

Town of Washington  
Planning Board

2-3-09

The monthly meeting and public hearing of the Town of Washington Planning Board was held on February 3, 2009, at the Town Hall, 10 Reservoir Drive, Millbrook, New York.

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

The meeting was called to order by Chairman, Beaumont at 7:31 P.M., read the meeting's agenda.

The application request of Ranita Site Plan (Christopher Ranita) a pre-existing nonconforming building lot at the southwesterly side of NYS Route 343, 3000' westerly of Hammond Hill Road, is for construction of a 1 story 26'x52' modular house. The property is zoned RR 10. The Zoning Board of Appeals granted Mr. Ranita a 52' west side yard variance (i.e. toward Millbrook) and a 75' east side yard variance (i.e. toward Dover Plains) on November 18, 2008.

**Dutchess County Tax Map Grid No.: 6964-00-405274**

Christopher Ranita appeared before the board.

Review of the Site Plan and application materials followed by Mr. Ranita, the board, and consultant Wilson.

**A motion to waive a public hearing, accept the Zoning Board of Appeals Ruling, and grant Site Plan Approval to the Ranita application was made by board member Shequine, and seconded by board member Rochfort. 6 ayes, 1 absent.**

The application request of Bancroft Farm Subdivision (Ron Romeo) westerly side of Verbank Road, north of Milewood Road is for a proposed four (4) lot subdivision, one (1) common driveway and wetland crossing. The property is zoned RL 5. Preliminary approval was granted 3/4/08. Application is being made for a security bond for construction of the common driveway, construction of a bridge for the wetland crossing.

Tim Race, L.S., The Chazen Companies, appeared before the board.

Consultant Wilson addressed the board to summarize the security bond, said that there are two parts that the board needs to discuss this evening. The recommendation is to have the planning board issue a recommendation to the Town Board to 1) act on the Restoration Bond. Tim Race

talked to Rodney Morrison, P.E., Town Engineer, also, a follow up memo was circulated of the conversation with Rodney Morrison about the amount of the Restoration Bond which has been agreed to the amount of \$5,000. The Bond is not about completing the common driveway, but if the work is abandoned in mid stream, the Town has to have the money to be able to hire someone to go in, bring the site back to some type of normal restoration. It is also a bond in the classic sense, it will be cash, which is preferred today because credit is hard to obtain. The Town will actually hold on to the cash which will be set aside. 2) the escrow is for the inspection. This should cover Rodney Morrison's time, also Bruce Barber- wetlands expert time; this is a separate recommendation and a true escrow that is set up by the Town, is drawn down upon when Rodney Morrison makes his inspections or whatever official work needs to be done in the field.

Consultant, Wilson said he talked to Rebecca Valk, VanDeWater & VanDeWater, LLP who had some minor changes to make, she was going to talk to attorney, Ann Gifford, about those changes, then present the paper work to the Town.

The recommendation from the planning board is on the two items requesting the Town Board to set up the escrow in the amount of four thousand dollars (\$4,000.00) and the Restoration Bond in the amount of five thousand dollars (\$5,000.00). The Restoration Bond needs to be in the form acceptable to the challenger.

Chairman, Beaumont remarked that after the driveway is completed, a two year maintenance bond is in effect. Consultant, Wilson disagreed, expressed that this is not a private driveway, a two year maintenance bond was required for the Emma Subdivision, that was actually a private driveway constructed under the specific provisions of the Code related to a private driveways. The board does not have any authorization in statute to say that the Town can hang on to monies to insure the maintenance. When work on the common driveway is done, the Bond can be released. That won't occur until the board has something in writing from the Town Engineer saying that the driveway has been built in accordance to standards, an as-built of the completed driveway is received from the applicant and the certification from the engineer. Once that is done, then the Bond can be released.

Tim Race remarked that there will still need to be a Maintenance Agreement between the parties. Consultant, Wilson agreed that a Maintenance Agreement between the owners who are going to be using the common driveway will need a separate agreement that is filed with the Subdivision Plat, covers all of the owners who use that driveway.

**A motion to forward a recommendation to the Town Board for a Restoration Bond for The Bancroft Subdivision was made by board member Lynch, and seconded by board member Hanson. 6 ayes, 1 absent.**

Tim Race questioned if he needs to have the monies for the Town Board meeting? Consultant Wilson said that the Town Board will need to vote on the Restoration Bond recommendation, then the monies are needed; he will work with Tim on this.

Chairman, Beaumont presented Mr. Race a copy of the account ledger escrow balance due in the amount of \$1,472.50.

Michael Bittner and Kelli Harrington, 371 South Road, appeared before the board requesting a customary home occupation to allow a Yoga Studio in the existing residence.

Chairman, Beaumont related that Mr. Bittner telephoned him last week, asked if the Yoga Class would qualify for “Tutoring”? Since he was unable to answer his question, Chairman, Beaumont deferred to a discussion before the board, also telephoned ZBA Chairman, Roeller, placing him on notice that the planning board had questions on this application. Chairman, Beaumont expressed that the key to allowing for home occupations is that there is no impact to the residential character of the community. In some cases the use can be a De Minimus Use, would have no sign indicating, or other exterior advertisement, of a home occupation use. De Minimus, meaning that there is no outside indication other than a residence. Chairman, Beaumont next opened discussion to the board and consultant Wilson’s input relative to “Tutoring”, a home occupation permitted by right upon issuance of a permit by the Zoning Administrator, provided that they are carried on in a manner which complies with the standards of the Criteria and Standards of home occupations. Chairman, Beaumont explained that he telephoned Chairman, Roeller in the event that this application would need an interpretation of “Tutoring” which is under the ZBA’s jurisdiction.

Board member Hanson remarked that “Tutoring” is a stretch and cannot begin to think how this relates to Yoga classes. He feels that there is no connection. Board member Shequine expressed that “Tutoring” is a one on one process. Mr. Bittner said that in any dictionary “Tutoring” is defined as private instruction. As a former teacher, professor, he would offer tutoring classes ranging anywhere from one to one hundred on an ongoing basis. Tutoring is commonly accepted in the English language as private instruction. Board member Hanson remarked that if the board said, yes, to Mr. Bittner this would be setting a precedent. Board member Lynch questioned if the reason the board is discussing “Tutoring” is because it is a permitted home occupation? Chairman, Beaumont responded affirmatively, said that the List of Home Occupations permitted by right lists number (20) Tutoring. Board member Lynch remarked that the big issue is the neighbors assessment. Mr. Bittner expressed that the neighbors come to his classes. Board member Lynch next questioned the size of the lot? Mr. Bittner said he has approximately five acres, his neighbors have at least that, perhaps more. Board member Lynch commented that persons would park on his property, would drive down South Road, turn into his driveway, questioned if his neighbors can see where they would park? Mr. Bittner said that they can see the driveway, see the vehicles parked on the property. Board member Lynch next questioned if the immediate contiguous neighbors are some of the persons who attend his classes? Mr. Bittner said most of his contiguous neighbors have not been there for months, so he doesn’t know, they are weekenders; one neighbor across the street attends his classes regularly. Board member Lynch questioned if any of Mr. Bittner’s neighbors have complained? Mr. Bittner said he has not heard of any complaints.

Board member Alley said that he has a problem with “Tutoring”, does not go along with Mr. Bittner’s definition, but would look into it. Said the board has to consider every other residential area in the Town in setting a precedent. Board member Alley referred to Ms. Harrington’s statement that there would be about thirty cars per day, five or six classes per day, four or five cars per class. Ms. Harrington disagreed, said there are four to six persons in a class, not in one day, not all persons are in individual cars. Board member Alley expressed that Mr. Bittner has a large lot, is secluded, is in the woods, however, feels that if the board says yes in that residential area, other persons in the Town who have a one or two acre lot, unless it is specifically pointed out why, yes, it is the same situation.

Mr. Bittner expressed that when he entered into this entity he wanted to maintain the integrity of the community, has done everything to make sure that it was set back so no one could see it, the population was small enough, that his interpretation of “Tutoring” definition was an accepted definition that met the criteria. Said, they are offering a service to the community that professionals are enjoying and are enthused by. Board member Hanson remarked that he doesn’t have a problem where the house, studio, is located, what Mr. Bittner is trying to do, however, has a problem with trying to blanket this under “Tutoring.” This might be great for Mr. Bittner because he is achieving what he wants, but this will be a headache for the board, down the road; he personally does not want to get involved with this issue.

Upon being questioned by board member Lynch, consultant Wilson expressed that there is a list of home occupations that are allowed by right, Flower Arranging, Locksmith, Physician, etc. any one of those items on the list, can simply go to the zoning administrator who can issue a permit. The second half of the List names the home occupations that are prohibited, cannot be allowed. If the use is not listed as a permitted use, or prohibited use, the use falls into a gray area whereby the planning board issues a special permit.

With respect to the particular question of “Tutoring” this board does not have the authority to make an interpretation, that is Zoning Administrator, Jack Neubauer’s domain. If the board wishes to pose the question to Jack Neubauer, if the yoga studio falls within his interpretation of what “Tutoring” is, have him make a determination. The Zoning Administrator has to actually make a formal determination, he is the starting point. Where the application goes from there depends on where the applicants would like to take it. If Jack Neubauer says no, “Tutoring” means tutoring in the classic sense, is a one on one, then the applicants can appeal that to the Zoning Board of Appeals. Then, the Zoning Board can make the determination. This board does not have the authority to make an interpretation. Board member Lynch remarked that alternatively, the applicants can come before the planning board for a special permit because it is not on the as of right list or is prohibited. Consultant Wilson said that the applicants would have to comply with all of the standards for the home occupation section, the board also has to make a specific finding on Section 485 of the Ordinance, that the proposed use meets the special permit criteria.

Board member Lynch feels that the applicants should direct the “Tutoring” question to zoning administrator Neubauer, if he says, no, they come before the planning board for a special permit,

so the board does not have a precedent problem. Then the question becomes, does the use meet

the sixteen criteria of the Ordinance. Consultant Wilson remarked, if Jack Neubauer says, no, that it doesn't fit the definition of tutoring, the applicant can take it to the zoning board to make an interpretation.

Chairman, Beaumont expressed that the Use is either for a special permit or is a DeMinimus Use.

Said, many persons do not understand that if someone came out of Mr. Bittner's driveway, was hit by a car on South Road, did not go through the steps to ensure that the operation was fully legal, he would be legally exposed. This is one of the board's concerns.

Chairman, Beaumont said his understanding is that Zoning Administrator, Neubauer wasn't sure how to handle this. Consultant, Wilson expressed that the board can refer to Jack Neubauer to make a request for an interpretation, it starts with the zoning administrator. Chairman, Beaumont expressed that the board should get something formal, in writing, it is okay, or it is not okay, and if needed, to go through the special permit application process. Consultant, Wilson reiterated that if Zoning Administrator Neubauer says it does not match the definition of tutoring, the applicant has two potential processes, can return to the planning board for the special permit process, or, take it to the Zoning Board of Appeals, then the ZBA has to rule, yea, or nay.

Board member Hanson expressed that it was his understanding that the applicants are now before this board for a special permit. Chairman, Beaumont said that the applicant came before the board for a special permit, then he received a telephone call from Mr. Bittner about the Tutoring definition, felt to be fair that he shouldn't make the decision. Board member Hanson commented that Mr. Bittner is prolonging the process for himself.

Chairman, Beaumont addressed the applicants, asked them to think about what direction to take, the special permit route, or have zoning administrator, Neubauer make an interpretation about a DeMinimus Use. Applicants are to telephone chairman, Beaumont.

Steve Busco, Rhode, Soyka, Andrews Engineering, 40 Garden Street, Poughkeepsie appeared before the board, submitted a site plan and aerial map for the board's review of Everest Polo Stables, Mabbettsville, property. Mr. Busco said that the owner wants to construct a 4 ft. deep pond, stock with fish, in other words, "wants to dig a hole in the ground and fill it with water." The location of the property was reviewed by the board. Mr. Busco said that his client accesses the property through the portion that has been recreated/continued driveway around the whole area and up into the property.

Mr. Busco said that his client would like to create a pond in the general area that was pointed out on the site plan. The restrictions are numerous, basically the jurisdiction of the wetlands, that are Army Corp, are not large enough for State wetlands. Mr. Busco pointed out the drainage system direction, meeting up with the primary feeder stream for the Town Park. Consultant, Wilson

emphasized that the streams are Classified. Board member Shequine expressed that Mr. Busco is talking about surface water, the board is very concerned about what is under the surface, called Aquifer.

Mr. Busco expressed that the owner's motivation is to create a physical, naturally, occurring, physical barrier to keep the deer from coming up towards Route 44 to bring them around the pond, for whatever reason. Based upon the size of the pond, which totals about 4 acres, the average depth is 4 ft., there will be about 30,000 cubic yards of material; the owner doesn't know what he is going to do with it, doesn't have a place on the parcel to put it.

Board member Hanson questioned the property owner's name, Mr. Busco said, David Wildenstein. Mr. Busco related that there will have to be some type of an outlet structure, there will be two ponds because the topography will require it. There is sixteen feet of elevation difference. The smaller pond of the two is four feet higher. There will be a spillway or dam or some "architectural wonder" to separate the two ponds.

Board member Shequine questioned if he is anticipating a flow? Mr. Busco responded affirmatively, said he is not sure exactly how much. A hydrologist is employed, a surveyor was on site to confirm the topos, also a wetlands biologist. Board member Shequine questioned if the flow will be controlled. Mr. Busco responded affirmatively.

Mr. Busco said that he will not be designing the interior topography of the pond, his client is going to employ a Bass expert.

Mr. Busco pointed out the location of a small two foot high berm in order to maintain a water level of around 725. Board member Hanson questioned how this pond is going to affect the flow into the Town pool? Mr. Busco said that they have not done the hydrology yet. Mr. Busco said that they do not know if there is enough natural flow into this to be able to maintain an elevation of the pond depth. Board member Hanson questioned, if their studies indicate that they will reduce the flow by one third, will this be enough for the owner to say, this will affect the Town pool, therefore will not continue. Mr. Busco, said he has no knowledge, "it might happen." Mr. Busco said that they have not done the entire storm water discharge, that is the next step. Mr. Busco wanted to find a design that the owner likes, this is the first step before the board, to find out what information the board needs. Chairman, Beaumont said that a hydrology report is needed.

Board member Shequine remarked about the 16 ft depth of the pond for the trout to multiply in the pond, it is clearly going to be in the Aquifer unless he does something to separate the pond from the Aquifer, doesn't understand how this would be done. Board member Shequine expressed that it is not only the Aquifer, but the Village of Millbrook water supply that is to be considered.

Frank Genova expressed that you cannot divorce a pond from the Aquifer/watershed.

Consultant, Wilson expressed that there are serious questions about the impact on the residents water supply, the Town Recreation Park, more importantly, the Village water supply. Frank Genova expressed that the pumping station is less than one-half mile away.

Consultant, Wilson said that the questions being raised are beyond his technical skills, the board will need to bring in Rodney Morrison, P.E., Town engineer, a hydrologist to do a review, also Bruce Barber, wetlands and wildlife expert. Consultant, Wilson's recommendation to the board is to have the applicant place escrows to allow the board to scope the issues out now as opposed to further down the road, before a formal application is placed with the board.

Chairman, Beaumont suggested bringing in the CAC, the Village water supply manager, DRI, will also need input from the DEC. Consultant, Wilson said that he will bring in Rodney Morrison and Bruce Barber, will question Rodney who can be brought in for the hydrology review. Frank Genova suggested that Mr. Busco contact the soil and water conservation department, Ed Hoxie

Board member Hanson questioned the amount of escrow needed for the specialists. Consultant Wilson expressed that the board needs sufficient monies for these specialists, suggested an escrow amount of \$4,000.00. Board member Hanson next questioned what will be done with the material from digging out the pond? Mr. Busco said he doesn't know at this point.

Chairman, Beaumont asked Mr. Busco to review what the board requested. Mr. Busco said that he needs to talk to his client about the \$4,000.00 required escrow amount to pay for the specialists, issues about the Town and Village water supply, erosion control measures, the Town Park, the Aquifer, the need to hire a hydrologist to determine if the project is going to be feasible, contact Ed Hoxie, soil and water conservation department, and to contact Bruce Kovner.

Mr. Busco is to be placed on the February 24<sup>th</sup> workshop agenda.

**A motion to accept the October 7, 2008 meeting minutes as written/submitted was made by board member Alley, and seconded by board member Rochfort. 6 ayes, 1 absent.**

**A motion to accept the November 4, 2008 meeting minutes as written/submitted was made by board member Shequine, and seconded by board member Rochfort. 6 ayes, 1 absent.**

**A motion to accept the December 2, 2008 meeting minutes as written/submitted was made by board member Rochfort, and seconded by board member Hanson. 6 ayes, 1 absent.**

**A motion to accept the January 6, 2009 meeting minutes as written/submitted was made by board member Alley, and seconded by board member Rochfort. 5 ayes, 1 abstain (board member Hanson was absent for the meeting) 1 absent.**

**A motion to adjourn the meeting was made by board member Hanson, and seconded by board member Rochfort. 6 ayes, 1 absent. The meeting was adjourned at 8:32 P.M.**

Respectfully submitted,

Nikki Caul, secretary

