

**NORTH CASTLE PLANNING BOARD MEETING
15 BEDFORD ROAD – COURT ROOM
7:00 P.M.
February 27, 2017**

PLANNING BOARD MEMBERS PRESENT: Steve Sauro – Acting Chairman
 Michael Pollack
 Jim Jensen

PLANNING BOARD MEMBERS ABSENT: John P. Delano, Chairman
 Christopher Carthy

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

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

 John Kellard, PE
 Consulting Town Engineer
 Kellard Sessions PC

 Valerie B. Desimone
 Planning Board Secretary
 Recording Secretary

 : Conservation Board Representative:
 Christine Argentina Futerfas

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

PUBLIC HEARING:

BTD T PROPERTIES

18 Carolyn Place

Section 100.04-1-5

Ralph Mastromonaco, PE PC

Frank Guiliano, Landscape Architect

Steve Marino, Senior Wetlands Scientist - Tim Miller Associates, Inc.

Jacob Amir, Esq. DDWWW LLP

Site Plan

Discussion

Present for this application was Jacob Amir, Steve Marino, Ralph Mastromonaco and the applicant Kirk Scuderi.

Mr. Sauro read the affidavit of publication for the record. Noticed neighbor Penny Kramon, 12 Carolyn Place was present; also present was Ms. Kramon's sister - Linda Safin. Mrs. Desimone noted all paperwork was in order for this application.

Mr. Amir stated that he has appeared before this board several times regarding this site plan application and wetland permit application. As the board is aware the applicant has filed for a Building Permit application and has been held in abeyance pending the completion of this process here. He stated that he has had two constructive meetings and site walks with the Town and its professionals regarding this application. There are a few things in the resolution that are over burdensome and a few things that are different that what is on the application and he will go over that with the board after Mr. Marino has spoken.

Mr. Marino stated that his client was before the board this evening because of a wetland permit application process regarding the removal of 12 trees on the property within the wetland buffer and the restoration remediation plan to put the site back together to the satisfaction of the town. There were 12 trees taken down as part of the plan and taken down as part of the construction process and a permit was issued by the Building Department to take those trees down and there has been some confusion about the buffer line and where the work was done and they took a step back and got into the wetland permit process. A remediation proposal is before the board this evening. There is 50' of flat area behind the house and there are some trees on the slope and those were the trees that were removed. Currently there is no disturbance in the wetland buffer but there will be as part of the remediation process. The trees were already removed and several of them were chipped and taken away. He opined that it makes sense to leave the trees that are already down and go in and replant with the planting plan.

Mr. Marino stated that there would be 8,800 square feet of buffer disturbance to remove the trees, replant, reseed and restore the area. His client is proposing 20 trees and 47 shrubs which are appropriate in wetland and wetland buffers. He has provided additional information as noted at the two additional meetings with the Town's professionals. His client will provide access to the Town and Westchester County for a determined period of time to access the lots for remediation.

Ms. Kramon thanked the board for all of the time they have put into this application. This is a very big problem as far as she can see. She got involved with this because all of the trees immaculacy disappeared between the home and Wampus pond. She stated all of the trees disappeared between 18 Carolyn Place and the water. There are no large trees proposed like

spruce or evergreens. She handed out to the board at this time the Wampus Pond Ridgeline definition as copied from the Town Code. She stated that the Ridgeline according to the code is supposed to be protected from view of anything from Wampus Pond. A steep slope area as defined here in shall not be disturbed in any matter except as maybe necessary to protect life or property. Neither of these is involved here. As you continue down, the removal of vegetation or construction of buildings or other structures in publicly visible locations on hilltops or on long ridgelines shall be permitted only if the natural visible quality of such features is appropriately protected. In other words the house should not be visible from Wampus pond. She also stated that she reviewed the plans at the Building Department and the original house was one story and the new plan shows the basement, 1st floor, 2nd floor and attic at 29 ½' tall is three stories and will be very visible and obtrusive. She does not like that this will be visible from the pond and that there are no significant trees proposed. This application does not conform to the North Castle Town Code. She objects to this application for the reasons listed above.

Ms. Black, Conservation Board Co-Chair stated that this applicant was before the Conservation Board last week on Tuesday, February 21, 2017 and the Conservation Board did not make a recommendation back to the Planning Board at that meeting because they had a number of questions to be answered about the tree restoration plan. There were also a number of items requested by the Conservation Board. She stated that the Conservation Board asked the applicant to resubmit updated plans reflecting their comments from the February 21, 2017 meeting for their next meeting on March 21, 2017. She reviewed with the board some of the comments discussed at their meeting i.e.: They wanted to see more trees, some of the trees on the applicants list were categorized as shrubs; 5 year maintenance plan, changes to the tree list and they gave the applicant some specific recommendations of trees wanted on the plan which included larger trees like evergreens, white pines and spruce. The white house will be very visible and suggested earth tone colors for the house to help it disappear into the environment more. They drove along Route 128 and noted there were no other white houses on Carolyn Place that were facing Route 128. The Conservation Board also wanted quantification of the disturbance area and mitigation area. They also wanted some large caliber trees including some evergreens closer to the house on the large flat area, her board noted at the site walk that some of those were taken down. They would also like some large caliber trees. These comments have been provided to the applicant's professionals and they are waiting for a resubmission at the March 21, 2017 meeting.

It was agreed to discuss the draft resolution at this time. Mr. Amir started to discuss pg. 1 2nd to last whereas clause which referenced the amount of town regulated steep slope disturbance, 5,237 sq. ft. and Mr. Marino opined that the disturbance was a result of the mitigation plan not as a result of cutting down the trees. Discussions were had at this time with how to word this to everyone's satisfaction. Mr. Kellard noted there was also steep slope disturbance that has already taken place. Continued discussion took place regarding the correct wording.

Mr. Kellard asked if the number of steep slope disturbance as quoted in the resolution was accurate, Mr. Kaufman noted that information was taken off of the applicants plans. Mr. Kellard stated that the trees cut down on the applicant's property that fell onto town property were not taken into account regarding the amount of disturbance on the lot. Mr. Amir stated he did not have that information. Mr. Kellard stated that he did a site walk yesterday and today and it is obvious that trees fell from the applicant's property onto Town Property. Mr. Amir stated that was not obvious and did not agree with Mr. Kellard regarding his comments. Mr. Kellard stated that he walked the site yesterday and again today and it is obvious to him. Those trees taken down by your client dropped onto Town property. Mr. Amir stated that is simply not true. Mr. Kellard noted the 5,237 included the applicant's property, it did not include disturbance on the

Town's property. Mr. Kellard noted the property lines have been flagged and it is obvious these trees fell onto town property. Mr. Scuderi stated that he chipped all the trees that he took down. Mr. Kellard noted that 11 trees were cut down on Town Property. Mr. Scuderi stated that he chipped all the trees that he cut down, the trees that are there now were not cut down by him.

Mr. Baroni stated that there is an affidavit from the neighbor that he took down some trees. Mr. Baroni asked if the trees taken down near this applicant would have improved the neighbors view. Mr. Kellard stated it would not have improved the neighbors view. Mr. Baroni stated so those are not trees he would have ordered cut. Mr. Kellard stated that when you stand at 18 Carolyn place there is a cut that took place down to the lake. If you go in front of the neighbor's property, there is a separate cut that went down to the lake. They appear to be different cuts. The applicant has flags showing their property line and you can see that the trees that were cut are lying down onto the Town's lot. Mr. Amir stated this was a new issue and a general site visit took place on December 1 or 2nd and did not recall this conversation coming up then. Mr. Kellard stated that no one knew where the property line was at that time. Mr. Amir stated the property line was staked since October. Mr. Kellard did not agree with his comment.

Mr. Jensen noted that there were several meetings spent discussing the survey and flagging getting done on site so the town could then mark its property and the county could stake their property off of that survey. Once that was done the town's professionals could go out to the site and determine the amount of damage to Town property. That information was just received from the Town Engineer early today. Mr. Amir noted the stakes have been in the ground since October.

Mr. Baroni asked if there were trees the town would like to see removed. Mr. Kellard stated that is up to the town to decide. There are trees lying on town property that have been cut, who cut them, he was not able to tell the board. He noted on the applicants plans that there were a lot of red circles showing trees removed on the applicant's property line that borders the town's property line. This is a steep slope and this is where the trees fell. Mr. Scuderi stated these are not his trees and he has nothing to do with him, he said he felt adamantly about his statement.

After more discussion was had the applicant agreed to chip the trees that fell onto town property or authorize the applicant to remove the trees. Mr. Kaufman will update the resolution accordingly regarding chipping or removal of trees and access on town property to remove the trees. He will also add appropriate language regarding the amount of steep slope disturbance. Mr. Scuderi stated that his excavator can reach 15 feet. In response to Mr. Sauro's comment, Mr. Scuderi stated there were there are 10 or 11 trees on town property to be removed.

Continued discussions were had regarding the draft resolution at this time. The applicant asked for the Building Inspector to sign off on some conditions instead of the Town Engineer and the professionals noted that the Engineer typically signs off on these conditions and the Building Inspector is not qualified to sign off on those conditions.

Mr. Kellard noted that they have been asking for a grading plan and to date it still has not been submitted. He also noted that the foundations were not shown on the site plan and the walkout basement is in a different location. The grading plan needs to coordinate with the site plan and needs to be submitted. The grading around the house as shown on the RPRC plans is not consistent with the plans submitted to this board. Mr. Amir and Mr. Scuderi did not agree with this comment. Mr. Scuderi stated that Lou Demasi put what we are going to grade to. There is about sixty cubic yards that was brought in. Mr. Sauro confirmed with the applicant that for square foot purposed you had to bring the grade in high enough for the square footage. Mr.

Scuderi agreed and continued to state that is what the retaining wall was that was on the plan originally and that is what the footing is for, we have not poured the wall yet but it is there. Mr. Sauro asked Mr. Scuderi if that was different from the RPRC plan. Mr. Scuderi stated that it was not different. Mr. Sauro confirmed that it was not a field change afterwards. Mr. Scuderi stated no it was not. Mr. Sauro stated that seems to be where the disconnect is. Mr. Scuderi stated that the footing under the ground is for future planters. Mr. Kellard asked if that footing was shown on the original plan and Mr. Scuderi stated that it was shown on the original plan. That is the bump out on the rear of the house. He pointed that out on the plan in the upper left corner. Mr. Scuderi continued - the Planter is not in the wetland or the wetland buffer. Mr. Kellard noted that was not on the approved plan. Mr. Scuderi stated it did not have to be on the plan, underground footings can be put anywhere. Mr. Sauro asked the applicant to correlate this plan with the existing plan and the approved plan. Mr. Amir agreed.

Based on comments from Mr. Amir regarding the draft resolution he was looking at and what the Town's professionals were reviewing, Mr. Kaufman asked to review it and stated that the document that Mr. Amir was reviewing with the board was not his document, he did not prepare that document and it was altered in some way, there is language in there that he did not write – specifically about permits being issued, he stated again that it was not his document. Mr. Sauro suggested keeping that document. Mr. Amir noted he had gotten this draft off of the Town Web site. Mr. Kaufman stated that is not the draft the board was looking at. Mr. Amir asked for his document back and it was returned to him at this time by Mr. Kaufman. Mrs. Desimone gave Mr. Amir her copy to review and discuss. Mr. Amir noted this was what he downloaded off of the website Sunday afternoon.

The applicant was instructed to coordinate the existing site plan with the restoration plan, it was noted that both plans must agree with one another. It was noted the RPRC plan does not agree with the plans today. All plans for the site must coordinate with each other.

Discussions were had regarding the Conservation comments at this time. Mr. Marino stated that larger trees would triple the cost if the applicant went from 2 ½" to 3 ½ inch caliber trees. He opined that this property was not on the ridgeline and the lot across the way was on the ridgeline. Mr. Kaufman stated that comment was disingenuous. Mr. Marino asked for the definition of a ridgeline and noted this lot was not at the top of the hill and is not a hill top and is not a ridgeline. Mr. Kaufman noted that clearly from Route 128 this is a ridgeline. Mr. Sauro stated that the spirit of the code would submit to all of us that the house is situated appropriately on that lot and then there is a flat area behind the house and then it significantly drops off. Prior to the drop is the ridge line. He agreed that if you continue across the street on Carolyn to the house across the way the hill does continue to go up but behind this house there is a ridgeline. We can't quantify what was there prior to the cutting to rear of the property prior to the significant drop off. We are in a little bit of a gray area here and we need to come to a consensus as to what the appropriate plantings are for the area behind the house and before the ridgeline in addition to what is on these plans and we will come to an agreement on the five year maintenance plan of those items planted.

Mr. Kaufman noted that it was reasonable to discuss the size of the plantings by this board and this was the recommendation of the Conservation Board to the Planning Board. Maybe all of the trees don't have to be 3 ½ "caliber 12-14' tall – perhaps some of them could be that size.

Ms. Black reminded the board that the conservation board had not made a formal recommendation and was waiting for the applicant to resubmit plans based on what they had asked for at their last meeting, she noted that she did not recall saying at the meeting that all of

the deciduous trees be of large caliber trees. She noted that they wanted some of the trees to be of large caliber and some large caliber evergreens and wanted some of the larger caliber moved closer to the house than they are shown in the current plan.

Discussions were had on whether the board could proceed with or without the Conservation Board recommendation. Mr. Amir stated that according to the code if the Conservation Board does not make a recommendation, this board can proceed without it. We are hearing suggestions from the Conservation Board but this board can proceed.

Mr. Baroni stated that Mandamus proceeding has been brought in Supreme Court by the applicant against the town. We have been trying to avoid spending the time and the money to respond to it. When these meetings started with Mr. Kaufman, myself and the Town Engineers office with the applicant and his professionals is was in hope that we could set up a three meeting schedule. The first meeting was before this board two weeks ago and that is why the public hearing was scheduled this evening because the applicant was scheduled to appear before the Conservation Board last week and prior to their meeting the Conservation Board was out to the site. He did not feel it was appropriate to have this applicant wait another month to go back to the Conservation Board and then back to this board. He suggested the Conservation Board have a special meeting prior to the next Planning Board meeting on March 13, 2017. This way the applicant would only be held up two weeks instead of one month.

Discussions were had regarding Mr. Fava's comments, former North Castle Conservation Board Chairman and longtime employee of Westchester County Parks and Recreation. Mr. Sauro noted Mr. Fava's comments were very reasonable. Mr. Kaufman noted that Mr. Fava's comments were discussed at the Conservation Board and trying to be proactive, he and Mr. Baroni agreed to incorporate those comments in the draft resolution before the board this evening. Continued discussions were had regarding the draft resolution. Mr. Kaufman was instructed to update the resolution to include some or half large deciduous trees or to the satisfaction of the Conservation Board.

Mr. Baroni suggested that the Conservation Board have a special meeting prior to the next Planning Board on 3/13/17 to further discuss this application. The applicant said that they would submit revised plans by Thursday, March 2, 2017. (A special meeting was scheduled by the Conservation Board on Tuesday March 7, 2017 at 9:00 a.m.)

Ms. Kramon stated that she would like the full restoration plan completed prior to the issuance of a Building Permit. Ms. Kramon stated that you can rush to a building permit people will do what they want when they want and a lot of the work is done on Saturdays and Sundays. The house will go up and none of the landscaping will be done that the Conservation Board wanted or this board wanted. She said that you can't give a building permit until all the landscaping is completed. Mr. Kaufman stated that we have been discussing when these items can be addressed. Typically we don't want the plants in while they are building the house. That would have to be done prior to a certificate of occupancy. They will be allowed to construct the house and there will be disturbance on the site. Mrs. Kramon interrupted and stated this board already allowed the applicant to put in a foundation because the applicant has five starving children. She wants the trees to go in on the flat part of the property and was concerned if a lot of them will die.

Mr. Kaufman stated these are all issues the board is aware of and are working on. First we are working on what the plan will be and that needs to be addressed before the Building Permit is going to be issued. The plan will be implemented and that will be done prior to the issuance of

the certificate of occupancy. During the course of construction the Town Engineers office and the Building Inspector will go out to the site and make sure it is being built according to the plans. Also in the draft resolution, the Planning Board, Conservation Board and Town Engineer have discussed the viability of the plants and this is done with a five year maintenance bond. If these materials don't survive there is an avenue for replanting. The bond amount will be determined by the Town Engineer based on the amount of the plantings proposed.

Linda Safin, Ms. Kramon sister, stated that she was around when her sister's house was built 48 years ago by the Gallo brothers. She stated at the time that because of the ridgeline it could not be built as a multiple story. She asked that as executor of Ms. Kramons estate, would the new property owner be able to ignore the one story rule and build a mega mansion on her sister's lot. Mr. Kaufman stated that person would submit an application to the RPRC and their application would be reviewed according to the Town Code. Ms. Safin was concerned about the view of the ridgeline from across the pond. Mr. Kaufman stated that is an issue he has had regarding the ridgeline and how do you deal with it and mitigate it. Depending on how the board determines, when you read the resolution you are essentially saying that the impact to the ridgeline are minimized by the mitigation plan as the conditions in the resolution are implemented.

Jane Black discussed the email from Mr. Fava. In addition to his comments the Conservation Board agreed to include some larger trees and they felt that the maintenance plan should be added to the comments. Mr. Sauro stated that the location of the trees is critical because if this is a two story house, the plan should encompass the location and height of the trees. Ms. Black stated the wetland expert agreed with moving some of the trees closer to the house as well as the inclusion of some larger caliber trees like evergreens closer to the house.

Mr. Sauro asked the applicant if they were clear on the directions from the Conservation Board. Mr. Marino asked for a copy of Mr. Fava's comments. Ms. Black will work with him to make sure the all the Conservation Board comments are addressed.

Mr. Amir stated that he wants the building permit issued. Mr. Sauro stated he was not comfortable with disconnecting this application with the building permit for the house and the restoration plan. The rest of the board agreed. The applicant agreed that the revised plan would be submitted no later than Thursday, March 2, 2017 to the Conservation Board and the Conservation Board would provide a recommendation to the Planning Board by March 10, 2017.

In response to Mr. Jensen's comment, Mr. Kellard noted that we typically take the comments from the Conservation Board and incorporate them into the final resolution of approval.

Discussions were had regarding access to the site until July, 2017 for the restoration plan for North Castle and Westchester County properties and whether access should be an easement or AA license access. Mr. Baroni noted a meeting was scheduled with Westchester County regarding this application on Wednesday, March 1, 2017. He will report back to the board with Westchester County's findings. Mr. Amir stated that under real property law, the county can seek a petition or legal remedies to gain access, they do not need a license or easement to do that, they can petition the court if they have to. Or get a license from the applicant they have remedies under the statute. They are not blocked out after July 31, 2017. It is an inconsequential date.

Mr. Jensen stated that once we hear back from Mr. Baroni regarding the meeting with

Westchester County he will be able to advise the board about adding a whereas clause regarding access for the town for improvements. Mr. Baroni stated that he will report back to the board. He understands the applicants position that if they have a house that is ready to be sold and have finished all the required landscaping. How do they sell the house if there is a possibility of a construction operation going on through their property for an undetermined period. Westchester County needs to define what they are going to do and how long it is going to take them and a reasonable date, perhaps July is not reasonable, he did not know. He will hear what Westchester County says and come back to the board, perhaps September is more reasonable which is into the next growing season, he was not sure, it can't be indefinite and that is not fair either when selling a multimillion dollar home. He will know more after Wednesday.

Mr. Jensen inquired if the time comes and goes with the restoration plan and it is not done on Westchester County property, do we run the risk of dirt eroding into the pond. Mr. Kellard stated that we were told that we are not considering Westchester County property at this time and that is up to Westchester County. Mr. Baroni agreed. .

Mr. Sauro asked for a motion to adjourn the public hearing to March 13, 2017. Mr. Pollack made a motion to adjourn. It was second by Mr. Jensen and approved with three ayes. Mr. Carthy and Mr. Delano were not present for the vote.

CONTINUING BUSINESS:

SOUL CYCLE

45 Bedford Road

108.03- 1-65

Referral from Town Board

Dan Hollis, Esq. Shamberg Marwell Hollis Andreyck & Laidlaw, PC

Rob Aiello, PE John Meyer Consulting

Discussion

The applicant's professionals requested this application be removed from tonight's agenda.

DEER RIDGE SUBDIVISION

7 Deer Ridge Lane

100.04-2-20

Subdivision

Ralph Alfonzetti, PE Alfonzetti Engineering PC

Dan Merritts, Thomas C. Merritts Land Surveyors

Consideration of Bond Recommendation to Town Board

Mr. Sauro asked for a motion to positively refer the bond memo prepared by Kellard Sessions to the Town Board. Mr. Pollack made a motion to approve. It was second by Mr. Jensen and approved with three ayes. Mr. Carthy and Mr. Delano were not present for the vote.

Mr. Sauro asked for a motion to adjourn the meeting. Mr. Jensen made a motion to adjourn; it was second by Mr. Pollack and approved with three ayes. Mr. Carthy and Mr. Delano were not present for the vote.

Meeting was adjourned at 8:38 p.m.