

Town of Washington
Planning Board

12/2/2008

The monthly meeting and public hearing of the Town of Washington Planning Board was held on December 2, 2008, at the Town Hall, 10 Reservoir Drive, Millbrook, New York.

Members Present: Donald Hanson, Steve Lynch, Matthew Rochfort, Consultant Neil Wilson. Chairman Beaumont entered the meeting at 7:45 PM upon request due to the lack of a quorum. Board member Mackey is recused from review of the Mabbettsville Market application.

The meeting was called to order by Acting Chairman, Donald Hanson at 7:31 P.M. announced that board member Alley is absent due to illness, board member Shequine is not in attendance, and Josh Mackey has been recused. Since Chairman Beaumont is en route the order of the agenda is reversed.

The application of Hade Site Plan and Special Permit (Brian Hade) 127 Jameson Hill Road, Clinton Corners request is for approval for the remodel of the existing one story garage to use as a one bedroom apartment. The property is zoned R2.

Applicant Brian Hade appeared before the board for review of the site plan and special permit. Review of the site plan map by the board, consultant Wilson and Mr. Hade followed.

The board requested that the well, septic system, and off-sets from the property lines are to be shown on the map, is to be submitted for the December 30th workshop. Mr. Hade pointed out the location of the septic system and well on the map.

Mr. Hade expressed that he will also submit a document of proof that the house was built prior to the 1989 zoning.

A public hearing is scheduled for January 6, 2009.

Fee Status: \$400.00 special permit
500.00 escrow
\$900.00 total paid

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, Dennis Lynch, Day Engineering, PC, Wappingers Falls, NY and Mr. Russell Sarachek appeared before the board.

Attorney Quartararo called attention to The Draft Conditional Special Permit and Site Plan Approval page 1, paragraph 3, sentence 6, “The second floor would be inaccessible to patrons and would be used for storage, office, and non-retail space.” Attorney Quartararo said in the Narrative, they requested that this be used for “specialty long term storage pantry items and also storage not accessible by patrons.” This was placed on the site plan map general notes.

Attorney Quartararo expressed that they want to use the second floor for retail space. Acting Chairman,

Hanson remarked that the note about the second floor is basically the same thing as in the Approval. Attorney Quartararo reiterated, “long term storage pantry items”; he thinks the intent was to be 1) the sale of long term storage pantry items, 2) storage which will not be accessible by patrons, one is accessible, one is not accessible. Consultant Wilson remarked that this was unclear when he and attorney Quartararo talked this afternoon. There was an earlier response to comments about that, probably, that is where that language came in, it wasn’t clear to consultant Wilson when he was drafting the Resolutions that any portion of the upstairs was to be used for retail space. The question lies with the board as to how they want to treat this. Acting Chairman Hanson said he feels this was discussed, that there would be no retail space. Board member Lynch said this is what he thought. Mr. Sarachek said this is not what he thought, this space would be for storage, also non perishable items retail space. Mr. Sarachek said there were two separate items upstairs. Consultant Wilson questioned how much of the upstairs space would be useable as retail space? Mr. Sarachek said they marked off a portion, he doesn’t know the measurements, but it would be the small open space at the top of the stairs, not all of the way to the right where there is a door, or the closet for storage, it’s the small space upstairs against the wall on both sides. The footprint is not being changed. Board member Lynch questioned if this can be under advisement as a request, does the board have to make a decision about this tonight? Acting Chairman, Hanson expressed that the board does not have to make a decision tonight.

Consultant Wilson commented that originally he wanted to get a map that identifies the uses of the spaces in the building that the zoning administrator can check upon. The board needs something showing the second floor space and the breakout of what would be the retail vs the non retail space. Mr. Sarachek said that he will “mark it out.”

Dennis Lynch, Day Engineering, PC introduced himself to the public; his presentation included a description of the site plan map, said the site is a .4 acre site located off Route 44, is an existing building, parking is located in front of the building. The market will be serviced by an existing well and existing sewer septic system. The first floor will be open as a “farmers market”, there will also be prepared foods, some eating for patrons convenience, but there will be no service to these seats by Mabbettsville Market. There will also be some catering for limited size parties. Mabbettsville Market is not proposing any expansion to the existing structure or any of the site and will maintain the same use since 1988.

Mr. Sarachek said that purpose of the market is to sell mostly local, Hudson Valley, fresh and prepared foods. There will be no waiter or waitress service. There will be a lot of local items that are prepared on site, there will be gourmet items.

A motion to open the Mabbettsville Market public hearing was made by board member Lynch and seconded by board member Rochfort. 4 ayes, 1 recusal, 2 absent.

Acting Chairman, Hanson read correspondence dated November 25, 2008 from Janet A. Donnelly, 3795 Route 44, adjoining neighbor, that states her major concern, is Mabbettsville Market planning to offer barbeque meats. When the previous owner barbequed, the odor was constantly around. Ms. Donnelly said she had to have her carpets and furniture professionally cleaned, hoping to rid the smell. When she referred the problem to the owner, she was told to close her windows, it was July. Ms. Donnelly said the chicken was first boiled, then barbequed, Bob Taylor said he was able to smell the odor up on the hill where he lived. She is hoping that this won't persist as it has taken away from the Mabbettsville quality of life.

Mr. Sarachek responded to the Donnelly letter, said that this will not be an issue, the venting system was not operating properly and did not comply to the Code. The venting system was up against the wall; a new vent system is being built, also, the grease trap was not properly maintained and has been replaced.

Acting Chairman, Hanson next read from the Draft Conditional Special Permit and Site Plan Approval, page 4, paragraph 10, a,b,c. Consultant Wilson stated for the record that this Approval

is just a draft. “10) Commencing from the time of issuance of a permanent Certificate of Occupancy and once each month for a period of six (6) consecutive months, and then once every three months (i.e. quarterly) thereafter.”

a) “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 a licensed and certified laboratory personnel selected by the Owner/ Operator and approved by the Planning Board.”

b) “The function and operation of the on-site sewage disposal system (i.e. the septic system), including the wastewater meter, shall be evaluated 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. Said written record shall include the results of the daily wastewater flows into the sewage disposal system as recorded by the flow meter, and shall also identify any needed repairs or maintenance to the sewage disposal and the flow meter systems. The Professional Engineer shall be selected by the Owner/ Operator and approved by the Planning Board.”

c) "Certified copies of the results of the water quality and the sewage disposal system reports set forth in subparagraphs 10,a, and 10,b, shall be submitted to the Planning Board, the Town Zoning Administrator, the Village of Millbrook and it's designee (currently VRI Environmental Services, Inc., P.O.Box 943, Millbrook, NY 12545), and the Town Conservation Advisory Committee no less than five (5) days after receipt of the test results by the Owner/Operator."

A motion to open the Mabbettsville Market public hearing was made by board member Lynch, and seconded by board member Rochfort. 4 ayes, 1 recusal, 2 absent. Acting Chairman, Hanson invited the public to view the site plan maps, for public comments to state name, and residence.

Kate Farrell questioned what happens if Mabbettsville Market doesn't comply? Acting Chairman, Hanson expressed that this Approval is conditional, after six (6) months, the Planning Board has the option to say if it is satisfied or not, also the Town Zoning Administrator, the Village of Millbrook Environmental Services, and Town Conservation Advisory Committee, need to be satisfied.

Board member Lynch expressed that his understanding is that the testing and the report are monthly for six (6) months, then quarterly thereafter, in perpetuity. Consultant Wilson said, until the board changes the rendered lab, unless the board actively changes that, that is the condition of perpetuity. Acting Chairman, Hanson said that the board is relying on the engineer and the lab who are to submit the names to the Planning Board as to who they would like to have,

the Planning Board is to say yes, or no. Acting Chairman, Hanson said the board, in initial discussion talked about having the testing and report done once a year, but the board felt very strongly about not waiting one year, if anything is to go wrong one year is too long a time period.

The board decided that the testing and the report is to be done monthly for six (6) months, then quarterly thereafter. Board member Lynch remarked that there is a specified average daily monthly flow into the septic system. Ms. Farrell questioned if the specified average daily monthly flow is in Condition Approval E,1? Board member Lynch responded affirmatively.

Howard Schuman, addressed the board, said the board has done a good job in putting in stipulations, regulations, in the Draft Approval, applauds their effort and time in doing that. He expressed that his concern is with the septic system; it is his understanding that the system was put in 2001, has asked about this before, and it was said it was for the purpose of putting in a bathroom, that there was a prior failure previous to that. Mr. Schuman questioned Dennis Lynch, engineer, if his understanding is correct? Mr. Lynch said it was for the purpose of a bathroom but doesn't think there was ever a failure. Mr. Schuman said that it is his understanding that later on in the process, under the ownership of Ty Bittner, there was some problems with the grease traps that perhaps led to compromising of the septic system. Mr. Schuman said it is his understanding that when grease gets into these types of leech fields it is very similar to cooking food on a stove, when that cools down, that grease becomes solid, it may very well get into some of the small holes in the pipes of the leech field, could plug them up, and in turn decrease

the efficiency of the system. At one point he understood Dennis Lynch, answering in response to Don Hanson's question, how do you know that the system is working one hundred percent? His response was that we can't tell for sure unless we dig the system up, this would compromise the system in the process and would be an added expense to the owner. The owner, at the time had been asking for 692 gallons per day flow, which was agreed upon by Neil Wilson, and everyone else, that this was the standard flow rate for a business like this, and would use a water restriction in order to accommodate that. This seemed to be acceptable to everyone. Somewhere later in the process, a number of 1,012 gallons became the new standard for the flow rate which is an increase of almost forty percent. Based on the idea that this was the system approved by the Board of Health, we do not necessarily know that it is working one hundred percent today, nor that the applicant needs that much water according to the applicant requirement. Mr. Schuman said he is asking the board to consider to start monitoring the system at 692 gallons, to reset the flow rate for the time being. If everything works out fine, and the applicant later needs to have more, nothing has gone wrong, there is no reason that this can't be revisited. In the best interest of the applicant, and as a safety margin, if everything is working out under the 692 gallons number, you have a safe baseline. If more needs to be done and it turns out that it doesn't work out well, then the board has a fall back number of 692 established as correct. Mr. Schuman said that he is basing this partly on the fact that there is no way of knowing for sure that the system could have been compromised under Mr. Bittner's ownership, there is no apparent reason to go above the 692 gallons number that was agreeable to everyone at the time. Mr. Schuman said he is asking the board to take this under consideration in the interest of safety, that this is the number that the board start the monitoring, see how that works out.

Attorney Quartararo responded to Mr. Schuman's request saying that the system was designed for over 1,000 gallons flow rate, when the property was purchased, the septic system was investigated and found it to be working fine. On the monitoring that is to occur, if there is a problem, it will be found out very quickly. Attorney Quartararo expressed that he would rather not have the monitoring start at 692 gallons when the system can do better and was designed for over 1,000 gallons flow rate.

Acting Chairman, Hanson expressed at that time the system capacity was designed for 32 seats; the board is currently allowing Mabbettsville Market 20 seats.

Mr. Schuman reiterated that he is not talking about the engineering speculation or the design of the system, he is talking about a system that has been there for twelve years, an area with a very high water table. He is asking for a safety margin to be put in place for the community, not for the convenience of getting the maximum number that was mentioned in the engineering diagram. Mr. Schuman feels that the Planning Board has the ability to decide whether that is appropriate or not. The original decision was if it was even appropriate to allow the use as before to go back in again when there were existing problems from that use. Since the board made that decision, he is asking not to go by the Board of Health number of 1,012 gallons which might be under ideal conditions, but to look at the reality of where this place is, what happened there in the past, and base this into the board's decision since the board has been generous enough to grant the applicant relief to go back in for the same business use. Mr. Schuman said that Dennis,

Lynch, Day Engineering, on record, has said that there is no way to know until you dig the system up, is an enforcement and expense to the owner. Mr. Schuman said that he is looking for something that works out for the owner and works out for the Town as well.

Board member Lynch questioned Mabbettsville Market representatives when they purchased the property and investigated the functioning of the sewer system, if they had a third party report? Attorney Quartararo said they had someone come out and look at the system, they said it was fine. Board member Lynch referred to the M.A. Day Engineering Report, September, '08, said the 692 gallons is based on twenty seats, asked Howard Schuman if this is where he obtained the number 692 gallons. The response was affirmative, it also came out of a number of meetings as well, everyone was in agreement with that number.

Attorney Quartararo expressed that perhaps the M.A. Day Engineering Report was based on specifications and an estimate for twenty seats. Board member Lynch said it is not flow into the septic system, it is actual water useage. Attorney Quartararo confirmed the statement.

Howard Schuman commented that this is talking about flow into the septic system which is a much bigger number. If the board agrees to the 692 number, maybe only 500 gallons would actually get into the septic system because it will have other uses, maybe 1,012 gallons will go into the septic system. Board member Lynch said the 1,012 gallons number is the number that was given to the board by the Board of Health. That septic system, in their opinion, is designed to handle an average daily flow of 1,012 gallons into the septic. Board member Lynch expressed that the board does not have an independent document that says, we have tested it.

Frank Genova, CAC liaison, addressed the board, questioned, 1) will Ken Schrible, VRI Environmental Services, Village of Millbrook, receive any copies of documents; he feels this is extremely important, he should receive a copy of every document that pertains to water and sewer disposal. 2) if there is a question of concern, any pertinence regarding this situation, who will specifically be contacted in the event of a problem. There are four (4) LLC persons involved, who is to be contacted for responsibility and responsive answers to any query, whether it is the CAC, the Town, or the Planning Board? Mr. Sarachek said "it is ultimately himself, or Paul Quartararo." Said, "he is ultimately representing the Market." Mr. Genova questioned if there is an affidavit to that extent? Attorney Quartararo said that the Town Zoning Administrator has the authority, under the Permit, to go into the market and talk to whomever is operating the market. Mr. Sarachek said that he will have a manager in place who will be given the responsibility. Mr. Genova feels that this is not valid and questioned, if Zoning Administrator Newbauer has a question, accusation, report, or whatever, to whom does he go to specifically?

Attorney Quartararo said that he needs to go to the owner of record, Mr. Sarachek.

Mr. Sarachek explained that he has a manager who is responsible for making disbursements, is responsible for operating the property, responsible for making sure about opening and closing the market, and addressing any concerns. Mr. Sarachek said that he is willing to place his name, as the representative of the market. Acting Chairman, Hanson commented that it is easier for the Zoning Administrator to go to Mr. Sarachek if he has a problem, Mr. Sarachek then takes care of

the problem. Consultant Wilson expressed that as one of the conditions of approval it is a very simple matter to put in a condition that says, that the owner of the site shall keep and maintain on file with the Zoning Administrator, the contact person who shall be responsible for addressing any issues of compliance with the terms of the Site Plan. It is established that Mr. Russell Sarachek, owner is the contact person.

Kate Farrell, referred to Howard Schuman's request to the board to start monitoring the system at 692 gallons vs 1,012 gallons, that the system can handle this, but can the septic system handle 1,012 gallons per day, in the place it is located? Acting Chairman, Hanson expressed that the septic system is designed for 32 seats, the board is allowing 20 seats. Ms. Farrell questioned the ramifications of non compliance? She heard the board say that the market could be closed down, heard consultant Wilson say, the market could be issued a ticket, questioned the board if they have talked about ramifications of non compliance? Acting Chairman, Hanson said a number of conditions have been placed on the map regarding signage, etc. if they are not in compliance this is a citation, or of a larger magnitude, the Board of Health could shut down the operation. Chairman Beaumont remarked that it would not only be the Town Zoning Administrator, the Board of Health has the authority to close the market down. Also, the VRI would have the power working in tandem with the Board of Health.

Chairman Beaumont said that this facility was abused in the past, double the number of chairs were being used than what was permitted, there were 60 chairs being used for customers. The Board of Health closed down the operation, said 35 chairs were to be used. At that time, there was no evidence of a deleterious affect on the water supply in the Village and Aquifer. This septic system is an overbuilt system, as far as holding the numbers to 692 or 1,012 gallons, the board will see how it works, monitoring it every month. In all fairness, it is reasonable to assume that what the Board of Health has said is a reasonable number of 1,012 gallons. Chairman Beaumont feels this is the number that the board should use, if it is not working, the board will find out very quickly.

Dennis Lynch, M.A. Day Engineering, gave an explanation of where the numbers are coming from, said the 1,012 number is what the system was designed for, which was approved in 2001, for the 35 seats. The Planning Board reduced the number of seats to 25 seats, now, again, the Planning Board is reducing the seats to 20 seats. The system is designed to accommodate 1,012 gallons per day, is not a general design, is designed for the Site. Based on the Planning Board's allowing 20 seats and the number of employees, it will be more of the 692 number.

Howard Schuman again commented that there is no way of knowing about the problems of the previous owner with regard to the grease traps. It is a possibility that this may have compromised the original system which is now eight years old. He would like to see a realistic number used that will give a margin of safety in case something goes wrong. If it turns out at a later date that larger number is needed, this can be revisited.

Mr. Sarachek said that there were issues with the previous owner, from their standpoint in looking at the structure, equipment, not only was it not up to Code, but it wasn't effective for the business. They have worked not only make the structure look better, but the business operation will run better in a proper fashion and be a place to be proud of.

A motion to close the Mabbettsville Market public hearing was made by board member Lynch, and seconded by board member Rochfort. 4 ayes, 1 recusal, 2 absent.

Consultant Wilson stated that the board is unable to vote on the Conditional Special Permit and Site Plan Approval tonight due to the County Planning Department's lack of response to the 30 day 39M Submission that was made. A vote can take place for the January meeting.

A motion to adjourn the meeting was made by board member Lynch, and seconded by board member Rochfort. 4 ayes, 1 recusal, 2 absent. The meeting was adjourned at 8:40 P.M.

Respectfully submitted,

Nikki Caul, secretary

