

Town of Washington  
Planning Board

11/4/2008

The monthly meeting and public hearing of the Town of Washington Planning Board was held on November 4, 2008, at the Town Hall, 10 Reservoir Drive, Millbrook, New York.

Members Present: Chairman, Thomas Beaumont, Robert Alley, Donald Hanson, Steve Lynch, Josh Mackey, Matthew Rochfort, James, Shequine, Consultant, Neil Wilson.

The meeting was called to order by Chairman Beaumont at 7:33 P.M., expressed his thanks and appreciation to board member Hanson for his role as acting chairman during his absence.

**A motion to approve the September 2, 2008 meeting minutes as written/submitted was made by board member Alley, and seconded by board member Rochfort. All ayes.**

**The October 7, 2008 meeting minutes were tabled subject to a correction on page 2, paragraph 1, line 3, questioned by board member Alley on the width of the Higher Ground Farms LLC Site Plan, gravel driveway that reads: "installation of a new 6 ft. wide gravel driveway to provide access to the facility and to modify/amend the current special permit to allow board of forty (40) horses." Secretary Caul indicated that this description was taken directly from the application. The board is to review the site plan map and submit the corrected size of the driveway.**

The application of Byrnes Site Plan (Thomas & Donna Byrnes) 452 South Road is for approval to allow construction of a one level, two (2) car garage. The property is zoned RL & RS 5. The Zoning Board of Appeals granted setback variances on October 21, 2008.

**Dutchess County Tax Map Grid No.: 6664-00-869508**

Mrs. Donna Byrnes appeared before the board for review of the site plan map by the board, and was questioned about the space shown along the property line on the map that was not identified. Mrs. Byrnes said she had no knowledge about the space, said perhaps it is the ridge behind her house. Board member Hanson indicated that he checked the aerial map, did not show/identify the space, has no bearing on the site plan approval. Consultant Wilson remarked that offsets were put in as some type of structure. The question remained unanswered but the board felt that this was not an issue.

**A motion to accept the ZBA variances ruling, waive a public hearing, and grant site plan approval was made by board member Alley, and seconded by board member Hanson. All ayes.**

The application of Mabbettsville Market Site Plan and Special Permit (L. Associates, LLC) 3809 Route 44, Mabbettsville request is for the proposed use to operate a mixed use facility for a country food market. The property is zoned HM, AQ.

Attorney Paul M. Quartararo, Quartararo & Quartararo, PLLC, Fishkill, NY and Dennis J. Lynch, Day Engineering, PC, Wappingers Falls, NY appeared before the board.

Board member Mackey recused himself from review of this application since his firm has worked for one of the LLC Mabbettsville Market investors.

Consultant Wilson recommended that the board take action tonight to set a public hearing for the December meeting, said that he still needs an extra copy of the site plan map to submit to the County for the 239M referral and their review. Mr. Lynch provided a map.

Consultant Wilson expressed that the board requested him to “pull together” the Resolutions, particularly with respect to the conditions of approval, distributed tonight, said that the manner in which the Resolutions were set up is what the application is about, where located, what zoning district it is located, what the proposed use is, referenced the SEQRA Action which is what the board will adopt as a negative declaration resolution. The negative declaration has not been provided to the board tonight but will be e-mailed before the next workshop.

Consultant Wilson said the Resolution goes into how the application does, or does not, meet the criteria for issuance of a special use permit and conditions for site plan approval. The Negative Declaration Draft is to be provided before the next workshop meeting. Review of the special use permit and site plan draft resolution by the board, consultant Wilson, attorney Quartararo, and Mr. Lynch followed:

Page 2, **“Be It Further Resolved**, that the Planning Board’s Special Permit and Site Plan approvals are conditioned on the following:

- A) “All site work and building exterior work shall be in accordance with the following maps and drawings:” (this is a requirement of compliance)
- B) “The date of issuance of all Certificates of Occupancy or Certificates of Completion for all on-site buildings shall be noted on the Site Plan.” (This refers to the ZBA’s October 24<sup>th</sup> letter re all buildings/structures were made before the current zoning was adopted 12/89, and have certificates of occupancy. The ZBA reviewed the documents presented by the applicant, and is satisfied that this is the case. This information is to be shown on the Site Plan. Also, all variances granted by the ZBA are to be shown on the Site Plan.)
- C) “The date and the nature of any area variances(s) granted by the Town of Washington Zoning Board of Appeals shall be noted on the Site Plan.”
- D) “The use of each principal and accessory structure on the site shall be noted on the Site Plan.”
- E) “To ensure that the operation of the Market does not exceed the stated carrying capacity of the site as determined by the Planning Board in its findings set forth above the following notes shall be placed on the Site Plan before signature by the Chairman:

1) “The Owner/Operator shall install, and shall maintain in operating condition, a water meter at the source of the on-site water supply. The meter shall be capable of recording, on a daily basis, the amount of water withdrawn from the well.”

Board member Alley questioned the wording “shall be capable of recording.” would be more comfortable with the words, “shall record on a daily basis.” Consultant Wilson said what is being talked about is an automatic recording kind of device, as opposed to someone going out to read; he doesn’t know if there is a difference in the cost or not. Board member Alley questioned if “shall be recorded” can be placed somewhere in the language. Consultant Wilson acknowledged, said he has this set up as a requirement of the meter. The second one is the requirement of the installation and the maintenance of an overflow alarm.

2) “The Owner/Operator shall install, and shall maintain in operating condition, an overflow alarm at the sewage disposal system to provide an audible alert of an imminent spill or overflow of sewage and/or grease from the system. The overflow alarm shall be set to provide notice when the system, or any part of the system, reaches 85% of capacity.”

3) “There shall be no more than 13 employees on the site at any one time.”

4) “There shall be no more than 20 seats for patron use at any one time.”

5) “Seating is for patron convenience only. There shall be no food service whereby food is brought to or served to seated patrons by a Market employee at the proposed seats and tables.”

6) “The Owner/Operator of the Mabbettsville Market shall cooperate at all times with the Town Zoning Administrator to provide such information as the Zoning Administrator may require to assure compliance with this requirement including access to the interior and exterior areas of the buildings(s), and access to current business employment records. Additionally, the Owner/Operator shall upon request of the Zoning Administrator, provide written statements, acknowledged under oath, that the employment and seating limits stated herein have not been exceeded and that this condition has not been violated. Failure to cooperate with reasonable requests of the Zoning Administrator to verify compliance with the conditions of approval shall be deemed to be a violation of the Planning Board’s approval.”

7) “The Owner/Operator of the Market shall ensure that at all times all buildings and improvements shall be accessible to emergency vehicles.”

8) “At all times Owner/Operator shall comply with all requirements of the Village of Millbrook Watershed Rules and Regulations.”

9) “Approval herein is granted only for use and the improvements depicted on the approved Site Plan. No authorization is granted for construction or alteration of any building or structure not shown on the Site Plan, or for the use of any principal or accessory structure for a use not specifically authorized on the Site Plan and this Resolution. Construction, re-construction and use of the site and the improvements in any manner other than as shown on the approved maps and drawings plan shall require the prior approval of the Town Planning Board.”

standing sign is to be removed and setback 80 ft. The Owner will remove the sign and is to seek a variance from the ZBA. The rules for an accessory structure in Mabbettsville hamlet are written for an 80 ft. setback which places the sign somewhere in the seating area. The sign is to be shown on the plan once the ZBA has granted the variance.)

10) “Commencing from the time of issuance of a permanent Certificate of Occupancy and for a period of six (6) consecutive months thereafter.”

a) “No less than once each month the on-site water supply source shall be sampled and tested for compliance with the NYS Department of Health water quality standards for a public water supply. Such collection and testing shall be performed by licensed and certified laboratory personnel who shall certify the results of the water sampling. A copy of the results of the water sampling shall be submitted to the Zoning Administrator no less than five (5) days after receipt of the test results by the Owner/Operator.”

b) “No less than once each week the volume of water withdrawal shall be monitored by a reading of the water meter and a written recording of the results. The results shall be maintained on the site and made available for inspection by the Zoning Administrator upon demand of said Zoning Administrator.”

c) “No less than once each month the function and operation of the on-site sewage disposal system (i.e. the septic system) shall be inspected by a Professional Engineer licensed by the State of New York who shall provide a written and certified record of his/her observations as to the function and operation of the sewage disposal system. The results of the inspection shall be maintained on the site and made available for inspection by the Zoning Administrator upon demand of said Zoning Administrator.”

Consultant Wilson said he drew a distinction between a,b,c where a is a result of the water quality testing, actually is mailed by the Owner/Operator to the Zoning Administrator, if there is a problem with the water quality, it is known immediately, b and c are the monitoring of the volume being withdrawn as well as the monthly inspection reports of the septic system.

F) “A material part of the application and the approval granted herein is the provision of not less than five (5) parking spaces for employee parking on an off-site location within 500 feet of the proposed project site. The applicant shall, at all times, maintain use and access to these off-site employee parking spaces by written agreement with the owner of said parcel. The parking space rental agreement dated \_\_\_\_\_, 2008 between the Owner/Operator of the Market and \_\_\_\_\_ shall be maintained at all times during use and operation of the site as a market and food service operation. In the event the use and access to these five parking spaces is terminated by action of the parties to the agreement, or by a default or breach by the parties, or by operation of law or government action (such as by a taking), the owner/operator of the Mabbettsville Market shall, within 10 days of such termination, provide written notification to the Town of Washington Planning Board via certified first class U.S. mail, return receipt, advising the Board of such termination and

unavailability of the off-site parking spaces. In addition, not less than twenty (20)

days of such termination, the Owner/Operator of the Market shall submit an Application to the Planning Board for an amended Site Plan Approval in accordance with the requirements of the Town Zoning Law, as amended. The Owner/Operator of the Mabbettsville Market shall cooperate at all times with the Town Zoning Administrator to provide such information as the Zoning Administrator may require to assure compliance with this requirement including written statements, acknowledged under oath, that the parking space rental agreement cited herein is in full force and effect, has not been terminated, and that this condition has not been violated. Failure to cooperate with reasonable requests of the Zoning Administrator to verify compliance with this condition shall be a violation of this approval.

- G) “Upon completion of construction and prior to issuance of a Certificate of Occupancy, the Owner/Operator shall provide to the Zoning Administrator and to the Planning Board an “as-built” survey of the property depicting the location of all improvements, including the approximate location of sewage disposal and water supply facilities and distribution lines. The survey shall also depict offsets of on-site structures to nearby property lines.
- H) “Prior to issuance of a Certificate of Occupancy the applicant shall obtain, and shall provide proof of, all required Health Department approvals for the operation of the Market. (This will be left to the Building Inspector)
- I) Prior to placement of the signature of the Planning Board Chairman on the Site Plan the applicant shall pay the cost of all Planning Board fees including consultant review fees.

Chairman Beaumont referred to item no. 10a, said it was decided that inspection would be once a month for six months, then every six months thereafter. Also, this item should define the date of the business opening. Consultant Wilson questioned how the date of the business opening would be defined? Board member Lynch feels that there should be a continuing obligation after the six months. Board member Hanson said this item should state that it should be reviewed for frequency. Board member Shequine said it should be ongoing monitoring. Discussion followed on the continuing inspection obligation after six months. Consultant Wilson questioned how often the Board of Health will require the water quality testing? Mr. Lynch expressed that some tests are done quarterly, some tests are done yearly. Attorney Quartararo questioned if Mabbettsville Market is to keep those records? The Board of Health keeps the quarterly records, for two years. They can keep the records at Mabbettsville Market for review. Consultant Wilson expressed that the records should be accessible on site. Frank Genova remarked when records are kept in a file, someplace, they “do service to no one.” He suggests when the results of a test are received, it should go to the zoning administrator and a copy to VRI. VRI is responsible for the Village water system; the Board of Health automatically gets a copy. Board member Hanson expressed that the board wants a report whether it is

positive or negative, a benchmark is needed.

Consultant Wilson reiterated that the monthly water report is to be done quarterly, and whatever annual or bi-annual report thereafter continues to come to the Zoning Administrator as well as the VRI. Board member Hanson remarked that this is correct. Board member Shequine questioned about the frequency? Board member Hanson suggested that the frequency can be reviewed after six months, said if the test is not done on a regular basis frequently, every month, if something goes wrong the board won't know what happens after six months. Consultant Wilson questioned if the board is establishing a periodic reporting period? Board member Hanson said what he is saying is, after six months the board is to review the frequency. Consultant Wilson suggested along with what reporting Mabbettsville Market has to do for the Department of Health, the board is to require them to provide whatever reports, whatever frequency is being sent in to the Department of Health, maintain the option of reviewing and adjusting the reporting period beyond what the Department of Health requires. Board member Lynch questioned what the period of reporting to the Department of Health is? Consultant Wilson said, quarterly. Mr. Lynch interjected that some reporting is done quarterly, certain tests are done periodically. Board member Lynch suggested saying quarterly, or more frequently if the board decides it is appropriate, questioned if items A,B, and C are being talked about? Consultant Wilson's response was affirmative, said items B & C are the board's requirement. Board member Lynch said after the first six months, then quarterly, or more frequently, if the board so decides, would also apply to items B & C, board members response was affirmative. Board member Lynch reiterated, quarterly for items A,B, & C unless the board decides more frequently. Board member Shequine remarked about conditional approval, said when the Planning Board's overseeing ends, some conditions should be placed that will apply to the life of the project and enforced by the Zoning Administrator.

Board member Hanson questioned if the board is to request a list of chemicals, abrasives, to be placed on signs over the sinks at Mabbettsville Market? Consultant Wilson remarked that he checked the original Tuxis Corporation approval's exact notation for the signs over the sinks. He intends to circulate the next versions of this draft via e-mail to board members, at least one week before the workshop, and will include the sign conditions posting over the sinks, will also include the Negative Declaration as well.

Board member Lynch referred to the applicant's submission dated September 2<sup>nd</sup>, Day Engineers Report, a maximum average daily useage, the board thought this was a good suggestion, the suggestion provided 692 gallons/day maximum for 11 employees, food establishment with 20 seats, said he doesn't see the maximum in the draft resolution. Consultant Wilson said that he did not put this in the draft resolution; the wording of that would have to be very carefully crafted, the reasons being about the design averages based upon the engineer's report, keeping in mind that the Health Department has authorized and overseen the installation of the septic tank of 2000 gallons. They oversized the tank for a certain daily load with respect to the water consumption (metering water coming out). Board member Lynch said he thought they were metering water useage going in, consultant Wilson said that they are metering water useage coming out of the well. The concern is about the water supply related to the septic system, it is

needed to find a way to rationally rate the water coming out of the well, and the water going into the septic system. Attorney Quartararo questioned if consultant Wilson is talking about

water withdrawn or going into the system? Consultant Wilson said that they are not metering water going into the system, only metering water coming out of the well. Board member Shequine suggested watching it for three months, see what the useage is, from that, it can be determined what a reasonable maximum is. Mr. Lynch said the useage is determined by the amount of seats and employees. Board member Lynch suggested using the engineers number of 1, 012 gallons that was based on 35 seats, originally, by the Board of Health. Board member Lynch questioned if this number is the maximum, or average? Chairman Beaumont said that the system was designed for a daily flow of 1, 012 gallons, daily average for 35 seats. The Board of Health had originally approved 35 seats, the board is dealing with 20 seats. Board member Lynch said he thought the Board of Health's recommendation of 692 gallons is reasonable. Chairman Beaumont feels the Board of Health's recommendation of 1,012 gallons should be used.

Consultant Wilson's recommendation is to monitor the flow going into the septic system as opposed to the water coming out. What is being talked about is limiting the flow into the septic system, that is what should be used to monitor the volume that goes into the septic system.

Chairman Beaumont questioned if the principals involved in Mabbettsville Market, L. Associates, LLC are going to continue ownership after the business opening? Attorney Quartararo said that he has no knowledge of this. Board member Lynch referred to placing a deed restriction on the approval. Chairman Beaumont stated that the special permit goes with the land, he is talking about having an owner coming from somewhere, not knowing, and wants to make sure that the owners are up to speed on this.

Consultant Wilson advised the board that it can schedule a public hearing for the December meeting.

Board member Lynch referred to the change in the Special Permit and Site Plan Approval, page 3, paragraph 10, A,B,&C, these are going to be done every month for six months, then quarterly thereafter unless the board decides it is needed to be done more frequently. Consultant Wilson's response was affirmative. Also, item A is going to be changed that the meter measures not what comes out of the well but goes into the septic system, that useage shall not exceed an average daily on a sem-annual basis, an average daily useage of 850 gallons going into the septic system. Consultant Wilson remarked that this is treading into Board of Health territory, he feels that the Board of Health number of 1,012 gallons are to be used. Board member Lynch questioned about setting a more limited, restrictive, requirement being set , the Board of Health offered 692 gallons in September. Chairman Beaumont remarked that this was the amount of water useage, an estimate of what Mabbettsville Market would end up using. Board member Lynch said it was offered as an alternative means to control the catering. Dennis Lynch said it is their understanding that it was limited to catering, also the meter coming in was to try to limit the catering; they are now getting away from that and metering what is going into the septic system. Board member Lynch expressed what goes into the system would be less. Dennis Lynch's response was affirmative.

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Board member Alley questioned if the Board of Health numbers are less than the capacity of the sewer system? Is the number less than the total capacity, or, is it the maximum capacity? Consultant Wilson said he thinks the number is enclosed in allowance for some peak loading that

is going to occur.

Attorney Quartararo expressed that the maximum number of gallons is 1,012 gallons, if the board is looking to 850 gallons they could try that. Consultant Wilson said this all has to do with the authority of the Department of Health to authorize a permit, that a septic system is to be installed in the ground based upon certain useage characteristics, of residential or commercial. In this particular case, as a repair of the existing facility, in 2000 the Department of Health approved a system designed for a peak load of a little over 1,000 gallons. Consultant Wilson said he is cautioning the board with respect to establishing a limitation on the sewage flow going in without the acquiescence of the applicant to a particular number, in light of the fact that the Department of Health that is the sole agency responsible for approving these kinds of designs what has allowed a flow of a different larger number; his point is about treading into another agencies territory.

Chairman Beaumont expressed that the board is concerned about the volume of water, but the main concern is about the quality of the water, whether it is 800 gallons, 650 gallons, or 1,000 gallons it is the quality that is important, the quality of the well. Board member Lynch felt that these are two separate issues. Consultant Wilson expressed that “from day one” the board expressed a concern about a market operation with the characteristics described, its impact on water quality in that area because there have been water quality problems, such as the gas spill across the road. The monitoring of the water quality which is item #10 a of the approval, is about the water coming out of the well. Board member Lynch said this is a separate, equally important issue, but doesn’t officiate the importance of the proper functioning and loading of the septic system. Consultant Wilson expressed that you need both, if there is a design flow of a little over of 1,000 gallons per day, what is going into the system is 3,000 gallons average, the system is going to be overloaded no matter what the quality of the water is.

Frank Genova questioned if there are well logs on file, these should tell what the output was over a period of time? Attorney Quartararo said when he reviewed the file he saw a well log.

The Board’s decision is for a monitoring system going into the septic system using 1, 012 gallons as an average, every six months.

A public hearing is schedule for December 2, 2008.

A motion to adjourn the meeting was made by board member Alley, and seconded by board member Rochfort. The meeting was adjourned at 8:50 P.M.

Respectfully submitted,  
Nikki Caul, secretary

