. Sherwood stated that those were started that day.

Chairman Michelman asked if the neighbors had any comments or questions regarding the application. Mr. Samuels said that he lived directly adjacent to the applicant, and indicated his location on the plan. He said that he has lived in Armonk for a long time and wanted to know what the required distance was for applicants to send notices to the neighbors. Mr. Kaufman said that it was 250 feet. Mr. Samuels said that he had serious concerns about this location of the pool. He explained that his well is approximately 100' downhill from the proposed pool and any discharge may contaminate his well. He recognized that it will likely be self-contained and contain dry wells and similar protections, but he was not convinced that that was enough.

Mr. Samuels was also concerned because there is a major wetlands area in the front. The southeast corner of the applicant's land and the southwest corner of his land are inundated with water frequently. The houses recently constructed nearby have large roof surface areas and they get a lot of that water. The Town is aware of this problem. However, when those homes were built the neighbors were assured that sophisticated drainage systems would be installed. He was concerned that a large volume water would displace the groundwater, and will flow onto his property. He felt that the more appropriate position for the pool was further back on the other side of the lot.

Mr. Schroeder said that the Town Engineers are aware of the drainage issue on the street, and they are in the process of researching the problem. As far as the setback from the well, he believed it only needed to be 50.' Mr. Delano stated that the DEC guidelines call for a separation of 100' from a private water supply. Mr. Delano said that if the infiltrators for the pool are at least 100' from the neighbor's well then that meets the standard. Mr. Samuels was concerned because it was on much higher ground. Mr. Schroeder believes the applicant has a drywell proposed for the pool's draw down itself as well as a drywell infiltration system for the increased impervious surface.

One woman said that they don't work. The heavy rains they've had recently have proven this. The drywells fill up and then overflow onto the neighbor's property.

Chairman Michelman asked what areas Mr. Schroeder was reviewing. Mr. Schroeder explained that it was Hadley Road and High Street and the problems that have emanated from Sterling. Mr. Schroeder believed that they will have a letter within a week or so. The neighbors said that this has been going on for six months. Chairman Michelman explained that the Town is looking at the problem, and trying to correct it, and they cannot ask the Engineers to do anything more than that.

One woman stated that the neighbors had been complaining about the problem on the street for at least two years, and they finally met with Supervisor Berman who said it would be looked into. The neighbor wanted to know how long they were supposed to wait for this to be resolved. Chairman Michelman stated that she understood the neighbors' concerns, and the Board would attempt to move things along so that a resolution is reached. However, the purpose of the meeting was the applicant's pool and the possible impact on the neighbors. Mr. Samuels understood that, and stated that they were only concerned that this application would exacerbate the problem.

Chairman Michelman asked Mr. Schroeder what impact the pool will have on the neighbors' properties / wells. Mr. Schroeder said that it is likely it would have little impact on the well. If the infiltration system is set back 100' as required, then it is unlikely to impact at all. Mr. Sherwood stated that they are mitigating the additional impervious surface pursuant to the Code and the main concern for the neighbors is that no matter what happens during a rainstorm, runoff exists. There will still be runoff as it exists today, but this applicant is mitigating the increased impervious surface. The drywells are designed to fill up and overflow, the overflow is directed into a controlled environment, the applicant's front yard wetland.

Mr. Sherwood added that he believes the State Code requires a pool to be set back from a well is 25' or 50'. Mr. Schroeder stated that one way the applicant could attempt to decrease the amount of runoff is to increase the size of the drywells.

Mr. Samuels had some pictures and asked if the Board wanted to see them. Chairman Michelman recognized the problem but still wanted to focus on the pool and whether or not it would exacerbate the problem. Mr. Sherwood stated that he did not think it would cause a problem. They are mitigating the impervious surface for the displaced groundwater. It is an 800 sq. ft. pool; the foundation for the pool will be approximately 9' deep. The test holes that were dug show that they hit water at 6'. Chairman Michelman asked, hypothetically, what difference would moving the pool make on the runoff. Mr. Sherwood believed that it would create more runoff because they would have to do more grading and filling.

Chairman Michelman asked if Mr. Kaufman had any issues and he did not.

Mr. Samuels stated that if the pool was moved in the back the extra 100-150' of distance would be a sufficient buffer, and he would be more comfortable.

Mr. Delano stated that the plan does not reflect that the pool equipment will be screened from the street, and he believes it should be. Mr. Sherwood said that they would screen

it. Mr. Delano said they should do that or find another location for it. Mr. Delano pointed out that if they plant around it in its current proposed location the applicant would need a wetlands permit as well. Mr. Sherwood said they would try and find another location for the equipment.

Mr. Delano stated that he wanted the applicant to confirm the distance between the infiltrators and the neighbor's well and that the distance at least meets the state standard. If it does not, then they will need to revise the drainage system.

Mr. Samuels said again that he was concerned that the proposed filtering and drainage system would be sufficient and function properly.

Dr. Matusow asked if the Board wanted to require that the applicant increase the size of the drywells as Mr. Schroeder mentioned. Mr. Schroeder stated that they could be sized for a 25 year storm event or a 100 year storm event. Dr. Matusow asked what they were currently sized for and Mr. Sherwood stated that they are sized 2" rain storm, which is not a 25year storm event. Mr. Schroeder stated that given the small amount of impervious surface at issue [*inaudible*]. Dr. Matusow stated that it would give the neighbors more comfort if the drywells were increased in size. Mr. Samuels asked what a 25 year storm event would equal. Mr. Sherwood stated that it was similar to the rainfalls that had been experienced in recent days, approximately 6 or 7 inches. Mr. Schroeder said that a 100 year storm event was 7 inches, so a 25 year storm event is less than that. Mr. Delano stated that since the street drainage is only required to be for a 10 year storm event, then a drywell for a 25 year storm event is more than generous. The Board agreed.

Dr. Matusow moved to close the public hearing. The motion was seconded by Mr. Delano and unanimously approved. The applicant will increase the drywell to accommodate a 25 year storm event, change the location of the pool equipment and confirm that the distance between the infiltrators and the neighbor's well meets the state standard. Mr. Kaufman stated that the Board could approve the resolution with these as conditions.

Chairman Michelman asked if Mr. Sherwood had reviewed the resolution. He stated that he had and had no comments on the resolution other than requesting that the Town Engineer's comments be moved to prior to the issuance of a building permit. Mr. Schroeder stated that he would prefer that they remain where they are. The Board agreed.

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

**SCHWARTZBERG**  
**Special Use**  
**Section 2, Block 3, Lot 7-22**  
**12 Wrights Mill Road**  
**Robert Sherwood, Landscape AIA**  
**Discussion**  
**Consideration of special use permit resolution**

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 7 out of 13 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for the application. There were not.

Mr. Robert Sherwood was present on behalf of the applicant. He explained that they were seeking a special use permit because the gross lot coverage falls between the basic and the maximum. They are within 822 sq. ft. within the maximum. They are expanding the motorcourt by 450 ft. and are proposing to build a 20x40 pool.

Chairman Michelman asked if Mr. Sherwood had reviewed the resolution. He said that he did, and had no issues with it.

Dr. Matusow moved to close the public hearing. The motion was seconded by Mr. Delano and unanimously approved. Mr. Adelman was not present for the vote.

Ms. Black made a motion to approve the resolution. The motion was seconded by Mr. Delano and unanimously approved. Mr. Adelman was not present for the vote.

### **PUBLIC HEARING & NEIGHBOR NOTIFICATION**

#### **LASHINS**

##### **Site Plan**

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

##### **1 Hidden Oak Road**

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

##### **Discussion**

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 17 out of 21 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present for this application. Mr. Stewart Breifblat at 3 Hidden Oak Road was present, Ms. Ann Manzi at 5 Hidden Oak Lane, Ms. Ann Schaller at 5 Hidden Oak Road and Ms. Dunn at 2 Whippoorwill Crossing were present.

Mr. Rich Williams, and members of the applicant's company were present for the application. Mr. Williams explained that the property is three acres in the R2A zoning district. Bayberry Road abuts the property to the North, and Hidden Oak fronts the property to the east. There is an existing single family residence on the property serviced by an existing subsurface sewage disposal system and a driveway. He indicated the locations of all of them.

Applicant is proposing to remove the existing residence and reconstruct a single family home, shifted slightly further back on the property. They are also proposing to construct a new subsurface sewage disposal system in the front of the property. They would relocate the existing public water surface and the driveway entrance to provide maximum sight distance.

Mr. Williams explained that at a previous meeting with the Board, it was noted that they did not have the required 200' sight distance for the proposed driveway. On May 3<sup>rd</sup>, the applicant received a variance for the sight distance. The ZBA was concerned about the

screening between Mr. Breifblat and the proposed driveway. In order to address those concerns, they met with Mr. Breifblat to review the landscape plan. They've agreed to add an additional 11 10' tall evergreen trees. Mr. Williams pointed out that they do not currently show on the plan, but will be reflected in subsequent submissions.

Mr. Williams stated that, in the last letter, it was noted that the building height at the lowest point was 39.75', which is in excess of the permitted 38'. They have revised the plans, to be submitted, which will reflect a height of 36' 1/4" at the lowest point and the average grade will be 25' 8".

Additionally, the Town Planner had a comment in his memo about the surrounding footprints of the neighboring houses. The areas provided are the footprint of the surrounding houses, average 4,479 sq. ft. in order to "compare apples to apples" the footprint of the proposed house is 4,300 sq. ft., so they are 100 sq. ft. less than the surrounding houses' footprints.

Chairman Michelman asked if the neighbors had any comments or questions. One neighbor wanted to ensure that the planting between the applicant's property and his property would be required. Chairman Michelman stated that it would be on the site plan that is finally approved. The site plan would not be signed without it. He also asked about the square footage that Chairman Michelman mentioned in the public notice, because he thought it was 7,435. Chairman Michelman stated that her figure of 8,633 includes the attic. Mr. Kaufman added that if the basement is more than 50% exposed, that is included as well. Mr. Williams believed it was the 7,400 figure, but would confirm with the architect.

Chairman Michelman stated that one issue raised by Mr. Kaufman's memo was the size and height of the house. She stated that although the applicant addressed the height of the house, there is still a walkout basement and a lot of fill. She suggested that while the architect is revising the plans for the height issue, he could also look at the issue of the mass.

Mr. Kaufman stated that they should determine whether there really is a mass issue. The code requires the applicant to compare the gross floor area of the five surrounding houses, not the footprint. Therefore, we don't know if there is a mass issue, because the applicant compared footprints. The applicant needs to provide that information. Additionally, the Board needs to review the elevations and how the house will look from the rear; especially the impact on Bayberry. It seems the applicant successfully dealt with the screening of the neighbor's property. Mr. Kaufman cautioned the Board to keep in mind that there is approximately seven feet of fill proposed, and that will impact the neighbor's property as well. Mr. Williams stated that is where they are concentrating the screening. Additionally, the property sits very high up in comparison to Bayberry so they will be sensitive to that also. They are hoping that the way they are siting and screening the house it would mitigate that impact.

Mr. Delano suggested that the applicant provide sections. Mr. Kaufman agreed. Ms. Black stated that her biggest concern was the rear elevation, and the mass of the house with the full basement exposed.

Mr. Williams stated that they are keeping the grades approximately as they are now. The existing house has approximately half of the basement exposed, so they are not changing it that much.

Dr. Matusow asked if the applicant had considered Mr. Kaufman's specific suggestion regarding the grading: "if the grading plan were revised to eliminate the fill and the walkout basement, the resulting addition would reduce the amount of exposed exterior wall height and also reduce the perceived mass of the home." Mr. Williams said that they could look at it, but everything is being dictated by the grade in the front. Therefore, they are coming out at grade in the rear, so they can't push the first floor into the ground. Mr. Kaufman agreed, but stated that it is more about moving the house so they don't have to create the addition. Mr. Williams stated that the further down the hill it goes, the worse it will get.

Mr. Kaufman asked what would happen if the applicant used the footprint of the existing house. Mr. Williams stated that they would still be coming out fairly close to the grade in the back, so it wouldn't make much difference.

Ms. Dunn stated that she lives downhill from the steep slope, and she is concerned about runoff. She explained that she already suffers from a great deal of runoff from the steep slope and Bayberry. The neighbors had been informed that the runoff would be put into something, but could not recall what it was. She wanted assurances that there would not be any increased runoff.

Mr. Williams explained that the water would flow to three subsurface infiltration systems; one for the driveway and the front portion of the lawn, one for the entire house, and one for the discharge from previous applications. There is a break in the topography, so much of the water flows downhill. All of the infiltration systems are designed to discharge on the other side of that break so they will attempt to redirect some of the runoff, alleviating some of the neighbors' concerns. Ms. Dunn asked if there were assurances there would not be increased runoff during construction. Mr. Williams stated that during construction they will apply all practices to control runoff and sediment so that it does not impact the neighbors.

Mr. Williams added that they have provided the Town Engineer with the drainage calculations and they will be obtaining a SPEDES permit. Chairman Michelman explained to the neighbors that this is a special permit issued by the state.

One neighbor asked if the driveway was granted [sic]. Chairman Michelman explained that the variance for the driveway was granted, and this Board was advised by the ZBA that the proposed position of the driveway is much safer than the one that currently exists, so that is an improvement. The neighbor said that she was concerned about how the size of the house will change the character of the neighborhood. Chairman Michelman stated that the Board had just requested the applicant readdress this issue for the next submission. The neighbor asked if the neighbors were going to hear about the resubmission. Chairman Michelman stated that the Board had the option of holding the public hearing open.

Mr. Kaufman stated that the Board was going to receive a revised plan with at least a 3' reduction in height and will review sections of the elevation. Chairman Michelman stated

that the public hearing would remain open. Mr. Kaufman added that they were also going to get an analysis of the gross floor area of the surrounding homes. Chairman Michelman advised the neighbors that no additional mailings would be sent regarding the next time the applicant is on the agenda; they would have to call or look online.

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

## **GILEAD CONSTRUCTION**

### **Site Plan**

### **Section 2, Block 5, Lot 2D-21**

### **5 Ridgeview Circle**

### **Peter Gregory, P.E. – Keane Coppelman Engineers**

### **Discussion**

#### **Consideration of site plan resolution**

Chairman Michelman read the public notice for the record. Ms. Desimone noted that 22 out of 24 cards were returned and that all paperwork was in order. Chairman Michelman asked if there were any neighbors present. Ms. Lisa Shep of 74 High Street was present.

Mr. Peter Gregory was present along with the applicant for this application. Mr. Gregory explained that this application was for a site plan approval for the construction of a five bedroom single family home. The property is in the R2A zone, and is two acres. The property slopes from west to east, rear to front. It is moderately steeper in the rear. The house is proposed in the mid portion of the lot on the northern side. The driveway is proposed to pass in front of the home to a side entry garage on the left. The septic system is proposed on the southern portion of the property and the well is proposed on the northern front of the house. He indicated the proposed locations. Mr. Gregory explained that stormwater runoff from the new impervious surface will be collected and discharged into a subsurface infiltration system located in the front of the property. There is an overflow that is provided that will connect into the existing collection system in Ridgeview Circle that ultimately discharges into a detention basin at the cul-de-sac.

The construction of the home will require 88 regulated trees to be removed. Additionally, the northern portion of the property is designated as a steep-slope area; 330 sq. ft. of steep slope will be disturbed there. There will be a special use permit required due to the fact that the coverage on the property exceeds the basic permitted by approximately 975 sq. ft. and a special use permit is required for the construction of the house because it exceeds the basic FAR by 3,605 sq. ft.

Chairman Michelman stated that the applicant does exceed the basic, but is below the maximum for both the FAR and the land coverage. She noted that for the neighbor that the gross land coverage is below the maximum by 3,508; Mr. Gregory explained that the FAR is below the maximum by 700 sq. ft.

Chairman Michelman asked if the neighbor had any questions. She looked at the plan and asked the location of the cul-de-sac, which Mr. Gregory indicated. She asked several questions of Mr. Gregory, all of which he answered to her satisfaction. She was concerned about the size of the house, and thought that the Town Board was going to be limiting large houses. Mr. Kaufman explained that the house does not exceed the

limit; what the Town Board did was to adopt a minimum threshold. If the house exceeds that minimum, the Planning Board will review it to determine if it is appropriate. The Town Board also established maximums, and no house can exceed that. All the houses before the Board tonight are above the basic, but below the maximum.

Chairman Michelman asked Mr. Schroeder and Mr. Kaufman if they had any issues. They did not. Mr. Kaufman noted that he had prepared the resolution as directed. Chairman Michelman asked if the Board had any issues.

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

Chairman Michelman asked if the applicant had reviewed the resolution. Mr. Gregory said that he did. His only concern was that there were some items requested that have already been submitted, i.e. the ARB approval. Mr. Kaufman said that these things would just be checked off as completed. Mr. Delano made a motion to approve the resolution. The motion was seconded by Ms. Black and unanimously approved.

## **CONTINUING BUSINESS**

### **MODERN BARN**

#### **Referral from Town Board – Rezoning**

#### **Section 2, Block 3, Lot 39E**

#### **430 Bedford Road / 19 Cox Avenue**

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

#### **Rob Aiello, P.E. – John Meyer Consulting**

#### **Discussion**

Mr. Dan Hollis and Mr. Rob Aiello were present on behalf of the applicant. Mr. Hollis stated that they were before the Board requesting a referral with a recommendation of approval. He explained that a site walk was scheduled with the Conservation Board the following day, that the ZBA application was being heard at the June 7<sup>th</sup> meeting, and that there is a public hearing scheduled on June 13<sup>th</sup> regarding the proposed rezoning. Mr. Hollis stated that the applicant's goal was to have revised plans before the Planning Board so as to be scheduled for the June 25<sup>th</sup> meeting, with the hopes of having a public hearing on July 9<sup>th</sup>.

Mr. Delano asked if the applicant had reviewed the memo from the fire inspector, and noted that the issues raised in that memo seem to cause a big problem for the applicant. Mr. Roth said that he'd address this. Chairman Michelman pointed out this might impact the parking. Mr. Roth said that they have a call into Mr. Richardson regarding this issue and doubted that this would create a problem with parking. Mr. Kaufman stated that it was his impression, based upon his conversation with the fire inspector, he does not want parking in that area.

Mr. Roth presented last month's plan to the Board and explained that the new plan addresses the concerns from the last meeting. There were questions regarding the layout of parking, additional landscaped islands, placement of parking lot lights, and the number of loading spaces. Under the code this building requires three loading spaces. He indicated where they are proposed. The new plan addresses those things and if this

Board approves, they will work on tweaking this plan. Mr. Roth explained that they have incorporated landscaped islands and improved circulation. This also provides spaces to put the lights. In doing so however, they lost 4 parking spaces (the applicant previously had 136, now they have 132). He explained that the Board has a policy for storage areas and apply the same rate as the principal use, which would necessitate 148 and would require a variance from the ZBA. The applicant still believes that there will be more than sufficient parking at the site and that the model does not recognize that there will be inherently shared parking; the actual required parking would be more like 108.

Mr. Roth noted that Mr. Schroeder had a question regarding the layout of parking, specifically the ability of a truck to make a certain turn. Mr. Schroeder indicated that he wanted to see the actual maneuverability, which they will be able to do with a 3D computer program. Mr. Roth added that they have also reconfigured the lot, which allows the truck to be guided better. Mr. Roth reminded the Board that there was a sight triangle in one area of the parking lot, and although there was nothing within that triangle was above the maximum height, it contained a parking space. If, and when, a car parked in that spot, it would be above the maximum height. This parking spot has been moved out of the triangle.

With respect to the loading areas, the one in the front left of the site will remain, however, the rear left loading area will be moved and that area will now contain landscaping. Mr. Roth noted that now, each corner of the building is anchored in loading areas.

Mr. Kaufman stated that this was a much better plan, and that it was exactly what he had envisioned in terms of landscaping. In light of the significant variance being requested, he suggested that the Board consider two plans. He explained that there is nothing in the Code that would prevent the original layout with the only one landscaped island and landbanked parking. Mr. Hollis pointed out that the applicant could ask the maximum required variance of 16 spaces at the ZBA meeting. Mr. Roth added that the applicant would only be able to landbank four spaces in plan "A" not 16. He suggested that one thing this Board could do is explain to the ZBA that this is a policy that this Board has had about the storage being on different levels. The applicant believed that the 136 spaces fully complied, and by adding the landscaping they lost 4 spaces.

Chairman Michelman suggested that they address the issue of the fire lane, and whether that will or will not impact the parking. Mr. Kaufman explained that the Board always sends site plans to the police and fire departments, and so far no official communication has been received from the fire department, only the fire inspector. The fire inspector indicated that he wanted a knock box, a sprinkler system and a fire lane. Mr. Roth acknowledged that Mr. Richardson wrote that memo, but pointed out that they have not had the opportunity to speak with him and believes that they will be able to reach a happy medium. He explained that there are plenty of instances in town where there is parking in the front of buildings (i.e. MBIA and Main Street), and there is nothing that prevents it. He explained that there are several fire lanes on the site. He stated that he would speak with Mr. Richardson and report back to the Board.

Chairman Michelman felt that the Board should have this information prior to referring to the ZBA. Mr. Kaufman stated that would be advisable because it could impact the number of parking spaces. Mr. Hollis said that he would prefer to go sooner, and that he

would bear the risk on this issue. He said that if this issue is not resolved by June 7<sup>th</sup>, he would make the ZBA aware of the issues and that they need to keep the meeting open.

Mr. Delano asked if this site had a private well, and Mr. Aiello said that it did. Mr. Delano asked if they were going to sprinkle the building, and Mr. Aiello said they were. Mr. Delano suggested the applicant installs a stamp pipe as well. Mr. Aiello noted that MBIA is on a private well, and they have tanks in the basement. This will be similar situation, but this site has two wells.

Mr. Kaufman noted that the Board has also received comments regarding the traffic study, which needs to be updated and amended. Mr. Roth explained that his office would respond to FP Clark's memo. The applicant knows the sight distance works and they will be able to respond to the concerns.

Mr. Kaufman pointed out that they have also received comments from the DEC regarding the traffic light the applicant is willing to install. The DEC said that they are declining the installation at this time. Mr. Roth repeated that they are still willing to fund this installation. The area needs a light today, and one will still be needed later. The State hasn't denied the installation; only that they are not approving it at this time. Mr. Kaufman noted that the Town does not want to wait until there is a problem that they need to react to; they want to be proactive. Mr. Hollis felt that the applicant has done all it could in this regard, and that they are still prepared to put up a bond or something similar. Mr. Kaufman agreed that there is nothing more the applicant could really do, and this is not their fault.

Dr. Matusow stated that there is already a traffic light on the corner of Greenwich Road and the development that is likely to occur on the south side of Route 22 in the near future, could have an impact on the traffic that flows through these two very busy intersections. He said that this is something the Board has to consider. The volume and patterns will change, and the Board should take a look at what the maximum build-out could be, and the traffic that might be generated. That information should be incorporated into the discussion for this application.

Mr. Kaufman noted that any redevelopment across the street would have to go through the same traffic analysis, and if there were a problem, then *that* applicant would have to mitigate (i.e. slip lanes, or adjusting the timing). Mr. Kaufman stated that if the Board knew of any pending applications, Dr. Matusow's suggestion would be permissible; however, as there are none pending it is not appropriate to consider in terms of this application. Dr. Matusow reiterated that he felt the Board should look at the whole picture. Mr. Roth explained that the applicant's proposal will not preclude any development across the street; this applicant is proposing to prohibit left turns out of the driveway, which are currently permitted. Dr. Matusow wanted to know what would happen if the Board looked at the traffic in the whole area, and determined that the configuration of the Cox Avenue intersection was so inappropriate with the added traffic that it could not function that way. He stated that this is a difficult turn and wanted to know when it is appropriate for the Board to consider that there is a lot of room in that intersection and that something might be able to be done.

Chairman Michelman stated that she would like to be accommodating in terms of the ZBA waiver but without a clarification on the fire inspector's issues, she did not think it

would be prudent for the Board to positively recommend the waivers being requested to the ZBA. Mr. Hollis said that he would make that argument before the ZBA, and only requested the referral from this Board. Mr. Hollis pointed out that the applicant bears all the risk in this regard; the applicant would have to publish the next day in order to be on the June 7<sup>th</sup> agenda and the notices were sent certified mail and contains both the parking and the other issue.

Mr. Baroni pointed out that the application needed to remain open because this Board has to finish SEQRA. This way, the Board could hold off on their referral and recommendation. Mr. Delano asked why the applicant couldn't simply go to the ZBA on their own. Mr. Baroni explained that they have to be referred, but there does not have to be a recommendation. Mr. Hollis requested that the Board refer without a recommendation.

Dr. Matusow moved to refer the application to the ZBA without a recommendation. Ms. Black seconded the motion and it was unanimously approved.

Mr. Hollis asked if there was a recommendation for the front yard. The Board said that they could not recall; Mr. Kaufman looked it up and informed everyone that it was referred, with a positive recommendation.

## **CINE MAGNETICS**

### **Subdivision**

**100 Business Park Drive**

**Section 2, Block 16, Lot 11B-4**

**Bob Peake, P.E. – John Meyer Consulting**

### **Discussion**

#### **Referral to Zoning Board of Appeals**

Mr. John Kirkpatrick, Esq. was present for the application. Mr. Kaufman informed the Board that this project took a hiatus for a few months to address flood storage issue with the Town Engineer. This issue has been addressed, as have most other comments. Mr. Kaufman explained that the applicant still needed to address issues from the prior traffic report. He added that they have received confirmation from Mr. Sessions that there are no wetlands on the property. The applicant has provided an internal connection between the two properties as requested. In large, the Board's concerns have been resolved.

Mr. Kirkpatrick explained that the state law requires this Board to make a recommendation to the ZBA. Mr. Kaufman explained to the Board that the main concern was the flood storage issue, but now, the Board may have enough information to make a positive recommendation to the ZBA.

Mr. Kirkpatrick stated that they needed to update the traffic study because the building has been converted to a warehouse and made smaller. Additionally, they need to demonstrate there is adequate sight distance, which will not be a problem. The issues that remain are site plan issues and the Board needed to be satisfied that the applicant could satisfy these issues before they could make a recommendation to the ZBA. He said that he believes the applicant is in that position. He pointed out that they would still need subdivision approval after the ZBA. Mr. Kaufman stated that the applicant would

have to come back to the Board for the amended site plan, which will still include landbanked parking; Mr. Kirkpatrick agreed.

Mr. Schroeder stated that he had no issues with this applicant. He pointed out that the applicant has been very cooperative in working toward resolution of the flood storage issue and they have been successful in this regard.

Mr. Delano moved to refer this application to the ZBA with a positive recommendation subject to 213.13(f). The motion was seconded by Dr. Matusow and unanimously approved.

Mr. Kirkpatrick asked if the ZBA would recognize that their approval would not be an action under SEQRA. Mr. Kaufman explained that the two Boards are doing a coordinated review, and that it is an unlisted action, so this Board would need to conclude SEQRA before the applicant could get a variance. Mr. Kirkpatrick asked if the ZBA could make a conditional approval. Mr. Baroni said that they could not; this Board has to get a negative declaration before the ZBA could vote. Mr. Kaufman recommended the applicant compile all the traffic information before the Board issues a negative declaration.

The Board directed the applicant to go to the ZBA, and then come back to this Board. Chairman Michelman explained that the applicant would be placed on an agenda as soon as possible.

## **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 for this application. He apologized to the Board for the lengthy delay on this application and assured the Board it had nothing to do with the applicant.

Mr. Kaufman stated that he had issues with this application. In the past, the Board discussed how there is not really a need for this parking and that one of the reasons why the previously approved, but not constructed parking was never constructed was because it was not needed. If nothing has changed on this site, it's still the same intensity of use. While the applicant needs to demonstrate that this site is capable of the parking, the Board should consider landbanking the spaces. This would alleviate the need to widen the driveway over the easement area; we could get a bond for that eventual improvement.

Dr. Matusow pointed out that some of these spaces are on the sold property and asked if the Board had adequate assurances that these spaces could be used. Mr. Baroni said that he had not received anything in this regard. Mr. O'Neill stated that he did submit it. Mr. Delano said that he had seen it. Mr. Kaufman stated that it is the constructed parking over which they have an easement. Mr. O'Neill agreed, and stated, "all of the ones that are there should be covered by this and that the ten are the ones that are completely on

and the others are in the same line with the 10.” Several of them are partially on and partially off. Dr. Matusow wanted to ensure that the applicant could continue to use them. Mr. O’Neill stated that there is an easement, and that some proof of that has been submitted.

Mr. Baroni asked if “some proof” meant a recorded easement, and Mr. O’Neill said that it does. He stated that he has a Xeroxed copy but Mr. Baroni stated that the Board should have a certified copy. Mr. O’Neill stated that he had also submitted copy of title report for the dirt road. He said that he had been working under the assumption that the spaces could be landbanked.

Mr. O’Neill recognized that there were several issues from the Board. One was the pole for the sign, because it was half on and half off the property. This will be moved. Mr. O’Neill asked if the Board wanted the entire sign on the applicant’s property. Mr. Kaufman stated that the entire sign, including the overhang, has to be on the applicant’s property.

Mr. O’Neill added that there was a question about “these” parking spaces (indicated on the plan). He explained that they are excess spaces, and are shown as parallel parking. In Mr. Schroeder’s memo, he suggested removing them entirely rather than making them employee only. The Board felt this was probably a better solution.

Chairman Michelman asked if the applicant would consider potentially landbanking the eight spaces, and Mr. O’Neill said that they would be very happy to do that. Chairman Michelman stated that the Board would need to ensure there was some type of bond in the event that the spaces are needed. Mr. O’Neill stated that the applicant has an easement to use it, but he does not think they have the right to widen it or otherwise improve it. Mr. Kaufman explained that the Board would need to know that it could be approved and useable in the event that they are required.

Dr. Matusow felt that “improved” didn’t necessarily mean “paved” but Mr. Kaufman said that it kind of does mean paved. Mr. O’Neill stated that, because it is angled parking it could only be one-way. He believed that Mr. Schroeder thought that it was two-way. If they could get adequate space to turn around and come back out, they wouldn’t need that to serve these spaces. Mr. Kaufman stated that if it was only going to be a one-way egress, the driveway doesn’t need to be 20’ wide. Mr. Kaufman realized that it still needed to function as a two-way driveway for the house. Mr. Schroeder said that was his point. Mr. O’Neill stated that there are only three or four houses and it doesn’t need to be that wide. Mr. Kaufman asked if Mr. Schroeder knew the standard for a common drive serving three houses, but Mr. Schroeder did not know off the top of his head.

Mr. Kaufman stated that, either way, there is a strong possibility that that would need to be improved somewhat, and there needs to be some assurances that they would be able to do that. Mr. Kaufman said that Mr. Baroni could review the easement.

Dr. Matusow asked how the driveway behind the building is currently used. Mr. O’Neill said that it was not really used at all; there is only one house that has access to it. They have access across the easement or through the front yard. Dr. Matusow asked if that was written down somewhere. Mr. O’Neill said that he really did not know the answer to that. There is an easement without a restriction on Mr. Prey’s property. The applicant

attempted to purchase that property, but the owner declined to sell. Dr. Matusow said that he was concerned for the Prey's. Mr. O'Neill said that the applicant was not proposing anything that will change the current situation. There is no loading or unloading going on there. Dr. Matusow noted that there was a concrete pad in that area. Mr. O'Neill said that he was not sure if that was used or not.

Dr. Matusow said that if he lived in that house, he would be concerned with the vehicular activity. He said that because this application is before the Board, it is fair for the Board to consider what shall or shall not happen in that area. Mr. Kaufman stated that the Board could specify that there shall be no deliveries or loading in the rear, or that deliveries shall be restricted to the front. Mr. O'Neill was amenable to this. Dr. Matusow was satisfied because this will provide some protection for the homeowners. Dr. Matusow asked if the applicant has granted an easement to those neighbors. Mr. O'Neill was not sure. Dr. Matusow pointed out that those neighbors are landlocked. Mr. O'Neill said he would try and find out.

Chairman Michelman stated that the main issue is whether the easement permits future improvement. Mr. Delano stated that the title report says that the applicant has rights for ingress and egress. Mr. Kaufman stated that was a problem. Dr. Matusow said that if that is all that allows, the applicant could attempt to get the easement that would permit improvement. Mr. O'Neill said that he could try, but cautioned that there was no guarantee. He asked if the Board could come to a consensus / agreement about what "improvement" means. Mr. Kaufman said that it would have to meet the satisfaction of the Town Engineer both today and in the future. Mr. O'Neill asked if the Board could give a more definite answer. Mr. Kaufman asked Mr. Schroeder what the Town would require if that was to be improved today. Mr. Schroeder stated that he could not answer that without reviewing the plans.

Mr. O'Neill asked if whatever would be required now could be made a condition. Chairman Michelman said that the Board could not do that; they could only say what would be required if it was to be improved today. Mr. O'Neill felt that this would be no different than the conditions that are approved in connection with landbanked parking; setting definite standards. Chairman Michelman felt this was different because landbanked spaces are approved because they are not needed right now. The Board cannot comment about how a road should be improved in the future. Mr. O'Neill said that certain curbing and landscaping is going to be required in connection with the landbanked spaces, and the applicant would be held to today's standards, not the standards that may exist in the future. Mr. Kaufman felt that Mr. O'Neill had a good point. Dr. Matusow agreed, and felt that it was just a matter of the Town Engineer determining what would be required today. This would enable the applicant to approach the neighbor with a more definite possibility.

Chairman Michelman had a problem with that and felt that the applicant was asking for a guarantee that the Board cannot give. Mr. O'Neill explained that he cannot approach the neighbor and ask for permission to improve the drive without knowing what would have to be done in the event that it is needed.

Mr. Kaufman explained that the Town Engineer is going to have to tell us what is needed. Chairman Michelman said that he already did – it has to be widened from 10' to

20.' Dr. Matusow stated that was not all that needed to be done though; paving, gravel, lighting, etc. all need to be considered.

Chairman Michelman asked what was next. Mr. Kaufman said that the Town Engineer would report what this driveway would need to be improved. Additionally, the applicant has to demonstrate that they have ability to make those improvements. If the easement as it exists would not allow them to make those potential improvements, the applicant would need to see if they could get what they needed from the neighbors. At that point, the Board would be in the position to approve the site plan.

**BARON**  
**Amended Site Plan**  
**49 Sarles Street**  
**Section 2, Block 4, Lot 1-15**  
**Frank Giuliano, Landscape AIA**  
**Discussion**

Mr. Frank Giuliano was present for the application. He explained that, pursuant to the requests made at the last meeting, they have eliminated the 3' fence on top of the wall, and are now proposing it only as a 3' wall. The Board stated that this was a big plus.

Mr. Giuliano stated that there was also a comment regarding the removal of the trees on the road. He explained that those trees were supposed to be removed pursuant to the original approved plat, but never were. Mr. Kaufman stated that there was no real problem there.

Mr. Giuliano explained that another issue concerned the clearing and grading limit line. Mr. Giuliano said that the applicant was willing to do whatever it takes. According to the approved subdivision resolution, the location of all residences and driveways and the extent of wetland and buffer encroachments for each lot shall substantially conform to those shown on the subdivision plot and any related drawings / modifications as determined by the Town Engineer not consistent with such drawings will require wetland or site plan approval by the Planning Board. According to the applicant's surveyor (Mr. Mastromonico), the clearing and grading limit line is different than the easement and conservation easement because they do have metes and bounds. The clearing and grading limit lines do not and they are not legally defined. The Planning Board has oversight in this regard. Mr. Giuliano stated that they are going to have to redo the plat, which they are not part of and everyone in the subdivision would have to sign off. But the way it is written is that the clearing and grading limit lines are not required to change the plat.

Mr. Baroni stated that the town of New Castle handles it differently; that town says if someone is going to change those lines, they need to be changed on the map as well. That was not included in the North Castle code. He felt that it is impractical for an owner to get multiple approvals to effect a change. He asked if there was a reason why these lines are on the plat as opposed to the construction drawings. Mr. Kaufman said that this was to ensure that there is a clear warning regarding what is permitted. Mr. Baroni pointed out that since the Town does not have the ability to measure it, how do you know when these are exceeded. Mr. Kaufman said that he was surprised there are not metes and bounds on them. Mr. Schroeder said that it would be difficult; you'd have to

visit the site and find a reference point. Mr. Baroni said that in this instance, he would be ok with the board adjusting them on the site plan, but in the future the board needs to consider including the metes and bounds on the final plat, or only having them on the construction drawings.

Mr. Kaufman said that they would amend the site plan and change the line. Mr. Kaufman noted that, in the recent past the Board has referenced the integrated plot plan on the plat map.

A public hearing and neighbor notification could be scheduled.

**SCOTT**  
**Subdivision**  
**80 Mianus River Road**  
**Section 1, Block 7, Lot 4**  
**Jerry Barrett, RLA**  
**Discussion**

Mr. Jerry Barrett was present for this application. He explained that this was last before the Board approximately two months ago. Since then they have attempted to address all comments from the Planner, Engineer and the Board.

Mr. Barrett explained that this is 40-acre site that abuts the gorge on three sides. The applicant is proposing four lots. There is a large pond in the middle and a NYS wetland. Since the last appearance before the Planning Board, they have made some changes primarily driven by the Town Engineer regarding the drainage and the layout. He stated that one of the biggest changes on the plan is the stormwater management from dry wells to infiltration chambers. Mr. Mastrogiamomo still needs to work with the Town Engineer. They were concerned about how it was going to be directed in that area. The applicant is trying to make this look like a "farm road" so they are proposing fieldstone curbs, and use them to direct the water. Mr. Barrett explained that the pink that is shown on the plan represents the flow direction. He reiterated that they still needed to meet with Mr. Schroeder to ensure that this plan is satisfactory.

Mr. Barrett stated that they have also added another pull off area and have adjusted the grading around all of the houses and added the curbs to bring stormwater into the basins.

Mr. Barrett pointed out that they did not receive the fire department comments in time to incorporate them into the submission for the Board. The applicant is proposing a 12' wide road, and the fire department wants that expanded to 16', a larger turnaround area and a pull off area near the pond. The applicant is going to do that.

Mr. Kaufman asked if they would be able to accommodate the wider driveway with stabilized shoulders. Mr. Schroeder explained that that the driveway has to be at least that wide, and this was his recommendation.

Additionally, the applicant wants to rebuild the barn in the same spot. Mr. Barrett explained that they have tried to get on the ZBA agenda, but were informed that they need a formal referral, which is requested now.

Mr. Barrett asked if they also needed a referral to the LPC and the ARB. It was recommended to the applicant that this be done before they go before the ZBA. Mr. Kaufman asked why they would need to go to the LPC. Mr. Barrett said that Mr. Fon had suggested they just notify that committee of this plan. Mr. Kaufman said that technically, the applicant does not need to go to the LPC unless it is a landmark or if they just wanted input. Mr. Barrett said that they would contact the LPC.

Mr. Kaufman said that there is no issue with the concept of subdivision. In his opinion, only minor details remain, and there are not many issues to hold up this application. The Board does need to deal with the cottage on proposed Lot #1 and the barn on Lot #3. The Board talked about the proposed amount of wetland disturbance and tree removal and that both are necessary. The applicant still needs to provide a plat map; the Board has the preliminary plat, but the updated plat is needed before a public hearing is scheduled. Mr. Barrett recognized this, but want to wait until they know that the drainage is acceptable, because when that changes, everything changes.

Mr. Barrett also recognized that lot three is large and the Board is concerned about further subdivision. The way the lot is sited, it cannot be further subdivide and the applicant does not want to burden the property with deed restrictions. He pointed out that further subdivision would have to come before this Board.

Mr. Barrett asked if they needed to be referred to the Conservation Board. Mr. Kaufman said that they were referred on March 30<sup>th</sup>. Dr. Matusow asked if the Board had a proof that this was referred. Mr. Kaufman said that they did.

Mr. Delano asked what the approximate amount of total disturbed area was; Mr. Barrett said that it was approximately five or six acres.

### **GUCCI LIMO**

#### **Site Plan**

**Section 9, Block 2, Lot 3**

**37 Virginia Road**

**Edward Swaby, R.A.**

#### **Discussion**

No one was present for this application.

### **ARMONK PROFESSIONAL CENTER**

#### **Amended Site Plan**

**Section 2, Block 11, Lot 7-1**

**355 main Street**

**Peter Garville, Garville Constructors, LTD.**

#### **Discussion**

No one was present for the application; only neighbors were in attendance.

Chairman Michelman advised the public that this was not a public hearing. Mr. Kaufman explained that the Board could discuss briefly the details of this application, and then hear briefly from the neighbors.

Mr. Kaufman explained that when the Planning Board approved 357 Main Street, they only approved the air conditioning units on the ground. The Board specifically stated that the units were not to be on the roof and the building was approved on that condition. The applicant wound up placing the units on the roof after they allegedly determined that no machinery would work on the ground. The applicant submitted a letter indicating that they've had two air conditioning companies visit the site and both have determined that the units cannot be located on the ground and provide adequate air conditioning.

Mr. Kaufman stated that, at this point the Board does not have independent proof that this statement is accurate. He recommended that the board retain their own, independent HVAC expert. The Board agreed. Mr. Delano was of the opinion that the applicant was not attempting to look at any other equipment, only the particular equipment at their site. The rest of the Board agreed with that.

Mr. Kaufman stated that the Town has a provision in the Code that would place the burden of the cost of the expert on the applicant. Chairman Michelman asked if they needed a motion. Mr. Kaufman said that it was not necessary; Dr. Matusow felt they should for this case.

Dr. Matusow moved to authorize Mr. Kaufman to find an expert in HVAC and that the charges be applied to the applicant. The motion was seconded by Ms. Black and unanimously approved.

Gil Goldman, 12 Agnew Farm Road, explained that his home is directly affected by the applicant's a/c units. He noted that he was here as both an affected owner and a member of the HOA board. When this first came before the board, many of the neighbors came and voiced their concerns. They met with the applicant's architect on this issue and both the applicant and his architect were fully aware of what had to be done. Mr. Goldman felt that to say that these particular units do not function on the ground doesn't answer the question. They should have to consider other units. This does not seem to be an accident, but rather a situation where they knew full well that they were not complying with the Board. He asked the Board to look into this very carefully, and ensure that they do not set a precedent.

Mr. Kaufman asked Mr. Baroni if it would be advisable to set up an escrow account for the expert to be paid. Mr. Baroni said that, in this instance, it might be preferable. Mr. Kaufman agreed. Dr. Matusow asked how it would be determined how much money would be in that account. Mr. Kaufman explained that it would be based upon proposals from the experts.

Dr. Matusow moved that the Board establish such an account, with the amounts to be subject to the determinations / recommendations of the experts' proposals. The motion was seconded by Ms. Black and unanimously approved.

**ALPS SAUNA & SPA**  
**Site Plan**  
**Section 2, Block 16, Lot 18A**  
**130 Business Park Drive**  
**William O'Neill, AIA**  
**Referral to the Town Board**

Mr. Bill O'Neill was present on behalf of the applicant. He explained that the applicant went to the Town Board, who found the letter from the Planning Board confusing. He added that as a result of the discussions and comments at the last meeting, has he revised the plan.

Chairman Michelman said that, to be fair, the applicant could briefly discuss the changes. Mr. O'Neill explained that, after the Town Board meeting, he met with the applicant to discuss possible changes. He explained that the sketch being presented was the applicant's own plan. He explained that, originally, there were four bath units and two have been added in an area that had salon services. Now, there are four chairs for various hairdressing services. Previously they were proposing 6 manicure and 6 pedicure stations. The new plan calls for only three of each. Further, there are only 24 seats in the restaurant, which constitutes a 60% reduction. This was an attempt to address some of the Town Board and Planning Board's concerns.

Mr. O'Neill explained that some of the Town Board members adhered to Mr. Kaufman's original definition of a day spa, but others were concerned about the scale of it. He stated that they have not responded to the idea of removing the hair / nail services all together because he still thinks they should be allowed.

Chairman Michelman stated that the Board appreciated that the applicant heard some of the concerns. This is a dramatic change, but the real issue before this Board is the definition, and whether or not hair cutting and nail services are part of a day spa. Even though the number of seats has been reduced dramatically, it still opens the door to "personal services" in this district. Mr. O'Neill recognized this, but as an accessory use it will be similar to the gym having retail use that is accessory to their principal use (i.e. gym apparel, etc). The Board repeated that the applicant made great strides, but the Board needed to address the definition of day spa, and then make a recommendation to the Town Board. Chairman Michelman felt that accessory uses are difficult to monitor.

Mr. O'Neill did not think this would be difficult to monitor because the applicant would have to remove expensive equipment in order to put in additional hair and nail stations. The applicant is not going to do that.

Mr. Kaufman stated that, initially when the plan was first reviewed, he was concerned that the proposal was for a "salon" with an accessory day spa, which he was not in favor of. One way to alleviate that problem was to prohibit the personal services. This new plan, a personal service with only six total nail stations, makes it clear that these are accessory uses only, and if the Board wants to proceed with moving ahead with this and permitting some personal service as accessory, it would be acceptable. There are some day spas that have this type of accessory use.

Mr. Kaufman pointed out that the Board would have to discuss whether this is acceptable in the PLI district. He recommended that the Board come up with some type of a clear percentage of the floor area that is devoted to the personal service accessory use. He believes there are people that, after a full day of spa treatments, would want this type of service. However, the concern was that people would be walking in and just wanting only this type of service.

Chairman Michelman countered that there are day spas that do not offer this type of personal service. She also felt that the issue of the restaurant should be discussed. Since the Town already has an accessory café definition, perhaps the Board should use that. Mr. Kaufman stated that there is a definition for a café, but that is currently only applicable in the NB district. He stated that the Board could incorporate this type of definition but it is a very specific definition – 1,000 sq. ft. and 16 seats.

Dr. Matusow felt that the discussion of café would be more germane once the Town Board makes a determination about what is permitted. He said that it hardly seems worth it to get into this detail at this point. The changes presented by Mr. O'Neill removed some of his concerns about the definition in that it is clear to him that these few seats will not change the picture of the downtown retail area. He felt that if it is discretionary in this Board, it won't matter; this Board will not be able to turn down an otherwise completed application. Dr. Matusow said that he was still concerned about writing this definition, which allows a personal service. He felt that despite the definition provided by the Planner, hair / nail services were not really personal services, but a retail type of personal service. He felt that this opened the door to other applicants to come in and want to do something similar, which could cause a problem in the PLI zone. The Board could be pressured to do things that were never contemplated when the PLI district was established. He was concerned about the zone. He still wanted to see a strict definition of the day spa, in keeping with what is currently permitted in the PLI district.

Ms. Black stated that she was not present at the meeting when this was first discussed, but she too was wrestling with this. She said that she would be happier with something like Mr. Kaufman suggested; to set a very small percentage of gross floor area for accessory so that is clearly accessory. She did not think that a hair or nail salon would be appropriate for this zone. She also liked the suggestion regarding the restaurant and using the same standards as an accessory café.

Mr. Delano said that he has not changed his opinion since the last meeting. He does not entirely disagree with Dr. Matusow and concerns over the long term. If they fine tune the definition, the restaurant may not need to get that small and a percentage may be more appropriate than a finite square footage.

Mr. Kaufman asked if the Board wanted him to attempt to craft a percentage and then resubmit to the Town Board. Chairman Michelman felt that there is a consensus that there should be some criteria, probably a percentage. Mr. Kaufman said that a percentage represents a fair medium. He recognizes that this is a part of many day spas, and if we can put a specific finite limit so that it could never come close to a principal use, that may be acceptable to the Town. The question is what percentage is acceptable and what they want to do with the restaurant. He said that he could not give the Board an answer on that immediately.

Mr. O'Neill asked if he could work with Mr. Kaufman in order to craft these figures. The Board said he could.

Jack Pancaldo said that he looked at what was avail in Armonk and there is 107,000 sq. ft. that is office and RND. He said that he understood the Board's concern for the PLI zone, but everyone needs to look at where it could go. He felt that the changes would be for the better, not for the worse. He gave the Board the information he has compiled.

Mr. Kaufman asked if he was being asked to draft something that will allow personal services as accessory use, but fine tune it in terms of giving a definite percentage for the accessory use and the restaurant. He also asked if the Board wanted him to come back with a revised definition. The Board said yes. Mr. Kaufman asked if they wanted him to say "spa cuisine" or "accessory café" or something like a percentage. Chairman Michelman felt that it would be better to be consistent with the other definition rather than having a square footage. Mr. O'Neill suggested that Mr. Kaufman propose alternatives and then everyone could discuss them at the next meeting. The Board agreed.

## **MARIANI**

### **Outdoor Seating**

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

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

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

**Referral from the Town Board**

Mr. Dan Hollis, Esq. and Mr. Rob Aiello were present for this application. Mr. Hollis explained that this was referred by the Town Board as to whether there should be legislation for a special use permit for seasonal outdoor seating in the NB district. Chairman Michelman asked if the NB allows for outdoor seating; Mr. Hollis said that it did not.

Chairman Michelman asked if the applicant in the NB zone, knows full well that the zone does not allow for outdoor seating zoning. Mr. Hollis said that was correct. The applicant has noticed that people buy the coffee and pastries at the café, and then take it out into the garden area and sit on outdoor displays of merchandise for sale. The applicant has had to remove those items entirely to prevent people from sitting on them.

Mr. Hollis stated that there was a customer demand for this seating. Outdoor seating in this zone would not impact traffic because it is just adjunct to the indoor permitted café use. He stated that this would be limited. There would not be any wait service; customers would have to buy something at the counter and find a seat outside. Additionally, as suggested this could not happen without a special permit. There needs to be a text amendment if this is going to be permitted. The request is for a referral by the Planning Board as to whether the parking available on site would be sufficient to handle seasonal, outdoor seating. Mr. Hollis stated that they believe this is satisfied, but would still have to go back to the Town Board.

Chairman Michelman clarified that the issue before the Board is whether this Board is leaning toward recommending a change to the NB zoning district to allow for outdoor

dining. She said that she did not know how many other areas were zoned NB and therefore, how many areas this would impact. Mr. Hollis pointed out that this is the only NB property in the Town. Mr. Kaufman agreed that currently, this is the only property zoned NB, but that is not to say that it will continue to be the only property.

Dr. Matusow pointed out that at the last meeting, there was a resolution in relation to the applicant that was removed from the agenda because the applicant was found to have a number of violations, and the Board felt the resolution should wait until these violations were dealt with. Mr. Kaufman said that was correct. Dr. Matusow felt that this application for outdoor seating has jumped ahead of the earlier resolution. Mr. Kaufman stated that it was his understanding that the Building Inspector is drafting a letter that explains the alleged violations have been corrected. Mr. Baroni stated that he had a similar conversation with the Building Inspector the week before.

Dr. Matusow stated that the applicant has skirted some of the issues that are real and cannot be avoided. Now they are asking for special permission to do something that is not currently permitted in the code, "basically as a response to their prior bad behavior." He said that this applicant has a history of exceeding the limits of what is approved at every step of the way. Every time the applicant gets permission to get to a certain point, something else happens, they ask for something else, and they apologize. He said that he finds it difficult to believe that this was an accident simply because the applicant had tables and benches for sale. Dr. Matusow said that he could not accept the explanation as an excuse that this was a "pressure" from the customers. He compared this to the applicant who placed the air conditioning units on the roof because his tenants complained that they did not have enough air conditioning. Now that applicant wants this Board to approve the units in that location. He said that he does not see much difference between that situation and the one at hand.

Dr. Matusow felt that the Board should deal with the issue of the resolution and table the issue of the outdoor seating. He stated that he was going to be somewhat cynical in accepting the representative's assurances that the applicant would accept the maximum the Board is willing to give. He did not think the outdoor seating should be considered tonight. He felt that it was out of order in terms of the priorities and the agendas themselves. Dr. Matusow said that he would not make a motion, but wanted the Board to consider this.

Ms. Black stated that she was not involved with the prior discussions on the café. Mr. Delano said that he had reservations regarding establishing outdoor dining in the NB zone. Chairman Michelman agreed. Mr. Delano felt there is a stated purpose in the NB zone and the applicant has done a great job in what he's doing there, but this will blossom into an "outdoor extravaganza" which will cause a whole different traffic problem. If customers want to sit on merchandise that is for sale he would be comfortable with that, however he felt that permitting a formal outdoor dining establishment would have to be approached very carefully. Chairman Michelman agreed.

Mr. Hollis suggested having the special use permit being limited to a specific time period, which would enable the Board to review the situation and ensure that it is working. He also distinguished this application from the applicant who violated the Board's approval and placed the air conditioning units on the roof.

Chairman Michelman said that the issue becomes whether the Board is going to vote on whether they want to amend the NB district to allow outdoor dining.

Mr. Baroni stated that the Board cannot assume that the Building Inspector would permit that merchandise for sale could remain contiguous to the restaurant. It either has to be permitted or not permitted. Dr. Matusow agreed and said that he would not support this application.

Dr. Matusow moved to advise the Town Board that the Planning Board is recommending that the town board not consider a zoning amendment. The motion was seconded by Mr. Delano and unanimously approved, with the exception of Ms. Black, who abstained.

## **NEW BUSINESS**

### **EMPIRE STATE TOWING**

#### **Site Plan**

#### **Section 6, Block 6, Lot 56**

#### **152 Virginia Road**

#### **William O'Neill, AIA – O'Neill Architects**

#### **Discussion**

Mr. Bill O'Neill and the owner were present for this application. Mr. O'Neill apologized for the delay between appearances, and said that it was his fault – not the applicant's.

Mr. O'Neill explained that the change in the zoning ordinance was adopted almost a year ago. The applicant was before the Board with a specific application and site plan for the tow yard on Virginia Road. This is a fairly simple application. They show required off street parking and there is a fence and a gate. The restrictions are included as notes. They have corrected the double negative that Mr. Kaufman referred to in paragraph 16 of his memo. Mr. O'Neill said that they have reviewed the comments from the professionals. The retaining walls referred to in Mr. Kaufman's memo are only concrete blocks and easily moved; therefore they will move them rather than try and get easements.

Mr. O'Neill recognized that the Board was concerned about screening for the rear of the Washington headquarters building. The Board recommended that some large fence be constructed along the line of the existing fence on the Washington headquarters building. That fence is a stockade fence strapped to chain link fence that belongs to the County. They would either agree with the County to replace that fence or construct a second fence immediately next to the fence.

Mr. O'Neill said that they also discussed accommodation of school buses for school trips so that kids could get onto the county parkland via a gate in front of the currently existing gate. He noted that the grades seem appropriate in that location. Then they would not have to go anywhere near the road. The applicant is willing to do that, but would need to explore whether or not the county would be interested. Chairman Michelman asked if there would be room for the school buses to sit parked, because this area is usually crowded. Mr. O'Neill said that there is, and there is room in one area for a bus to get by and park even with the trucks there.

Chairman Michelman asked what trucks are currently on the site. The applicant said that only his white tow trucks are on the property. Chairman Michelman expressed disbelief on this. Mr. O'Neill said that there are two trailers behind the building. One of the restrictions is that any off street parking be outside of the impound fence. Mr. Schroeder also requires at least 3' to back up. Mr. Schroeder said that he would prefer 5'. If they can get five they would do that, but they wanted to ensure there was enough space for a walkway. There is also a parking space in that area, but presumably that would be the last parking space to be used.

Chairman Michelman asked if there is a time limit as to when the tow trucks could be used. Mr. O'Neill said that there is; it is in the code and on the plan.

Mr. Schroeder stated that the hydraulic fluid barrels and drums should be removed. Mr. Kaufman stated that if the applicant is going to keep the trailers on the site, they needed to be reflected on the site plan. Mr. O'Neill stated that he did not know what was in those trailers but they have been there for a while. Mr. Kaufman said that the applicant needed to determine whether they can be removed. Mr. O'Neill asked that the Board assume they cannot be removed. Mr. Kaufman stated that, typically the Board does not allow those types of structures on these lots. However, they have been permitted on occasion. Chairman Michelman felt that they needed to know if they are going to be there for a long time. Mr. O'Neill said that they are temporary in terms of them being on wheels and not structures, but they've been there for a while.

Mr. Baroni asked if the applicant was the owner of the property, and Mr. O'Neill said that he was not. Mr. Schroeder asked how the applicant would be able to give permission for buses to park there if he was not the owner. Mr. O'Neill said that he has been authorized to act as agent for the owner on that issue.

Dr. Matusow felt that the significant concern was what was in the trailers. The Board has to give an approval on the site and now that this application is before the board, it has to approve whether the trailers can stay. To do that the Board needs to know what is in the trailers. Mr. Delano asked who owns the trailers and the applicant believed that the owner owns them.

Mr. O'Neill stated that the trailers are not structures, they are parked there and wondered if they even come under the Board's jurisdiction. Mr. Baroni asked if the trailers were registered. If they are not, then they are not legally there to begin with. Mr. O'Neill said that if they are registered, then they are parked there. Mr. Kaufman stated that the location of overnight parking is always depicted on the site plan and the Board ensures it is adequately screened. The Board has the power to approve the location of overnight parking. Mr. O'Neill pointed out that the entire site is overnight parking.

Dr. Matusow felt that this Board should not be asked to participate in make-believe. The Board can't pretend the trailers are not there, or that they are going to leave tomorrow or that they are going to be registered. Mr. Baroni stated that if they are not registered, then they cannot be moved and they become structures on the property. Mr. O'Neill asked if there were any restrictions on the trailers if they are deemed structures on the property. Mr. Baroni explained that the applicant would need to discuss this with the Building Inspector.

The applicant stated that the trailers are not his, and if they were, he would remove them. However, he is willing to deal with them as best he can. Mr. O'Neill said he would contact the Building Inspector and determine whether or not they are registered.

Dr. Matusow stated that he would be fine with this application so long as the issue of the trailers is resolved.

The Conservation Board representative asked if the applicant needed a wetlands permit because of the brook. Mr. Kaufman explained that they did not because there is no disturbance in that area. Mr. Schroeder had asked they show the wetland and buffer on the plan. Mr. Kaufman said that Mr. Sessions can visit the site.

## **LAURINO**

### **Site Plan**

**Section 5, Block 24, Lot 22**

**10 Rock Cliff Place**

**Robert Pollack**

### **Discussion**

Mr. Pollack was present for the application. He explained that the site plan is for a single-family house on a single-family lot in a very remote site. White Plains and the White Plains watershed surround the property on two sides. The watershed has a fence around it. The property sits in an increasing depth of a valley.

Currently, construction debris litters the site. The Town put a water main through the site that goes down toward Valhalla Place. As Dr. Matusow noticed, a corner of the house is significantly lower than how it appears on the drawing. He said that when he first saw the topography, he had a vision of the site and was surprised because it did not look like what he expected it to look like. He believed this was a mistake on the surveyor's topo. The corner of the house is down the valley, not a two foot drop as the drawing suggested; it is actually closer to a 10' – 15' drop. The owner is going to have to clean out all of the debris (tires, plumbing fixtures sticking out of the fill, etc.).

One side is a huge rock ledge and there is another valley with another ledge. The whole site is almost entirely impervious. The applicant is going to try and improve the situation.

The issue is whether they will be able continue the public street or whether the applicant would simple create a driveway off of it, or extend it a certain length so that the future owner of that one other building lot can come off the improved street or the driveway. His only concern is that the Town has standards for public streets, and the drop would have to be mitigated by a tremendous amount of fill to comply with the grade requirements for a public road standard. Again, this is the end of the neighborhood and the only people going in and out would be the people who live there.

Chairman Michelman asked if this road is a public road. The applicant's representative was not sure if it was ever dedicated. The applicant was under the impression that the road extended into the lot next to him, but upon closer inspection it does not. So now there is the concern as to how that lot would access the road. He said that he would try

and set up a meeting between the Town Engineer and the applicant's engineer to figure out what needs to happen in this regard.

Mr. Kaufman stated that if it is undedicated then it can be improved to private road standards. However, if it is a dedicated, then it has to be improved by Town standards.

Mr. Baroni explained that the portion being maintained by the Highway Department becomes a public highway by use because it had never been dedicated, but the Highway Department for more than 10 years was maintaining it. The maintained portion becomes tantamount to a public highway and the applicant has the option of improving it to Town road standards. He believes the applicant has the option to improve to town road standards if they desire. Mr. Baroni believes that ZBA has the option under 280(a)(3) of allowing standards less than the town road standards. The private road standard applies when applicant owns the bed of the road and he did not know if that was true here. The applicant's representative stated that they do not own the whole thing, only to centerline. Mr. Baroni stated that if the applicant does not improve to Town standards, then they would need to seek relief from the ZBA.

The applicant asked how far they would have to go. Mr. Baroni explained that the language of 280(a)(3) reads no less than 15' wide to a "suitably improved standard." The applicant would have to propose something that they would accept, and the ZBA would probably want input from Mr. Schroeder and Mr. Kaufman. He explained that was how the applicant gets to the point of having frontage on a street less than town standard. The other option is for the applicant to build it to town standard and then dedicate it. The applicant's representative did not think they would be able to meet the Town standards because there will be about a 19% grade.

Mr. Baroni reiterated that they should design something that both Mr. Schroeder and Mr. Kaufman can support because the ZBA would be asking their opinion.

Additionally, there was the issue of the retaining wall. The grade change in the area is about 16' and will have to be heavily enforced concrete wall designed by an engineer. The applicant understands there is a law about the setback. Mr. Kaufman explained that anything over 4' has to be designed by a professional.

Chairman Michelman stated that this is a tough site, and there is work to be done. The issues are going to have to be addressed one at a time, and the first issue is the road. The applicant will have to be able to reach this house before you can build it. The Board recommended meeting with Mr. Schroeder and Mr. Kaufman on the road issue.

Mr. Kaufman added that there is also the site plan issue regarding the second garage. The applicant's representative stated that they were able to get less than the 34' maximum exterior wall height. Mr. Kaufman said that was acceptable.

Dr. Matusow pointed out that this driveway would not meet the 14% standard. Mr. Schroeder explained that he was going to have to work on this with the applicant.

Mr. Schroeder added that the topography is incorrect on the plan and the survey would need to be updated. This might effect the road elevations. The applicant stated that he did not know how much bearing that would have on the finished elevations because he

has another topography that was done that depicts the elevations of the roads. He asked if the surveyor needed to go onto the site again. Mr. Schroeder said that because the elevations may change they need an updated survey that shows the correct topography for the lot. Mr. Kaufman agreed that the applicant needed to provide that information.

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The meeting was adjourned at 10:47 p.m.

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