

**NORTH CASTLE PLANNING BOARD MEETING
15 BEDFORD ROAD – COURT ROOM
7:00 P.M.
OCTOBER 26, 2015**

PLANNING BOARD MEMBERS PRESENT: Art Adelman, Chairman
 John Delano
 Steve Sauro
 Christopher Carthy

Planning Board Members Absent: Michael Pollack

Absent: Roland Baroni, Esq. Town Counsel
 Stephens, Baroni, Reilly & Lewis, LLP

ALSO PRESENT: Adam R. Kaufman, AICP
 Director of Planning

 Joseph Cermele, PE
 Consulting Town Engineer
 Kellard Sessions PC

 Valerie B. Desimone
 Planning Board Secretary
 Recording Secretary

 Conservation Board Representative:
 George Drapeau

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

APPROVAL OF MINUTES:

October 15, 2015

Mr. Adelman asked for a motion to approve the October 15, 2015 minutes as amended. Mr. Sauro made a motion to approve the minutes, Mr. Carthy second the motion and it was approved with three Ayes. Mr. Delano abstained. Mr. Pollack was not present for the vote.

June 3, 2013 Minutes –

Mr. Adelman asked for a motion to approve the June 3, 2013 minutes. Mr. Delano made a motion to approve, Mr. Sauro second the motion and it was approved with three ayes. Mr. Adelman abstained and Mr. Pollack was not present for the vote.

DISCUSSION:

THE PRAY FAMILY FOUNDATION, INC.

16 BEDFORD BANKSVILLE ROAD

102.04 / 2 / 50

Katherine T. O'Neill, Whitman Breed

Discussion

Present for this application was Katherine O'Neill, attorney for the applicant. Also present was *Marikay* Satryano, Executive Director of the Pray Family Foundation Inc.

The Planning Board site plan application is for the establishment of a charitable institution at 16 Bedford Banksville Road. The Applicant is proposing to utilize the existing structures on the site as a charitable institution and no new construction is proposed. The property is located within the CB-B and R-1A Zoning Districts.

Ms. O'Neill introduced herself and her client to the members of the board. Ms. O'Neill responded to the comments that were in the Director of Planning's memo. She stated that typically about 40 events occur on site annually and corresponds with the school calendar. Last year there were 600 students that visited the site and 200 of them came from one school with 50 students per day over a four day period and those numbers were a little higher than what was typically on site. All parking was done on site; there has been no need to park off site. There is parking behind the site and the driveway can accommodate five additional cars. There is currently no signage on site other than the address number of #16. There were thoughts of a temporary sign to roll out during events and rolled back in when the event is over. Mr. Kaufman suggested getting approval for a free standing sign that the Planning Board can approve. He suggested that Ms. O'Neill take a look at the temporary signage regulations within the Town Code.

Mr. Kaufman reminded the board that this site was previously before the Planning Board for approvals of a single family house and several garages. He also noted that the applicant has obtained a Town Board Special Use Permit approval for the Charitable Institution on April 8, 2015. The Planning Board has to amend the site plan to change the single family residence to charitable institution. When the applicant was before the Town Board, the applicant said that the existing nature of the site will remain the same and not change.

Mr. Adelman noted that Mr. Pray was active with the boys and inquired if some of the visitors were Boy Scouts. Ms. Marikay stated that a lot of the visitors are Scouts and this is a wonderful place and a worthwhile mission for inspiring people. Mr. Pray wanted this to be a resource to the community after his passing and it has been. Mr. Adelman

and Mr. Carthy noted that they had been to the site previously and what a wonderful place it was and what a commendable idea this was by Mr. Pray.

A public hearing was scheduled for November 23, 2015.

Mr. Kaufman confirmed with the board that they had no issues with the site plan. The board did not express any concerns at this time. Mr. Kaufman noted that his only concerns were parking on site and lighting for evening events. Ms. O'Neill stated that there was lighting on the side of the building to illuminate the pathways; there are four flood lights on the main building and two flood lights on each of the garages. Ms. Satryano stated that there has never been an issue with lighting on site. The Scouts come in the evening around 7:00 p.m. but that is not very frequent.

In response to Mr. O'Connor's comment, Ms. O'Neill stated that no one will be staying overnight and meetings are rarely held in the evening.

9 & 3 SADDLE COURT

9 & 3 Saddle Court

Section 95.02, Block 1, Lots 33 & 34

Lot Line Change Between Properties

Scott Gray, LS Thomas Merritts Land Surveyors, P.C.

Discussion

Present for this application was Scott Gray, professional for the applicant.

The application is for a land exchange between 9 and 3 Saddle Court which will enable the pool and appurtenances associated with Lot 3 to be entirely located on Lot 3. Both properties are located within the R-2A Zoning District.

After discussions with the board and the applicant it was concluded that additional information is necessary from the applicant in order for the board to be clear on the referrals necessary to the ZBA. Mr. Gray will meet with the Director of Planning to finalize all the details necessary for the next submission. The applicant was informed that if he submits by the close of business on Wednesday of this week, the board would consider his application again at the next meeting on Monday, November 9, 2015. Once the applicant has the ZBA approval, the lot line process may continue with the Planning Board public hearing.

SEDRISH

22 Smith Farm Road

Section 102.02, Block 1, Lot 39

Swimming Pool

Edward Figura, RLA, CPESC Benedek & Ticehurst Landscape Architects and Site Planners, P.C.

Consideration of 2nd extension of time resolution

The site plan application is for the construction of an 18'x38' pool with associated decking, walkways, patios, drainage and landscaping on a 1.156 acre lot located within the R-2A Zoning District.

Mr. Adelman asked for a motion to approve the 2nd extension of time for the Sedrish application. Mr. Delano made a motion to approve, it was second by Mr. Sauro and approved with four Ayes. Mr. Pollack was not present for the vote.

PUBLIC HEARING:

DIPIETRO

20 Banksville Avenue

102.04- 2- 43

Site Redevelopment – Office & Garage

P. Daniel Hollis, Esq. Shamberg, Marwell & Hollis

Dan Holt, PE Holt Engineering and Consulting

Discussion

The site plan application is for the conversion of the 2,080 square foot existing residence to a 1,040 square foot storage area and 1,040 square foot residence. In addition, the site plan depicts the construction of a 2,600 square foot garage with a 1,500 square foot second floor office within the RC Zoning District.

Present for this applicant were the applicants, Jack and Karen DiPietro and their professionals Dan Hollis & Dan Holt.

Mr. Adelman read the affidavit of publication for the record. Mrs. Desimone noted all paperwork was in order for this application. The following noticed neighbors were present Denise and Steven O'Connor at 5 Round House Court.

Mr. Hollis stated that the initial application was submitted back on May 30, 2008. The original proposal was for a 4,000 square foot garage and 2,800 square foot residence, there was out door parking for an excavator, trailer, a front loader, top soil screener, two dump trucks and material. This application was before the board for the first time on July 14, 2008 and only a couple of the present board members were on the board at that time. The present application is for a 2,800 square foot residence and a 2,600

square foot garage and is an as of right application. It meets in all regards with the zoning ordinance for this district as presented, there are no variances required as this application is presented. Opposition to this project began in earnest in 2008, with far more people than are present this evening that were in opposition of this application. The issues raised at the time were SEQR (State Environmental Quality Review) and CEA (Critical Environmental Areas). He prepared two letters on that topic setting the record straight on September 24, 2008 and January 28, 2009. The SEQR handbook states that the CEA does not affect the type of classification; in fact, the 1996 amendment of SEQR eliminated the previous automatic elevation of property in the CEA district into a Type I Action. In addition to SEQR, the Town of North Castle Code, Section 99.8 does not list actions within or contiguous to a CEA as a Type 1 Action. My letters from 9/24/08 and 1/28/09 were in response to three letters submitted by Mr. O'Connor dated September 10, September 17 and November 19, 2008. All of Mr. O'Connor's letters disregarded the case that Mr. Hollis cited in his December 24, 2008 letter regarding the Village of Tarrytown vs. Sleepy Hollow which spoke about CEA and Type I and Type I was not required here and never was. Never the less, a hard look is a requirement for any project and especially this project and that hard look has been taken and was taken by the Conservation Board and in their recommendation of approval on June 25, 2015. They recommended approval of this application and they recommended approval of tree removal. This letter is a very important part of the record as are his letters from 2008 are part of the record as well.

Mr. Holt will present the application and will note provisions made for additional parking on site to address areas of storage as noted in item #7 of Mr. Kaufman's most recent memo and we are going to ask that the board to land bank that. We will also review the Architect's plans. There will be a total of 6 feet between the two vehicles and outside walls and a total of 10' between the cars and the interior side, the interior side is bisected by a stairwell. There is no way a third vehicle can be put into that building in any way shape or form. He is a firm believer of the first amendment and the right of people to object and speak their mind at these public hearings. He actually feels that the process has been hijacked from time to time by the opponents to this project and the board has been beyond courteous and kind to the opponents to be able to speak at considerable length with regard to their opposition to this project, we get it they don't want it, they don't want anything there. The constant high jacking and constant haranguing of this project amount to a form of almost water boarding. They first fought the trucks and the outdoor storage, Mr. O'Connor's letter of September 28, 2015 Mr. Hollis took particular exception to. The parsing of the word accommodate page upon page is the reason why people don't think much of lawyers and politicians. The opposition renewed its Type I argument again and he submits that issue has been put to bed. They also speak about the enactment of Local Law #8 from 2013 and the intent of the law and what the Town Board thought about that law at that time. The Town Board is not like congress, the assembly or state senate. There are no bill jackets accompanying local laws. There is no memorandum of understanding of what the legislative body was thinking at the time. Any Discussion or intimation as to what the intent of the Town Board was as to the time of the enactment of that law is improper and should not be part of the record. Judicial inquiries into legislative intent are appropriate as an aid to statutory interpretation only when the law is doubtful or ambiguous. This

law was a project of political pressure in 2013 and is a result of what was going on in Banksville at that time; there was this application and other applications in Banksville which caused a big hullabaloo. He has been in front of the this board countless times, he has been in front of the Conservation Board, Town Board and Architectural Review Board and Town Court on perceived violations. We are here this evening for an as of right application. He felt the most offensive part of Mr. O'Connor's letter from September 2015 was "the Planning Board's job is not to cut an old pal as many breaks as you can" he respectfully submitted that if an old pal were cut a break, it would take a lot less time than 7 ½ years to have that break cut and if there was an old pal cut a break, it was not an old pal, it was a new pal, the voters of Banksville were cut a break when Local law #8 of 2013 was enacted. He then turned the presentation over to Mr. Holt to review the points he spoke about.

Mr. Holt presented the existing conditions plans at this time. The lot is a flag lot and there are off site wetlands which restrict everything along the driveway entrance (flag pole). Without a wetland permit, we would not be able to access the property. The other wetland that extends down further takes care of the rest of the area that has already been disturbed for the old parking lot that used to be there for the previous owners. The last wetland on site is in the upper corner and is the only wetland on site and about 570 square feet in area and has a buffer associated with it which swings around. Those are the existing features.

The proposed plan was now presented by Mr. Holt. The existing driveway is being refined and reconstructed to 16' in width and was part of a long hard discussion with this board to figure out a way to reduce the impervious surfaces and impacts. The only place that the driveway is a little wider is so that if two trucks meet coming in opposite directions, there is a place for them to pull off. The driveway will extend down where the 11 parking spaces were created for the vehicles that will be there, one of which is handicapped parking space and there are two spaces in the garage. The garage is 52' x 50' and is attached to the existing residence. We have established that the lowest floor on that building to be the same as the existing floor of the garage on the existing house. The garage will be 25' tall at its maximum height. Which basically means from this high point on site it extends above that point 15 1/2' which is below the tree line.

Mr. Holt stated that there are two types of stormwater mitigation proposed, one is an underground detention area with 36 inch diameter pipes fitted with an outlet structure which is controlling the flows for all events from one to one hundred year storm. We have controlled all of our run off and kept it on site. Beth Evans, Evans Associates has developed another type of mitigation here for water quality; it will be a sand filtration basin. It will take the flows from other people's properties and we capture it and get what we can into the ground before it enters out into the stream and on its way to the Mianus River.

Mr. Holt then presented a plan that was not part of the submission for this meeting and copies were not handed out at the meeting. Mr. Holt stated that the upper plan is the existing condition watershed and the lower plan is the proposed condition watershed.

This was put together to delineate how drainage was acting on this property in both conditions.

Mr. Holt stated that two hydrodynamic separators are also being installed to handle the water quality requirements under the state regulations. Everything is directed towards that, the sediment and silt get separated out before it gets into this basin and out to the water courses. The peak stormwater discharge for all storms is actually below what is happening right now, we are protecting the stream that feeds to the river, so they are not seeing increases in runoff. The water quality issues are being picked up and kept on site and again mitigating positively the Mianus River areas.

Mr. Holt then presented the architectural plans prepared by Crocco's office at this time; he also presented the interior floor plans. Mr. Holt stated that the garage was designed to fit the size of the actual trucks that would be used on site along with room for the employees to load and unload the truck and to get in and out of the truck. The trucks proposed are Isuzu trucks with rack body and crew cabs, one will have a lift on the back. The truck will be 7' in width and between 23 – 27 feet long. There is a 10' envelope around each truck, which is the line you see out here, it extends beyond the garage, the envelope you gave us the ability to work with. In reality the truck that is going to be used is going to be 6 1/2' on one side and 6' to the vestibule on the other side, plus a 6' entry for the guys to get around the truck and an area for storage of tools and materials. We have looked at and heard that you were going to ask us to reduce the size of the garage, we looked at that and the reality with the vestibule is this is the controlling factor on the dimension. Making the garage smaller will only prevent us from getting the trucks into the place or we won't be able to open the doors. These are real trucks and what will be used; they are in the industry and meet the required weight limit and axles. He does not see a way to make it smaller without it working for his client at all.

Mr. Holt presented Ms. Evans plans at this time. Most of the landscaping is on the Northerly side of the property and the applicant is not going into that area on site anyway. It is the area that can be used for the most mitigation. A lot of protection will be given to the existing wetland; a lot of the vegetation along the driveway is being removed at the Conservation Board's recommendation because it is diseased and will be replanted as part of the mitigation for the site. The sand filtration mitigation along the driveway will intercept the Genkerell runoff and get it into the ground before it gets into the Mianus River.

Mr. Kaufman asked Mr. Holt to review the offsite mitigation comments from the Conservation Board. Mr. Holt stated that the Conservation Board has a big interest in doing something with the Middle Patent Cemetery; the old pond out there is heavily silted over and needs a lot of work and dredging. The Conservation Board has been out there and has a list of things they would like done out there. Without knowing all of the things that they would like done out there, his client has agreed to do that but there has to be a limit somewhere, his client is willing to cooperate and work with the Conservation Board regarding the mitigation. His client lives in town and wants to take care of it; he does not have a problem doing that.

In response to Mr. Kaufman's question, Mr. Holt suggested that we determine what the most important parameters are and get some topography done and have a meeting with the Director of Planning, Consulting Town Engineer, Conservation Board and whomever else you would like present and work out what those issues would be and how to go about getting it done.

Mr. Kaufman stated that he had received a call from the Mianus River Gorge, they wanted put on the record that they don't think that any improvements should be made to the Middle Patent Cemetery and mitigation efforts should be focused someplace else. In particular they mentioned that it would be most desirable for the applicant to give consideration to placing a conservation easement on the 137 Bedford Banksville Road site. (Mr. DiPietro's other lot).

Mr. Fareri stated that this lot was worth between \$300,000. to \$400,000. And with the cost of all the approvals that would be a lot of money to donate. Mr. Adelman stated that the Gorge felt it might be a tax advantage to the applicant. Mr. Holt noted his client needs income not tax advantages. Mr. Adelman stated that will be worked out, we know it will be off site, the rest will be worked out with the interested parties.

Mr. Cermele stated that he walked the Middle Patent Cemetery with Mr. Fava, Conservation Board Chairman, over the summer. The pond is extremely silted at this point. We were looking at some options like inlet protection, a fore bay or some means of trapping that sediment and providing a maintenance point before it silts up the pond. We looked at some outlet stabilization and restoration of the channel that discharges from the pond because it is pretty heavily eroded with some steep banks. The Cadillac of the project would be to dredge the pond. These are all ideas we discussed at the site walk. As Mr. Holt suggested we should all sit down and go over what can be done and what is realistic and fair mitigation for this project. Mr. Kaufman asked when that meeting took place to please extend a call to the Mianus River Gorge because they had some specific concerns to doing that and it might be beneficial to include them. Mr. Adelman agreed to include Mr. Christie from the Mianus Gorge but also noted the Gorge was quite some distance from the cemetery. Mrs. O'Connor stated that Mr. Christie's concern was the Mianus River and that is his primary concern with this property. Mr. Adelman noted that it was a valid point but we have to do what makes sense, it will be worked out.

Mr. Holt noted that the septic system was approximately 50 years old and they are proposing to move the system outside the buffer to eliminate the concern of potential contamination to the CEA.

Mr. Adelman asked the board and professionals if they had any questions or comments at this time.

Mr. Carthy inquired how you would quantify the offsite mitigation. Mr. Cermele stated that he did not know if it was a dollar amount that was looked at, it is a benefit vs.

disturbance. He will advise, guide and consult with the Conservation Board, it is their final decision. That work will need a wetland permit.

Mr. Adelman stated that before he opened this up to the public he wanted to echo what Mr. Hollis mentioned earlier. This board endeavors at all times whether it is a public hearing or not, if people are interested enough to attend a meeting to see what is going on we really want to hear what they have to say, but there is a limit to that. He reviewed some ground rules. The board has heard this application and is familiar with this application. The board has heard the concerns expressed by the O'Connor's. We can't have a Filibuster; we need to keep this on point with no repeats. We understand what is going on, let's keep this short and to the point with no repeats.

Mr. Adelman stated that the board was aware that one of the main issues that the O'Connor's mentioned previously was the CEA and he felt that has been well addressed at this point, we have the letter from the Conservation Board, and we have some excellent plans for that. As Mr. Holt pointed out we are improving the situation relative to the water flows and the clearing up of the water flows. Lets not dwell on that for sure. Similarly on the garage, we had some questions on it, but I think – Mrs. O'Connor interrupted at this point and stated that she has quite a few questions and will be discussing that and she hopes that after eight years the board would indulge her at this public hearing to say her piece on that. She has some concerns about the statutory interpretation on that and hopes to be heard. Mr. Adelman interrupted and stated that as long as she is brief, to the point and does not repeat herself. Mr. O'Connor stated that she does not want to waste anyone's time.

Mrs. O'Connor gave her name and address for the record. Mrs. O'Connor stated that earlier this evening Mr. Hollis stated that this plan meets in all regards the current zoning requirements and she respectfully submit that it does not meet all the requirements and would like to discuss that. She will not attack Mr. Hollis personally the way he has chosen to attack my husband tonight. She does not have to do that; she can attack the plan on its merits. It is respectfully submitted that the DiPietro Construction Corp's application should be denied in its entirety because the intended use of this property is not allowed under its current zoning. DiPietro Construction Corporation is an Asphalt, paving and excavation contractor. It receives stores and distributes large multi ton loads of paving material, sand and gravel. It uses multiple oversized vehicle and equipment. Mr. DiPietro is asking this board to approve its application to run its construction contracting business from 20 Banksville Avenue. It seeks to store vehicles, contractor's vehicles and equipment on site in a 4,100 square foot warehouse, what he is calling a garage. The reason she uses 4,100 square feet is due to the 1,500 square feet of office space on the second floor which nobody seems to be counting. This building is nothing more than a warehouse transparently disguised as a garage. Mr. DiPietro is desperately trying to fit a square peg in a round hole. In Mr. Holt's own words in his recent October 13, 2015 submission he states that the typical operation is that the crew will meet at the garage, obtain their assignments for the day, load the trucks with tools and materials needed for the day and leave. These are contractor's tools and equipment that is being stored in this 4,000 foot warehouse. With a changing of the zoning in the Banksville Area in September, 2013; Wholesale

and storage uses as well as the storage of contractor's equipment are no longer permitted uses. The business that Mr. DiPietro seeks to operate from this property is no longer legally permitted. Mrs. O'Connor submitted handouts to the board members at this time.

Mrs. O'Connor continued. The first two pages are the new statute that this application is being submitted under and the old GB zone. If you look at the first page, the permitted principal use that Mr. DiPietro is submitting his application is under #2 which allows a residential dwelling at least 900 square feet in size along with a business and professional office, studio, retail use, carry out restaurant, fine arts instruction, school or recreation center. The total of such nonresidential uses shall not be more than 1,500 square feet. In the most recent submission the applicant states that he is using the residential dwelling which is 1040 sq. feet and a storage area which is 1040 Square feet. Mr. DiPietro is not even using the main residence as an office or place of business; his is using it for storage which is not a permitted principal use of the plain language of this statute. There is no allowance for the use of the principal dwelling for the storage of the contractor's equipment or materials. If we look at the applicable permitted accessory uses which are the second Column, I believe there is no dispute he is going under #3 for that. An accessory to a nonresidential use is a garage that shall accommodate not more than two, two axle commercial vehicles. Each vehicle has to be associated with a principal use and the gross weight cannot exceed 1,400 lbs., also no outdoor storage of materials or equipment. To obtain Planning Board approval, the proposed garage cannot by definition be big enough to fit three vehicles. Due to the specific language in this statute which states it shall accommodate not more than two vehicles. This language I submit to this board regulates the size of the garage.

Mrs. O'Connor continued. If you look at pages 3 & 4 of my handout, page three is what Mr. Holt presented earlier and page 4 shows with some planning there can be a lot more trucks that can fit in the garage. Mr. DiPietro sites for example two trucks that are 10 x 35 feet. Even though with the enormous size of these trucks, the proposed garage not only fits these two vehicles, but can fit five more vehicles of the same size or 10 smaller trucks. Clearly the garage as proposed is in clear violation of what the zoning law allows. A garage that can accommodate two vehicles but not big enough to accommodate three vehicles. Also the vehicle in the garage is depicted with a lift gate open which adds several feet to the length of the vehicle, you can see that on the truck to the left where it says lift gate. Why would the lift gate have to be opened or closed in the garage unless it is being loaded with contractor's material and equipment stored in the garage. Again, the storage of contractor's equipment is not a legally permitted use; it was specifically removed from permitted uses in the district in the 2013 zoning change. Again, I refer you to the second page of that hand out showing that in the GB zone the storage of contractor's equipment was specifically allowed with a Special Use Permit as was warehouse and storage purposes. Both of those uses were specifically eliminated. Under the new statute a garage is a permitted accessory use. Fortunately these terms are defined in our town code and lend further support that Mr. DiPietro's proposal is not legally permissible. In the hand out is a copy of Chapter 213 zoning definitions and word uses as defined in our own Town Code. Accessory use, which this garage must be, is defined in the Town Code as a use which is customarily incidental

and subordinate to the principal use on the lot. This garage as proposed is not incidental and is not subordinate to this business. The proposed garage is double the square footage of the house. Most if not all activities of this business will take place at or in this garage. The use of the garage is therefore not incidental or subordinate. Rather it is the business. It is the storage and use of contractor's material and equipment. In addition to storing the contractor's material and equipment, the applicant also proposes to use the garage as office space, 1,500 square feet of office space. This is also not permitted under this statute. A private garage is also defined in our town code as an accessory building or part of the main building used only and I repeat only for the permitted storage of motor vehicles for the owner's private use, there is no authority for Mr. DiPietro to have a second floor on this garage for 1500 square feet of office space. Moreover, the business or professional office space, the principal primary use can only be located in the residential dwelling, not in the garage. It is not a permitted accessory use. Therefore, under no strained interpretation of this new zoning law, can Mr. DiPietro's application be approved by this board.

Mrs. O'Connor Continued. Finally we have to take a look at whether there is any indication that Mr. DiPietro will adhere to any conditions that may be placed on any plan approval. If his past behavior is any indication of his future behavior, the community has great reasons to be concerned. You all know the environmental sensitivity to this site and she will not go there Mr. Chairman. You know if its location within the CEA as well as the onsite and offsite wetlands. Mr. DiPietro excavated and regraded portions of this property already. He has removed trees unlawfully within the town's regulated buffer. He pled guilty to the unlawful removal of trees on this site. He also pled guilty to operating an office out of this site without planning board approval. 20 Banksville Avenue to date has only been approved for a single family residence. Yet Mr. DiPietro operates his business from this site every single day. He has misrepresented in his notice of intent to the NYSDEC that the property is currently used as a commercial property. That is false and at a minimum, misleading. Mr. DiPietro should be required to resubmit that application to the NYSDEC. This application further seeks to remove 12 additional trees. Mr. Holt's letter and his comments earlier this evening both state that the Conservation Board's report states that most of the trees designated for removal were diseased. She has not seen that in any of the Conservation Board's memos or reports. She inquired if this was a true statement and asked that this information be made available to herself as well as the board. Mr. DiPietro has already stripped this property of important vegetation and he should not be able to continue to denude it. He operates his business from 20 Banksville illegally and brings trucks into the property daily and has seen it with her own eyes as recently as Wednesday or Thursday last week. His illegal behavior goes on unchecked by this town. She googled his company and it states, she wrote it down on the last couple of pages all with his convictions of cutting down the trees and other offences. If you google his company it says that his executive offices are located at 20 Banksville Avenue. He is fragrant in his violations to the law because he knows this town does nothing. The homeowners and business owners represented by Chuck Banks together, both factions, after years long strife, came together in 2013, with great assistance from Councilman Schiliro who worked very hard with Mr. Banks who represented the commercial residents and the O'Connor's who represented the residents. We came to a compromise with both sides

supporting this language. An agreement was reached whereby the small mom and pop commercial business could continue to thrive and the predominantly residential character of the neighborhood would remain. The new legislation protects all of us against the larger commercial contractors like DiPietro Construction Company whose activities negatively impact our environment, our roads and community. To approve this proposal which is essentially a 4,000 foot warehouse for the storage and use of contractor's materials and equipment would be contrary to the law was enacted. You would also be snubbing your noses at all the hard work and efforts of this community. To resolve this conflict once and for all so we can go back to the long standing peaceful coexistence that we have enjoyed with each other over the last 20 years.

Mr. Adelman thanked Mrs. O'Connor and asked Mr. Hollis back to the podium. Mr. Hollis stated that we will be here all night if we go back and forth. He will stand by his statement – Mr. O'Connor interrupted and asked if he could speak at this time or if we are going to go back and forth. Mr. Hollis noted this was not the Jerry Springer show. Mr. O'Connor asked how the chairman would like to proceed. Mr. Adelman stated how he would like to proceed is to keep in mind the ground rules, don't repeat anything that Mrs. O'Connor said. Mr. O'Connor said there was no way he could follow that.

Mr. Adelman stated that was a hard act to follow, she did a very good job. Mr. Adelman thanked Mrs. O'Connor for keeping her presentation concise and to the point. There were a lot of legal points raised and the board will rely on counsel and the applicants counsel to give the board some input on those points. He asked Mr. O'Connor not to repeat anything presented by Mrs. O'Connor. Mr. O'Connor said that he would do his best not to be too repetitive.

Mr. O'Connor stated that in regards to the statute, he came up with the term accommodate. The legislative intent will be heard by the court if that is where we end up. He will testify to it and how Mike Schiliro sat next to him and discussed how do we want to phrase this and are we going to limit it to two trucks. Originally, they wanted three trucks and we wanted one truck and compromised on two trucks. What about the garage, we specifically acknowledged in our discussion that you have to get in and out of the trucks, you need some breathing room - Larger to accommodate not more than two vehicles. Contemplating that almost gives you room for a third which gives you walking room and parking room. This would give you an extra 10 feet or so in length and width in the garage. That is the way that phrasing came about. That was the intent and that is the way it reads. Mr. Hollis, who I will not personally insult, said in his letter that it does not say anything about size, you are allowed to house, it does not say house, it says accommodate. Mr. Adelman asked that we not go into that. He thinks that Mr. Holt demonstrated why the garage will hold only two vehicles and the board has seen Mr. O'Connor's rebuttal and the board will leave that for the Town Engineer to give the board some advice on that. Mr. O'Connor stated that with due respect he is trying to avoid leaving it to a court by telling you where this goes. The Chairman is not the final word. Mr. Adelman stated that we understand that and an Article 78 is available to you and we will not do anything to deter you from seeking your legal rights. Mr. O'Connor stated that he was trying to avoid that. Mr. Adelman noted that it was understood, we don't need to speak of it again, and we know the court is always

available. That is always a crapshoot for both sides and is available to you. Please don't dwell on the garage issue, we have seen your configuration and we have seen the applicant's presentation and the board will discuss that and that is not an issue for you. Mr. O'Connor stated to speak on at a public hearing. Mr. Adelman stated that there will be no repetition, Mrs. O'Connor has done an excellent job on this and you have provided us with diagrams where you have indicated in your opinion that they can somehow squeeze in seven trucks and we will leave that for the professionals to discuss. We are not going hear you talk about it anymore.

Mr. O'Connor stated fair enough, he will move on. On June 4, 2013 John Fava, Conservation Board Chairman, sent a letter to the Town Board and was copied to Mr. Adelman, Mr. Kaufman and Mr. Baroni and that letter spoke about the proposed rezoning and said all properties require individual well water and sewage systems; therefore, great care must be taken to maintain and improve these facilities . In addition to any zoning change, he wrote to you, the result should be less intensive uses, protection of ground water and surface water resources and improved code enforcement. I stress of course less intensive uses because the current use is residential. If Mr. Fava is recommending to you that the uses be less intensive, I cannot for the life of him imagine how you can go back to John Fava and say that installing a paving contractors operation there is a less intensive use that provides additional ground water protection.

Mr. Adelman noted that we have a more recent memo from Mr. Fava. Mr. Kaufman stated that was definitely out of context. What we were talking about were the uses in the GB district and clearly that was the intent of the Town Board and the Conservation Board. Taking those more intensive uses like contractor yards out of the zoning, not particular to this site. Mr. O'Connor stated that he did not mean it to say that it was particular to this site, that is exactly what I mean to say that during the rezoning he recognized, it seems to me, and encouraged and applauded the idea of restricting the uses to become as a result of the rezoning less intensive, not more so and that it my point. Mr. Adelman stated that further point since you are bringing up uses and all of that and John Fava's letter from 2013; we have a later letter which essentially blesses this application. As Mr. Holt pointed out there is an improvement to the Water Treatment and everything else in so far as it affects the CEA. Mr. O'Connor stated perfect that is my last point the CEA.

Mr. O'Connor continued. The applicant is a paving contractor and will be bringing paving contractor material on site that is what he is going to do. He has trucks that accommodate materials. In his own submission is noted that the day will start with a crew and the crew will load on tools and materials to the trucks. Those are asphalt paving materials, what Mr. Fava did not consider is when he said there is going to be water treatment now, there is going to be an improvement, he did not consider that there was no mention what so ever about the intended new use which is to bring on asphalt and related oil base materials. Here is where that goes, you are again in CEA but more specifically the proposed water treatment. If you look it up on the internet and you will find it in ten minutes, a context CDS Hydrodynamic water treatment.

When you look it up it is good at reducing particulate matter but when it comes to oil and grease it only gets out 64%. In other words, for every 100 gallons of water that will go through that property and has particulate matter, oil and grease with he did not know how many trucks in practice all the trucks that will be there with their asphalt base materials but now for every 100 gallons that they say are draining off the site and into the river. 34 gallons essentially go untreated. That is what a 64% efficiency rate means. It means 34 out of every 100 gallons goes untreated carrying with them their grease and oil. He did not care as much about the sediment. To say this is going to be an improvement is a gross miscalculation and understanding by Mr. Fava and that is something we will have to treat if and when we challenge the wetland permit, he suggests to the Planning Board that they should never let it get that way, that is what I have been trying to tell you the whole time. You have to pay special attention in the CEA this is a double A certified thing and he is going to pollute it. This board is going to accept 1/3 pollution as acceptable. He thinks that is improper and has nothing else to add.

Mr. Adelman stated that we all have concern about the CEA. Mr. O'Connor stated that the board does not demonstrate that. Mr. Adelman stated that we have talked about this forever. Mr. O'Connor stated but the board does not act on it. Mr. Adelman stated that the board hears his comments and asked Mr. O'Connor to please take a seat. Now we will give other board members and the applicant a chance to respond.

Mr. Adelman thanked Mr. O'Connor for keeping it short and to the point.

Mr. Fareri, North Castle resident pointed out where the O'Connor's residence was in relation to the DiPietro property. This property was zoned GB prior to the zoning change in 2013 which permitted many more uses prior to the zoning change. The property next to the DiPietro lot has large garages and was not sure how many bays it has and is a contractor's yard, the Genkerell site. In his interpretation of developing, this is within the limitations of the law and does not require any variances what so ever. He noted the O'Connor's were quite a distance away from this lot. The application has been reviewed by the Mianus Gorge and Conservation Board. The applicant is proposing mitigating stormwater which does not happen presently. Post construction the environment will be significantly better than what presently exists if you do nothing. Mr. DiPietro has been working for me since he was 15 years old as a contractor and his father before him. His father started cutting lawns with me. It is right that Mr. DiPietro does do some blacktop work and a lot of it; he also does a lot of landscaping work, stone work, wall work and other things. There are many contractors in the paving business but that does not necessarily mean that is where you are going to keep your paving equipment and paving trucks. His equipment is not quite large enough to accommodate asphalt. When you do asphalt, you generally rent trucks to deliver the blacktop, you don't store it on your property. Only real truckers with the right equipment and heated trucks bring asphalt to the sites. Just recently Mr. DiPietro did all the landscaping at 99 Business Park Drive, he does many different jobs, just like Mr. Carthy does when installing a pool, he rents out the excavators, and he does not house that equipment on this lot. He did not think that Mr. DiPietro was going to store that material on site and if he did and it was not permitted the town would issue a violation.

Mr. Fareri continued and stated if a telephone pole was proposed the O'Connor's would still come out against this application. He has heard these discussions on TV and at length and one thing is for sure, the O'Connor's do not want to see anything developed on that property. There was a saying NIMBY (not in my back yard). This is not in their back yard and is such a far distance away and the O'Connor's would be happy to see the house kept just the way it is and nothing done, but that is not reality. For eight years this gentleman has been paying taxes on this property and wants to redevelop it. Post redevelopment, the town would receive more taxes, environmentally better than it presently exists, he hopes this board will see through the charade that has been presented here tonight and its so many different documents and if it does get passed and I hope it does and hearing is closed, the O'Connor's do have a legal right to go ahead and file an Article 78. If they want to go beyond that and they could stop the *development* of this property and do a cease and desist. He does not care what happens tonight. There is no way in hell that Mr. & Mrs. O'Connor are going to be satisfied with anything. The best thing to do, the size is not the issue it is definitely for two vehicles. There is more in your two garages as well, a lawnmower, rakes and tools and other things that people put in garages. The O'Connor's are correct that there will be more than the two trucks in the garage. Tools are customary in garages. If your concern is visibility let's talk about screening that will be satisfactory. He does not think the O'Connor's will win the argument with the stormwater pollution; Beth Evans is the Wetlands Commissioner in Bedford. Mr. Adelman asked Mr. Fareri not to discuss that any further because we all agree we have flattened that issue. Mr. Fareri stated that the town would be better served with the wetland issue. Mr. DiPietro is also required to do 2:1 mitigation and some of that mitigation will be done on site and the Conservation Board Chairman suggested dredging the Middle Patent Cemetery which could cost \$100,000. or more. To think of taking another lot that has gone through the process of getting approvals and worth \$300,000 to \$400,000. and donate that as the mitigation for this lot is a real stretch and greedy for whomever came up with that idea, that should also be put to bed. As a resident of this community the town would be better off approving this and it would have additional tax revenue, based on the requirements of this approval there will be no negative impacts. Stormwater and wetlands are better served and the community will get something else in return. After 8 ½ years, enough is enough.

Mr. Adelman thanked Mr. Fareri for his comments and asked Mr. Hollis back to the podium at this time.

Mr. Hollis stated that there has been more than an intimation that this is going to court. After representing Mr. DiPietro for 7 ½ years through calumny and character assassination of him, he is hardly about to abandon him if it gets a little tougher and in a different forum, that is not going to happen, second of all, Mr. & Mrs. O'Connor want you to get in to the intent of What Mr. DiPietro is going to do, that it is going to be an asphalt contractors yard. There is nothing in the record that would show that. The size of the garage is not limited by the ordinance except as the type of vehicle that can be there, period, nothing further. It does not say only so many square feet, it does not say that. It does not say only so many feet on the side. The intent of Mr. DiPietro as ill placed as

the accusations are and inappropriate, frankly, trying to muddy the water and color your thinking about him are just not correct. They are also not correct about the intent of Mr. Schiliro, fine man, good supervisor, a gentleman through and through. That intent and Mr. O'Connor is not going to testify on that either, the matter of Scarsdale Chateau vs. the Village of Scarsdale which he tried successfully on a condemnation case for Scarsdale Chateau, David Portman a recognized Dean of Planning and Zoning tried to on cross examination when the issue was the highest and best use of the property to be condemned. He represented the property owner. When Mr. Portman said that when we tried to put that together, Judge Rosato properly excluded the intent of that legislative body in constructing that ordinance. There is no bill jacket, it is just not proper. He can talk about it all he wants but it just never going to happen. The applicant is compliant in all respects and worthy of consideration. He recognizes the public hearing cannot be closed this evening because ARB recommendation has not been made back to the board.

Brief discussions were had regarding when this application would be adjourned to and when the applicant will appear before the ARB. (This application was scheduled to appear before the ARB on November 16, 2015 and will return to the Planning Board on November 23, 2015.)

Mrs. O'Connor stated that Mr. Fareri stated earlier that the O'Connor's would be very happy if nothing was developed here and that is not true. We understand what the compromised legislation allows Mr. DiPietro to do. We have sat down with our neighbors at our kitchen table and tried to resolve it and she invited Mr. DiPietro his wife, his attorney, Mr. Fareri or anyone else they want to come and see if we can't resolve this as neighbors and save each other another five years of litigation and who knows how much in attorney's fees. She is open to that and would welcome that. There is a business being run out of 20 Banksville Avenue, you don't see us calling the town code enforcement on you, what you have there now does not bother me. A four thousand square foot ware house is another issue.

Mr. Adelman stated if that is your wish to do it, then do it or not if you wish.

Mr. Cermele and Mr. Kaufman did not have any comments at this time.

Mr. Delano asked Mrs. O'Connor for a copy of what she presented this evening as he would like to review it later; Mrs. O'Connor offered her hard copy after the meeting was over.

Mr. Delano stated that Mr. O'Connor was not off base with his comments regarding the hydrodynamic separators. You would have to sit down and go over the drainage analysis with particular care. We have been told that Beth Evans is intercepting water that is coming around, not necessarily off the newly developed portion of this site and she is putting it through a sand filter which is a great thing, to clean up the water and let it go out. The underground detention system that Mr. Holt has put together which is going to primarily capture the runoff from the newly developed portion of the site, the change of peak will be mitigated by his control structure, this is a good thing, it is supposed to do that. The Hydrodynamic Separator is primarily for separating sediment

and floatables out of the flow of stormwater. Some small amounts of pollutants like phosphorus, nitrogen, bacteria attach to the sediment and get taken out. The Hydrodynamic Separator is primarily for sediments and floatables. This is not a device that is used to reduce increased phosphorus loading, increased nitrogen loading or increased bacteria loading, which you will get from any new development, regardless of what the business on the property is. My last discussion about this application was a couple months ago and I asked the applicant to give me something better because you are in the CEA. They seem to be barking up the right tree, can they go further, it needs to be looked at because we are going to get the newly developed area which is going to have a lot of impervious area on it and a new pollutant load down to a system that does not necessarily take care of all the pollutant loads. The water classification is AAS, the highest you can get in New York State. Some of the primary concerns are mentioned in the regulations is phosphorus and nitrogen when you are in the AAS water designation and to a lesser degree sediment. The stormwater pollution control device being used with the peak mitigation control device does not necessarily do the job on pollutants that he thinks should be attained in the CEA, which is his opinion; there are four other members on this board.

Mr. Delano stated that Mr. DiPietro is proposing a 1,500 square foot garage an office which is the second floor of the garage, for a single business. He inquired if that much office space was necessary. Mr. DiPietro stated he does need that much space. Mr. Delano stated that 1,500 square foot office is 38 square feet of space. If you bring that space straight down that is more than enough room to house two trucks and store equipment. The garage has one heck of a vestibule; the garage is not required to accommodate a vestibule for a grand entrance to the second floor office. The garage is required to house these two vehicles; there is some wiggle room in there. If the building shrinks, the stormwater shrinks and this is a step in the right direction. Is a 1,500 square foot garage enough for you to handle, no, but he would not be uncomfortable in saying I have my 1,500 square foot office and my 1,500 square foot garage. This is my office, my garage, my business, that garage is for the accessory use for whoever is in the office. The garage is an accessory use for whoever is in the office. Whether the garage and office have to be in the same structure, he did not know and did not study it that hard. He would like to see it built that way instead of putting up a second building and seeing it all sprawled out with all of that additional impervious surface.

Mr. Kaufman stated that the uses that are permitted clearly permit the residential use, the office use and the storage of two commercial vehicles. If it were a detached structure or that structure was on its own then it would be a private garage, here it was just a use within the building, it is one building.

Discussions were had at this time regarding whether this was one structure or two structures.

In response to Mr. Adelman's comment, Mr. Hollis stated that there is no debate regarding whether this is one or two buildings, this is one building.

In response to Mr. Adelman's comment, Mr. Baroni stated that this board needs to deliberate on what the interior of that building looks like and whether or not it needs to be as large as proposed. To a lay person like himself, having the foyer down the center of the building kind of clouds the issue. He does not know if that is something that can move to one side or the other so the garages are closer together. He was not sure if the ARB was going to look at the interior layout. It is something that needs to be done with the engineers and see if that can be reduced. He thinks that essentially the issue that the O'Connor's have is the size of the garage structure. Mr. Hollis stated that it is the size because the O'Connor's are concerned about the number of vehicles. He does not think they are concerned with the size and the mass on the horizon. Mrs. O'Connor stated yes they were. Mr. Hollis continued and said that this garage was designed to accommodate two vehicles that are permitted and as was negotiated without my client when that up zoning took place in 2013. Those two vehicles are exactly the vehicles specifically set forth in the ordinance

Mr. Kaufman stated that clearly some design choices that were made maximize the footprint of that building. Mr. Adelman suggested the two engineers sit down and discuss this. Mr. Holt noted that the engineers understand the turning radius of vehicles. Mr. Adelman agreed with Mr. Baroni's suggestion of moving the access stair to the side. Mr. Hollis noted it was an issue because of them pulling out. When both come out it is a difficult backing function. We have looked at this, believe me, this has been designed and redesigned and redesigned some more for over 7 ½ years. Mr. Adelman asked that the conversation be had with the two engineers and John Kellard if you want – that you can tell the Planning Board that you are satisfied that this is the optimal configuration. Mr. Cermele stated that he was not sure if he wants to make that determination for the board. Mr. Adelman stated that is a recommendation, we look to you for the engineering and design recommendation.

Mr. Sauro inquired about the exterior stairway. Mr. Holt stated that staff while in the garage that need to go to the office do not want to go outside to access the stairs to go to the office and the exterior stairwell was also a second means of egress in case of a fire.

In response to Mrs. O'Connor's comment, it was noted there would be no basement in the garage.

Mr. Cermele inquired if the board had a number in mind, a comfortable minimum envelope around the truck. Mr. Adelman stated that he did not know how much space is needed to open the door. Mr. Holt stated that the way it is proposed right now is it has a 6 foot envelope around the truck. Ten foot was presented to show the board what it would do if it were a ten foot envelope which would bring us to almost a 3,000 square foot garage.

Multiple discussions were had at this time. It was noted that the vestibule cuts the space down around the trucks, it was also noted there was a concern that the space behind the vestibule would be large enough to hold another vehicle. Mr. Holt stated that you cannot get another vehicle behind the vestibule. Mr. Hollis stated that the

point of the matter is that there is six feet where you open the door. There is a point where it is ten feet behind the vestibule to the second floor that is not the full 52' of the garage, that is only the back 25 or 26 feet of the garage. To redesign this garage for no practical reason or purpose to create some satisfaction to a couple of neighbors, it makes no sense.

Mr. Baroni stated that the issue is larger than that, if we are going to interpret the code to say that these garages to be any size you want. Mr. Hollis stated that is not what we are saying. Mr. Baroni stated that essentially that is what you are saying for that zone. Mr. Hollis stated that there are coverage issues, FAR issues and setback issues. His client is not coming in with something that is extravagantly beyond the side of the vehicle. Six feet for a truck that size allows three feet on either side to open the door. Some of the board members are in the construction trade or have been in a truck of that size. There has to be a point of reason here and not redesign for some reason beyond good planning and zoning, otherwise you are designing for a horse and going to get a camel and it just does not work. Mr. Adelman agreed that you need room to open a door. He noted another application (Patti) where they saw a two car garage where you can get the car in the garage but you cannot get out of the car.

Mr. O'Connor asked the members of the board when they returned home and parked their car in the garage to measure how much space was needed when opening the door, he opined that it was four feet. Multiple conversations took place at this time and the dialogue was inaudible.

Mr. Carthy asked Mr. Baroni about Mrs. O'Connor's comment made earlier this evening that since the new legislation was passed in 2013 this application has no basis. Is Mrs. O'Connor right or wrong? Mr. Baroni stated that Mrs. O'Connor's comments were based on the perceived uses that Mr. DiPietro is going to give to the property. Is an office allowed, yes. Is the storage of two medium duty vehicles allowed to be enclosed, yes. Is a residence allowed, yes, the rest of it is supposition. He is not going to use it as an office, it will be used as a paving yard, how do you get from point A to point B. Mr. Adelman noted Mr. Hollis covered that in the beginning of the meeting.

Mr. Carthy noted that some of the things said here this evening are irrelevant. The proximity of the O'Connor's house to the site is irrelevant. He does not feel it is enforcing their argument or weakening their argument. The fact that the applicant will pay more taxes is irrelevant. The argument is the zoning and how this was zoned and does this comply with the zoning. The board was not asked to think about the spirit of the zone in this case, the zoning is the zoning.

In response to Mr. Carthy's comment, Mr. Baroni stated that his only experience with a structure of this size is in connection with the Whippoorwill Club. There was a structure there that was 3,300 or 3,400 square feet and it housed all of the equipment and trucks associated with an 18 hole golf course. The Whippoorwill Club outgrew that and we are now building a much larger facility. The structure that was there was the structure that he was familiar with and it was certainly more than sufficient for the vehicles that are proposed. The question the board has to ask itself is when the Town Board used the

word accommodate, wasn't it included in the definition of accommodate that obviously you have to have room on either side to get in and out of each vehicle. But were you intending to have 10 feet interior, were you intending to have 10 feet behind the trucks. It makes for a very large structure, 2600 square feet for two vehicles.

Mr. Carthy stated do we really need a 10 foot wide stairwell up to the office, the board can consider this. Mr. Hollis stated that he did not know what the code was in regards to the size of stairs up to the second floor. He said he takes issue with Mr. Baroni's belief is the garage too large. Every case that goes to the Court of Appeals has this line in it " zoning deals with use, not users". What the O'Connor's are having you believe is that you need to deal with the user and not with the use. That is where their argument falls flat on their face. That argument was brought home to him in a case between the Town of Mount Pleasant and the Legion of Christ. He won that case all the way to the Supreme Court, zoning deals with use not users. The O'Connor's are painting this user as the second coming of Jack the Ripper and making you think that is the reason why you should deny it because he is going to do everything nefarious there. There is no prohibition on the size of the garage. We are asking for 6 feet on one side and most of six feet on most of the other side. Is it 10' in some places yes, look at that plan and look at it carefully, that will tell you the story and will dissuade your concerns in the garage and vestibule area too.

Mr. Kaufman stated that the issue he brought up over a year ago was when this was first rezoned to the RC district was that very issue, not the user but the use. That was the accessory use and the size of the accessory use in relation to the principal uses and at that point the board had a discussion of what is the appropriate balance and that is what the board has to look at. Mr. Carthy agreed we do have to look at the use; no one has prevailed on him, speaking for himself that the user is the problem here, for the record.

Mr. O'Connor stated that he did not know Mr. DiPietro from a hole in the wall; he does not know him or care about his personally. This has been about the use, not the user. Mr. DiPietro stated that he coached Mr. O'Connor's son with the Warriors football club. Mr. O'Connor stated that it has everything to do with the use. The reason why he fought years ago was not because of one guy or another it was because of the uses, one use was the contractors repaving yard (AMEC) and another use was for pesticides (Lowery).

Mr. Adelman stated the board does not have a crystal ball and can only deal with the facts.

Mr. Adelman made a motion to adjourn the public hearing to November 23, 2015. Mr. Delano second the motion and it was approved with five Ayes.

Mr. Adelman asked for a motion to adjourn the meeting, Mr. Delano made a motion, Mr. Sauro second the motion and it was approved with five Ayes.

Meeting was adjourned at 9:00 p.m.