

**NORTH CASTLE PLANNING BOARD MEETING  
15 BEDFORD ROAD – COURT ROOM  
7:00 P.M.  
November 21, 2016**

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**PLANNING BOARD MEMBERS PRESENT:**

John P. Delano, Chairman  
Steve Sauro  
Christopher Carthy  
Michael Pollack  
Jim Jensen

**ALSO PRESENT:**

Adam R. Kaufman, AICP  
Director of Planning

Valerie B. Desimone  
Planning Board Secretary  
Recording Secretary

:

Joe Cermele, PE  
Consulting Town Engineer  
Kellard Sessions PC

Conservation Board Representative:  
Jane Black – Co Chairman

**ABSENT:**

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

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

**APPROVAL OF MINUTES:**

**November 7, 2016**

Mr. Delano asked for a motion to approve the November 7, 2016 Planning Board minutes. Mr. Sauro made a motion to approve. It was second by Mr. Carthy and approved with four Ayes. Mr. Pollack abstained.

**PUBLIC HEARING:**

**WERNER**

**23 Hillandale Avenue**

**122.12-4-18**

**2-Family Home Site Plan**

**Chris Crocco, Joseph R. Crocco Architects**

**Discussion**

**Consideration of site plan approval**

Application was removed from the agenda; all paperwork was not in order for this application. This application was placed on the December 12, 2016 agenda.

**DEMPSEY**

**38 CREEMER ROAD**

**108.04-2-15**

**Accessory apartment**

**Taylor Palmer, Esq. Cuddy & Feder LLP**

**Discussion**

**Consideration of special use permit approval**

Mr. Delano read the affidavit of publication for the record. Mrs. Desimone stated that all paperwork was in order for this application. Terry Orlofsky – abutting property owner at 5 Green Valley Road was present for this application. David Grossman at 49 Creemer Road was also present.

Present for the applicant was his attorney Taylor Palmer from Cuddy & Feder and Lenny Learner, architect.

The accessory apartment was previously approved by the Planning Board in 1996 by the previous owner and pursuant to Section 355-40.K(16) of the Town Code, a special permit use for accessory apartments shall terminate upon change of ownership. The applicant is seeking to secure re-approval of the special use permit to utilize the previously approved accessory apartment. The application does not involve any proposed construction and the existing accessory apartment has not been changed since the Prior Special Permit Approval was granted.

Mr. Taylor presented the application to the board. He noted the lot was subdivided in 1983. In 1987 there was a change in the local law permitting special permit for accessory apartments, he noted the prior owners, the Walsh's had received approval for the accessory apartment and his client has owned the lot for the last 20 years. He noted that there have been no violations or complaints against this property since his client took ownership. There is a requirement in the code that a new owner has to reapply for the accessory apartment approval. The apartment has been inspected by the Town every three years since the approval in 1996 and passed its most recent inspection last month.

Mr. Learner presented the layout of the accessory apartment to the board at this time.

Mrs. Orlofsky confirmed with the board that they had received and read her submission. They all agreed that they had. She noted at the time when this lot was subdivided there was a condition that once the lot was subdivided the barn had to be removed. She noted she has lived there for 32 years and how the smell of the smoke from the wood burning stove in the accessory apartment was so strong in her own home that at times they thought their own home was burning down. The smoke would go into her master bedroom and there were many complaints over the years to Building Inspector Mr. Sarnelli. She also reviewed the conditions in the prior resolution and noted they were not complied with and not enforced. She also wanted to know if there was a CO for the apartment and if the septic was legal for the additional 1 ½ bathrooms. She noted the prior resolution discussed removal of the screen porch and removal of the wood burning stove and sealing of the chimney, no commercial vehicles and septic approval. She is aware of other accessory apartments in the neighborhood but those are connected to the primary residence and she is ok with that. She noted the apartment is 70' away from her home. This is an eyesore and there is no screening except for the screening she put up, headlights go straight into her bedroom. She recited section 355-40 of the town code and noted how this lot does not comply. She would like to see the CO and board of health approval. This is two separate dwellings on a two acre lot. She wants some screening planted between the lots and for the accessory apartment to be painted on the outside as it is an eyesore.

Mr. Kaufman responded to some of Mrs. Orlofsky's comments. He noted the original subdivision required the removal of the apartment not the removal of the barn, there is correspondence from the Building Inspector in the Building Department file that the kitchen was removed from the building and was no longer an apartment. Whether that happened or not, he did not know. Mr. Kaufman continued. In regards to the certificate of Occupancy and whether it is valid or not, he has discussed this with the Building Department and as far as he can tell it is valid and they have been out there inspecting this apartment. He noted this was a mute issue because in order for this apartment to gain reapproval, this applicant will have to comply with the law and show that the apartment has been signed off and has Board of Health approval regarding the well and will be built into the Planning Board approval. With respect to the barn being used as an accessory apartment, the Town Board approved legislation that certain structures that were in existence prior to 1984 and an apartment is permitted in this type of structure.

In response to Mrs. Orlofsky's comments, Mr. Kaufman stated that he cannot answer that and does not know why or how. The conditions from the resolution from 1996 were not complied with. It will be up to this board to determine if those conditions that the Planning Board previously agreed to still make sense. From a Planning point of view he does not understand why you would require the removal of a screened in porch or fire place, those are things that are typically found in structures. If we can have a discussion as to why those items should be removed and the impacts of those items. Mr. Palmer noted that there is a pellet stove on site and the wood burning stove has been removed. Mr. Kaufman noted that we did hear an issue about screening and if

that is something the board would like to take a look at and if there is not adequate screening between the two lots that is something the board can look at and require.

Continued discussions were had regarding whether a CO existed or not and what requirements are necessary for this approval, as noted earlier in these minutes.

Mrs. Orlofsky noted that she does not want headlights in her bedroom and would like some screening put up. She noted that she approved of accessory apartments attached to the primary residence but not as a separate structure. This lot has lived with a lot of violations for many years and she wants board of health approval, the prior conditions are complied with and screening is done. She was concerned about the resale value of her home someday. She pleaded with the board to make sure all conditions are followed through with on this application.

Mr. David Grossman who lives across the street and has lived there for 28 years and knew Ann Walsh and knows the Dempsey's, has never had an issue with any of the tenants and they have always been perfect neighbors and has no objection to the accessory apartment on their property. Mr. Palmer noted a lot of the issues raised by the neighbor this evening were regarding the prior owner and his client has lived on site now for 20 years. He referenced approvals from the Building Department back in 1964 and in 1996. The Septic has been cleaned out as required by the code and that information has been provided. The wood stove was replaced with a pellet stove and there have been no complaints in the file for the last 20 years. Photos and Aerial views were also provided with the submission from all sides of the property and shows tree coverage between the two lots.

Mrs. Orlofsky noted there was no screening, the trees were short. Mr. Palmer stated that if the board deems additional screening is necessary as a condition of approval, his client will provide it. He also noted there was sufficient parking on site.

Mr. Delano stated that the Dempsey's have a right to submit an application and for this board to review it. He noted that based on the legislation passed by the Town Board this accessory apartment is a permitted use. These approvals are discretionary not an as of right. He noted he was out to the site today. A site walk was scheduled for Tuesday, November 29, 2016 at 7:30 a.m.

IN response to Mr. Pollack's comment, Mr. Taylor stated that electric heat is also used in the accessory apartment.

Mr. Delano asked for a motion to adjourn the public hearing, Mr. Sauro made a motion to adjourn, it was second by Mr. Carthy and it was approved with five ayes.

Mr. Orlofsky inquired about the septic on site. Mr. Delano stated they will have to comply with the rules and regulations on this matter.

Mr. Jim Dempsey stated that originally there were four family members in their home and two tenants in the apartment. Now there are only two people in the residence and

one person in the apartment for a total of three on site vs. six years ago. Mr. Delano noted that approvals regarding the septic are made by the Health Department.

**CONTINUING BUSINESS:**

**DEER RIDGE SUBDIVISION**

**7 Deer Ridge Lane**

**100.04-2-20**

**Final Subdivision**

**Ralph Alfonzetti, PE Alfonzetti Engineering PC**

**Dan Merritts, Thomas C. Merritts Land Surveyors**

**Discussion**

**Consideration of final subdivision resolution of approval**

Present for this application was Mark Miller, esq. Veneziano & Associates as well as the engineer Ralph Alfonzetti.

The board's comments and questions were answered to their satisfaction.

Mr. Delano asked for a motion to approve the final subdivision resolution. Mr. Jensen made a motion to approve the resolution, it was second by Sauro and approved with five ayes.

**BTD T PROPERTIES**

**18 CAROLYN PLACE**

**Section 100.04-1-5**

**Mark P. Miller, Esq. Veneziano & Associates**

**Frank Guiliano, Landscape Architect**

**Referral from RPRC - Tree Permit**

**Discussion of site walk**

Mr. Carthy recused himself from this application.

Present for this application was the applicant Kirk Scuderi, Mark P. Miller, Associate from Veneziano & Associates and Jacob Amir, Associate from DelBello Donnellan Weingarten Wise & Wiederkehr, LLP. Neighbor Penny Kramon at 12 Carolyn Place was also present for this application.

A letter was received today from Westchester County regarding this application. The county would like more precise lines staked in the field, the town's professionals wanted this done as well in order to continue their reviews.

Continued discussions were had between the applicant and his professionals and the Town professionals and Planning Board members regarding the same subjects as discussed at the November 7, 2016 Planning Board meeting which was whether the

building permit and reforestation plan should be treated as one application or as two separate applications. The applicant and his professionals opined that the building permit does not impact the reforestation plan and the Town's professionals and Planning Board opine the reforestation plan and building Permit do impact one another. They also discussed the impact of Westchester County on this application as trees may have been removed from Westchester County property as well.

Mr. Miller handed out the affidavit from the neighbor, Mr. Skeel who was at the last meeting regarding the history and his participation in the tree removal in the area.

Mr. Delano stated that he visited the site earlier today since he was not able to attend the site walk last week.

Discussions were had again regarding whether wetlands existed on site or not. The applicant was asked again to flag the wetlands. The applicant stated his professional Steve Marino said there were no wetlands on site and this is manmade. The applicant was instructed to have his professional submit comments to this affect. Mr. Scuderi stated that the lot would be staked again this coming Saturday, November 26, 2016.

In response to Mr. Delano's comment, Mr. Kaufman stated that he spoke with Mr. Cromwell earlier today and then followed up with the Roland Baroni in regards to the Building Permit and both Mr. Cromwell and Mr. Baroni had the same opinion. Once the RPRC referred the tree removal permit to the Planning Board. The entire lot became the jurisdiction of the Planning Board. Mr. Cromwell's interpretation is that no permits can be issued until site plan approval is granted by the Planning Board. Since the Planning Board made a specific recommendation to the Building Inspector regarding the foundation permit, Mr. Cromwell was comfortable issuing the foundation permit. Mr. Cromwell was under the impression he is not going to issue any permit unless this board expressly says otherwise. Mr. Scuderi stated he could not sell the land with all of this hanging over his head. If he does not get a building permit the bank will not give him any more money to fund the project and he will not have the money to plant the trees. No matter what, he will get it all done because he can't sell the house if he does not.

Mrs. Kramon stated that many trees were recently cut in that area. She suggested a 15 - 20' tree planting plan on the rim of the lake for the board to consider.

Mr. Amir stated that according to the Town Code Chapter 127-4 section. The Building Inspector shall issue a building permit if the proposed work was in compliance with the applicable requirements of the uniform code and energy code. He agreed that there are two distinct issues before the board. The RPRC did approve the residence and the Building Inspector should issue the building permit. The RPRC referred only the tree removal permit to the Planning Board. He understands the financial detriment to his client if the Building Permit is not issued.

Mrs. Kramon stated that according to Chapter 355 of the Town code that says except for dire consequences in life, you shall not destroy the rim view on that property or any

property. This code refers to the rim of Wampus Lake.

Mr. Kaufman noted there is clearly a difference of opinion; he has related what the Building Inspector and Town Attorney had to say to him on this issue.

Discussions were had again regarding the opinions of the Building Inspector and Town Attorney and the board discussed whether this was one application or two separate applications and how and if they impact one another.

Mr. Amir stated that once the decision of the RPRC is made it cannot be nullified. According to the code the only way that can be challenged is with an appeal within 30 days. Since no appeal was made within 30 days, that decision stands. The Building Inspector cannot be in a position to throw his hands up, the code requires him to issue the building permit, he does not have the discretion not to issue the Building Permit because then all he has to do is refer matters to the Planning Department to defer applications. If the Planning Board wants to intervene they should direct the Building Inspector to issue the permit according to section 127-4F of the Town Code - he would be in violation of the Town Code if he exercises discretion he does not have.

In response to Mr. Sauro's comment, the sequence of events was reviewed at this time. Mr. Kaufman stated that on several occasions the Building Inspector has said that the tree removal that has occurred on that property was not in conformance with what he authorized. The board and professionals were trying to understand when, why and how the certificate of compliance was issued. Mr. Scuderi stated he took one more tree down than he was permitted to. Mr. Kaufman stated that the Building Inspector disputes that whole heartily, it was not one tree it was several. Mr. Scuderi stated the stumps are still there.

Mr. Delano noted that the tree permit and certificate of completion were dated the same day and the trees were cut down before he actually made the application. Mr. Scuderi reviewed the sequence of events for the board. Debate was had back and forth between Mr. Scuderi and Mr. Kaufman regarding what was said at the RPRC meeting. Mr. Kaufman noted he was out to the site prior to the RPRC meeting and noted that trees were being removed at that time of his site walk prior to the RPRC. Mr. Cermele stated that the RPRC application for the house had no tree removal as part of the application and noted the plan did not even show trees on the lot. Mr. Kaufman noted when he did his site walk there was only a couple of trees taken down, nothing like it is today.

Mr. Jensen stated at the last meetings there were comments regarding wetlands on site and the wetlands consultant was going to go out to the site and a tree removal count was going to be done, he wanted to know what the outcome of that was. Mr. Cermele stated that from what he was told at the site walk and from the Westchester County Representative. The County is waiting for some survey work to be done by the applicant and once that is done the county will send out their survey crew to verify their property line which is coterminous with applicant's lot and town property. Once that is done they will send their forestry people out and determine the number and quantity of

trees.

In response to Mr. Delano's comment, Mr. Kaufman stated that we are waiting for comments from the Town Engineer and their landscape architect on the adequacy of the plan submitted. We should coordinate that plan with what the applicant and or the neighbor is going to do on the County property. This board will not approve it but we want the plans to be consistent with each other. The County has said that once their survey is complete, they will provide information to the town to determine if any tree removal took place on town property. Mr. Cermele stated that not all four acres are behind and between the two lots. There is a portion of the town property that extends beyond the applicants property and the Town property. The Town property is generally a pie shaped piece from the ridgeline.

Mr. Pollack stated that there are a lot of differences with this application, the amount of additional trees or tree removed. Whether the trees taken down were the ones that were authorized per the tree permit. It is unclear how you can submit a site plan for approval with no tree removal and then have a valid tree removal permit; the plan was to remove approximately 1 dozen trees and what the validity of that permit is under those circumstances; can you really segregate those two separate applications and say you are perusing them separately and therefore no site plan approval with the Planning Board is needed on a unified basis. What is the best way to address this matter and differences between the role of the applicant and the role of the board? Different scenarios were reviewed at this time. He noted we need a tree restoration plan that this board finds acceptable and provides comfort to this board that this will be done and expedite that process and not press the board to see past all of the questions that have been raised.

Continued discussions were had with the board, Town's professionals, applicant and his professionals regarding the tree restoration and Building Permit and whether they are a separate matter or connected and whether the issuance of the building permit is on the Planning Board or the Building Inspector. Discussions were had again restating the same information as noted earlier and from the last meeting. The board was not ready to grant any type of approval this evening. Discussions were had at this time regarding the validity of the RPRC applications and if the circumstances were different this application may have been referred to the Planning Department.

Mr. Kaufman stated that if they make the argument that the Building Permit should be issued and this board is a completely separate review. Aren't they going to compel the Building Inspector, once the house is built, to issue the CO? Mr. Cermele noted that was his concern as well. Mr. Pollack agreed.

Mr. Kaufman continued, he thought they were working towards getting this plan done, reviewed by the Town Engineer and Landscape Architect, getting a wetlands permit if necessary, coordinating with Westchester County and hopefully this can all get done in time for the next meeting.

It was noted by the board members that a steep slopes permit will be necessary and



that the only access to the Westchester County Property is through the applicant's property. Mr. Amir was not optimistic that things will be resolved with Westchester County in three weeks and if it is not done in three weeks it just holds up his client for another three weeks.

Mr. Cermele stated that the wetlands need to be flagged adequately or a communication received from the applicant's professional regarding the wetland. In response to Mr. Cermele's comment, Mr. Miller will have Mr. Steve Marino follow up with Dave Sessions regarding the wetland status. Mr. Cermele stated that the Town still needs information regarding the trees on and off Town property and how their mitigation plan compares to what was removed. Mr. Miller stated they did not remove any trees, only one additional tree was removed; there is an affidavit from the neighbor to that effect. We do not need to resolve who did it; we need to get to a restoration plan. Mr. Cermele stated that he has reviewed the material submitted and provided comments on that material and has requested additional data.

Mr. Kaufman stated that we are discussing the site walk this evening.

Mr. Miller stated that some of the comments in Mr. Cermele's memo were not Germaine. Mr. Cermele stated that the applicant needs to address the comments regarding the town's property and the applicant's property.

In response to Mr. Amir's comment regarding the Planning Board giving instruction to the Building Inspector one way or the other. Mr. Delano and the board members were not inclined to give an opinion one way or the other on this matter to the Building Inspector. Mr. Amir stated that he feels the Building Inspector is in limbo and undecided on this matter. Mr. Delano suggested Mr. Amir speak with the Building Inspector.

Mrs. Kramon expressed her concern with how to access the area for replanting if the house is being built.

In response to Mr. Kaufman's comment regarding the submission deadline for the next meeting. Mr. Delano stated that the submission deadline was the close of business on Wednesday, the same as it is for every other applicant on the agenda this evening.

**MONTESSORI SCHOOL**

**67 Old Route 22**

**107.04-2-8**

**Amended Site Development for Classroom Addition**

**Raffaele Tarulli, PE**

**Discussion**

Present for this application was Ralph Tarulli.

The application for the construction of a new 1,073 square foot classroom addition, within the Town-regulated wetland buffer, at the Montessori school. The property is located within the RB and R-1A Zoning Districts.

Mr. Tarulli stated that he was before the board previously for an office and pool addition, the applicant has abandoned the pool proposal and is now proposing a classroom addition in approximately the same location as the pool. He needs a referral to the ZBA for the sideyard setback. He also needs ARB approval and amended wetlands permit.

Mr. Delano asked for a motion to refer this application to the ZBA. Mr. Sauro made a motion to approve. It was second by Mr. Carthy and approved with five Ayes.

The board instructed Mr. Tarulli to go to the Conservation Board for the wetlands permit.

Mr. Tarulli stated that originally there was 128 students and 40 parking spaces. The school does not anticipate changes in staff or students with the additional classroom.

**DOONEY WOODWORKS LLC**

**30 Bedford Banksville Road**

**102.04 -2-65**

**Amended Site Plan**

**Peter Dooney, property owner**

**Discussion**

Present for this application was Peter Dooney and Paul Matthews.

The site plan application is for a 1,395 square foot addition to the recently approved retail showroom and artisan's workshop on the 2.3-acre property in the CB-B Zoning District.

Mr. Kaufman noted that the 2<sup>nd</sup> floor, floor plans need to be submitted and the plans submitted were not signed and sealed and need to be signed and sealed. Mr. Dooney noted he had ARB approval. The board was alright with an Administrative Wetland Permit and with land banking the parking spaces.

The applicant noted they could submit the 2<sup>nd</sup> Floor plans along with plans that are signed and sealed in time for a public hearing at the next meeting. The public hearing was scheduled for December 12, 2016.

**MADONNA**

**Route 128- Mount Kisco Road**

**108.01-1-30.3**

**Site Plan**

**Kory Salomone, Esq. The Law Office of Kory Salomone, PC**

**Discussion**

Present for this application was Kory Salomone.

The Planning Board is in the process of reviewing a site plan for application to construct a 39,987 square foot 16-unit multi-family building on the 2.3-acre property. As part of the plan, the Applicant will merge all existing lots that are in the Applicant's ownership. That merger will create a unified lot that would have a depth of 86.7 ft. where 100 ft. is required. The applicant is looking for a referral to ZBA

Mr. Delano asked for a motion to refer this application to the ZBA. Mr. Carthy made a motion to approve, it was second by Mr. Sauro and approved with five Ayes.

In response to a comment from the Board members it was noted that there were 45 parking spaces on site and 13 of those spaces were in excess of the parking requirements.

**ETZIN**

**1503 Old Orchard Street**

**123.05-1-64**

**Accessory Structure**

**Nathaniel J. Holt, PE**

**Discussion**

Present for this application was Dan Holt.

The application for construction of a detached bath house, elimination of the existing septic system serving the bathhouse, connection of the bath house to the municipal sewer, elimination of gravel drives, construction of a new terrace at the rear of the existing principal house and the construction of an outdoor kitchen patio at the rear of the existing principal house on a 7.92-acre lot located within the R-1A Zoning District.

Mr. Holt stated that the Landscape Architect prepped a wetland mitigation plan and the Conservation Board did their site walk and recommended approval at their last meeting.

He has reviewed both professionals' memos and would like to hold off on the SWPPP unit ZBA has granted its approval.

Mr. Holt did not agree with Mr. Kaufman's comments in his memo in regards to the criteria for the cabana/bathhouse. Mr. Kaufman suggested that this is a very oversized lot and the applicant could create another building lot and then build whatever they deemed appropriate.

Mr. Holt reminded the board that the original cabana was crushed and his client wants to replace it. Mr. Kaufman stated that the board needs to decide if this use is appropriate for the neighborhood.

Mr. Delano opined that the proposed cabana was keeping with the property. Mr. Carthy agreed.

It was noted that a Floor Area and Height variance will be needed.

Mr. Pollack and Mr. Sauro stated they were not able to attend the site walk and would like to go to the site. Mr. Carthy offered to join them.

Mr. Delano asked for a motion to refer this application to the ZBA. Mr. Carthy made a motion to approve, it was second by Mr. Sauro and approved with five ayes. This referral was not made with a positive or negative recommendation.

**DIPIETRO**

**137 Bedford Banksville Road**

**Property ID: 102.01-2-67**

**New Construction of a 3 Bedroom 4,972 s.f. Home**

**Geraldine Tortorella, Esq. Hocherman Tortorella & Wekstein, LLP**

**Consideration of 4th extension of time site plan resolution**

Mr. Delano asked for a motion to approve the extension of time request. Mr. Sauro made a motion to approve. It was second by Mr. Pollack and approved with five Ayes.

**SINGER**

**1 Quarter Mile Road**

**107.04-1- 25**

**Paul R. Sysak, RLA, ASLA, John Meyer Consulting, PC**

**Consideration of extension of time resolution**

Mr. Sauro asked for a motion to approve the extension of time request. Mr. Pollack made a motion to approve. It was second by Mr. Jensen and approved with four Ayes. Mr. Delano abstained.

Mr. Carthy stated that he and Mr. Pollack went to a meeting a few weeks ago on wetlands and mitigation. Two to one mitigation is typically proposed, he is aware that at times the enforcement is lost. They discussed at the meeting in cases where you could only put in a one to one ratio that the developer/applicant puts the balance of the mitigation in the bank and that money could go towards a real meaningful project at a later date. Mr. Cermele noted that was discussed with the Dipietro application. Ms. Black noted that some locations where the mitigation is imposed at 2:1 is very beneficial and other locations not so much. They asked if that was done in other municipalities, no one was aware of that going on in other municipalities.

Mr. Carthy also noted his term was up and he was not able to attend the next meeting and wanted to conclude at the end of this term how he has enjoyed the privilege with working with John as Chairman and everyone on the board as well as the professionals and Conservation Board.

Mr. Pollack made a motion to approve the 2017 Planning Board calendar. Mr. Sauro second the motion and it was approved with five ayes.

Mr. Delano asked for a motion to adjourn the meeting. Mr. Sauro made a motion to adjourn, it was second by Mr. Carthy and approved with four Ayes. Mr. Pollack was not present for the vote. Meeting was adjourned at 9:51 p.m.