

TOWN OF WASHINGTON PLANNING BOARD

The monthly meeting and public hearing of the Town of Washington Planning Board was held on February 4, 2020 at 7:30 P.M., the Town Hall, 10 Reservoir Drive, Millbrook, New York.

Members Present: Chairman, Paul Schwartz, Ed Jorgensen, Tara Kelly, Bob Kulpa, Susan Meaney, Andrew Spence, also, Attorney Jeff Battistoni, Al DeBonis councilman/liaison, Howard Schuman, Conservation Advisory Commission representative.

Chairman Schwartz opened the meeting with the Pledge of Allegiance at 7:30 P.M., welcomed Andrew Spence to the Planning Board, said he spoke to Bob Campbell, Millbrook Cabintry and Design, 2612 Route 44, who has been on the agenda twice, said he has been looking to see what businesses he can put in the space in his building in the event that he decides to rent it. Mr. Campbell was told that there is a list that was adopted and approved by the Board that is in the file and can access that file through secretary Caul. If he has a commercial business that is less nonconforming than his business the Board should not have any issue and he would not need to return to the Board since he has a special use permit for commercial uses. Said, he understands that there is also to be an alternate board member in the event that there is one member short for a meeting. he or she will fill in for that member to have a quorum. Chairman Schwartz next announced the first agenda item.

The application of TOTALLY Kids Child Care (Renee Swart) 3815 Route 44, Mabbettsville (the Hammond Building) is for a daycare center serving children ages six weeks to twelve years infants/toddlers/after school program,) The property is zoned HM. **Dutchess County Tax Map Parcel No. 6865-00-661530.**

Renee Swart owner, current Dover Plains Child Care, several staff members and Peter Sander, Renna Engineering appeared before the board.

Chairman Schwartz stated if they are putting in additional lighting this needs to be on the site plan, if without conversation it should meet the specifications of the building code as far as angular placement, lighting, and kind of illumination. Peter Sander stated that this could be added to the site plan notes. Said, the applicants are proposing to divert an existing structure in the child daycare center. The structure is approximately 6,900 sq. ft. plus, or minus. A new septic system will be installed. The exterior alterations on the site will consist of reconfiguring the existing gravel drive around the site, adding a few parking spaces, a new sidewalk to go into the entrances on the eastern side, then a new light fixture to go on each side of the building. Most of the alterations for the structure

will be interior. Said, he received some emailed comments from the board from the cancelled January meeting. One comment was the concern of toxic hazard material on the site, As part of the daycare center licencing they have to go through an environmental study, completed. Before they get their license they have to have the study done. Maybe as a condition of approval can include the license once it is submitted. Chairman Schwartz interjected, that comment was, as a condition of approval the Town of Washington needs a letter to the Town of Washington from an appropriate licensed individual (whoever does the study) indicating that meets with the State's requirements of non toxic, non hazardous material. whatever the specifics were so that the town has on file a letter from that individual or group.

Lynn, current staff member. spoke to the regulations, said she spoke to OCFS about that particular piece of the regulations. The person was not very nice to her, didn't understand why they gave anybody the regulations. If anything in the seventy six regulations is not met they will not receive their license. The State said that is the only thing we give you, that states everything in their regulations has been met. Also spoke to the person who will be issuing the license, she said that they will not furnish TOTALLY Kids Child Care a letter because their license to operate and have children means that everything laid out in the regulations that they send has been met.

Peter Sander questioned if there is an environmental consultant that is conducting the test, believes will have a different person for different tests? Applicant said the Radon test is actually in process now, will be sent out next week for those results to be returned. The water testing is something that have to have per the regulations, has to meet that regulation.

Chairman Schwartz stated that the water testing is by the Board of Health, is taken care of, the Radon test is being conducted, he is not looking for a letter from the State, is looking for a letter from whoever does their inspection that tells the State its okay, if they also tell the parents its okay. Applicant said she has to send the results of their testing that they do to the parents, Peter Sander interjected that he will see that whoever is conducting the test write the letter to the town, will include it as part of their submission, will be part of the conditions of approval.

Chairman Schwartz questioned if any other kind of environmental test beside the Radon test is being done? Lynn stated the only thing the State wants is the internal air quality of the Radon test and a water test. Chairman Schwartz said the water test is by the Board of Health, questioned if there is any other test under the heading of toxic or hazardous that they are addressing that needs to send a letter to the town so it is on file?

Councilman DeBonis questioned, when you say air quality, does that include airborne voltage? Applicant said they are not required to do that, they are only required to do the Radon testing and the water testing for the license. Lynn said the inspector that comes to inspect the site, when they come they have a fire inspector that also comes, if he sees any reason to do any other testing he will let them know, they will have to comply.

Peter Sander referred to another comment made by the board which is about the occupancy of the structure. He talked to Don Smith, building inspector, about visiting the site who gave him a preliminary number of about 50 persons on the site. There was a follow up request to get a letter from the fire chief, he double checked, apparently the fire chief does not take on this function. He made another follow up call to Don Smith, told him that it will be figured out by the OSPC which is the Office of Fire Prevention and Control which is an Albany organization. This didn't make much sense. He did a little more research, found that it is actually a building code requirement to review that. Those occupancy numbers come from square footage and some standards.

Peter distributed excerpts from the International Fire Code that gives the general square footage per use. For the daycare use its 35 net, that means for every person in the building you would need 35 square feet of space. Based off the current occupancy of sixty nine hundred for the building that the daycare center will be located in, they assume that there is going to be hallways so they don't believe there is going to be more than that. Based on that, the building at 3,455 square feet has an occupancy of 98.7 occupants which is more than the septic system can handle. Eventually the occupancy will be set for the building but now there is interior configuration that needs to be worked out with the egresses and hallways. The building inspector should be establishing a set occupancy once all these interior renovations are completed. Chairman Schwartz questioned if he thinks it will be more or less than 98? Peter said he thinks it will be more than 98. Said he believes its part of the licensing. If that is not satisfactory they can go out and do an investigation of it and set it based off these standards. Board member Jorgensen said he thinks the building inspector will ultimately give them a letter.

Lynn said she met with the building inspector shortly after the public hearing. He came to look at the building, said, if they are going to be renovating it he cant give that calculation, he is not the one to do it, the State is the one to do it. That fire inspector will come to tell them everything. That fire inspector said no, he has to come in first after the renovations are completed and give a total. Even if the total he gives is 98. They are not having anything near that many children.

Chairman Schwartz said this is the State limiting their children. This is not about the children, this is about their having open house, having Christmas parties, have two

parents per every child whatever the ratio is. There has to be a maximum number of people that can be instructed. Whoever writes the letter doesn't matter.

Board member Jorgensen spoke to the Board approval, said, the occupancy cannot exceed the occupancy established by an applicable state and local authority. Chairman Schwartz said the maximum occupancy would be shown on the site plan. Peter Sander said the only issue he has with that is it could be onto an amended site plan, but because a site plan shows more of the exterior it would be then be applying for the easier renovations until he gets the site plan approved. Board member Jorgensen said the Board is not going to specify a number, just say, the approval is that the occupancy cannot exceed the limit established by an applicable State and local authority. Said, when Peter gets the number to file it with the Board. Peter said he will put that as a condition it has to be filed with the planning board.

Peter referred to the next question/comment by the Board is about the lumination on the structure. The initial conversation was about maybe having a dual post sign, applicant has opted to replace the existing wall lettering on the side of the building. Initially it had a proposed spotlight pointing upward, they are going to build a bracket to have it point downward, that way it will be illuminating down and should exceed outside of the realm ultra sight.

The last question was on the lighting for the parking area. There are several existing fixtures already on the building. There is a pretty powerful spotlight in the back. New lantern lights will be installed to match the existing lights that are already on the building which will provide illumination along the sidewalk. When the employees are walking down and entering the building it will be bright.

Attorney Battistoni questioned about the arrangement relative to the parking? Said, a lot of parents want to park and take their children inside, with a toddler you would. Peter Sander said there is a drop off area proposed on the site, beyond that they have some temporary parking spaces in the front. In the event that a parent needs to stay a couple of extra minutes they will have them park off to the front, drop off, should be able to idle, stay inside. He does not anticipate this to be a problem because they are offering plenty of parking area.

Attorney Battistoni remarked that he looked at the numbers of children, 8 infants, 9 toddlers, that is a lot of little children who will need someone to get them out of the car and take them inside, questioned if they have temporary parking to accommodate that? Peter Sander said, yes, they have temporary parking, also chose an area for child drop off where they can idle and walk in the building. It's a solid drop off of approximately 100 ft. or so, can accommodate 10 cars that can idle there while the

parents are dropping children off.

Attorney Battistoni questioned applicant if site plan approval is needed to obtain the license from the State? “Yes.” Applicant said right now they are at a halt because they only have three months to complete everything, they were not able to go into the building start their renovations, what happens is that the State withdraws their application, they have to resubmit everything again. Until they get the approval where they can go in and start doing everything they need to do, they are limited. Applicant said she has only three weeks to submit everything to the state, everything has to be done by March which is not going to happen.

Attorney Battistoni questioned if applicant during the application process needs to show that she has local approval? “Correct.” Lynn said they need to show local approval. They need to show that they have everything that is in the regulations. They have to show them that they have signed menus by a nutritionist, that they have local approval that the building permit is in place and they are almost done building

Attorney Battistoni spoke to drafting the resolutions, a resolution to grant the special permit and site plan approval, would list the conditions, said the board can combine the preliminary approval. Chairman Schwartz reiterated that the Board is looking for a motion for Preliminary, Final Site Plan Approval, and Special Permit Approval. The motion was made by board member Spense, seconded by board member Meaney. Attorney Battistoni spoke to the numbers of children, 8 infants, 9 toddlers, 12 pre-schoolers, 16 school age or less, questioned if those numbers are part of this approval? Applicant said they are going to re-measure after they complete the renovations, take the square footage to determine what the actual numbers will be for each of those rooms.

Attorney Battistoni remarked that the plan that the Board is approving tonight will have some changes made subsequent to what was talked about, added to the notes. Peter Sander said the notes are relative to final occupancy for the building, can edit it after approval. Attorney Battistoni said one of the conditions is going to be that daycare will supply a letter from an environmental consultant about the environmental test. Next questioned about the lighting, “Dark Sky” compliance was mentioned, Peter Sander said it’s a standard, basically uses no extra light, heating up in the sky. Attorney Battistoni said this would be a condition in the resolution. Chairman Schwartz said that their lighting is compliant with the building code. Peter Sander concurred.

Attorney Battistoni said ordinarily it would be nice to have a resolution, see all of the conditions in the approval. Thinks that the applicant is in a real hurry so if the Board is okay with approving this, having to submit the resolution afterwards for comments. Board members concurred. A vote on the motion followed.

A motion to grant TOTally Kids Child Care Special Permit and Site Plan Approval was made by board member Meaney, seconded by board member Kelly 6 ayes.

The Oken Site Plan and Amended Special Permit (Erik Oken) 636 Deep Hollow Road is to construct a 643s.f. pre-existing, non-conforming structure (barn) under Section 393 of the Town of Washington Code and convert the reconstructed barn to a guest house with a 2,088 s.f. addition. Total building s.f.. will be 2,731. The guest house will have a new septic system and be tied into the existing well. Department of Health has approved the system and use of the existing well. The property is zoned R 10. **Dutchess County Tax Map Grid No. 6966-00-617541.**

Section 393 Resolution: “Any building or structure damaged by fire or other natural causes may be rebuilt to its former size and continue in its former use despite the fact that its sturcture or use was nonconforming under the Local Law, provided such repairs or reconstruction shall be completed within two (2) years of the date the damage occurred”

John Allee, Allee Design, Millerton, NY appeared before the board.

Chairman Schwartz gave a recap of the application for the benefit of new member Spence. Said, approximately one year ago for the conversion of a pre-existing, nonconforming barn under Section 330 the Board approved an application for this renovation. At some point in time after the approval the barn was taken down which means it is no longer a renovation, is now a reconstruction. The application was done correctly, the approval was appropriate. The idea now is to amend the application from a renovation to a construction.

John Allee presented photos of the structure. Spoke to the amended special use permit application, said the barn is down, part of it fell down, has a letter from the builder with an explanation, photos, of the condition of the barn. The intent was to lift it up, build a foundation underneath it, turn it into a real structure. One third of the timber frame was rotting, there was an infestation of ants. The building came down. In the process of doing some other work on the property the contractor thought he could strip the siding off the barn since he extra workers there, expose the twimber frame making it lighter to lift up. As the siding was getting removed they began to see more and more rot, went to the north side of the barn, started taking siding off it actually dropped, became unsafe, at that point felt the only thing to do was to take it down.

The pieces of the barn are all there, now, since they don't have the barn they are hoping to amend their application under Section 393 that allows a structure that has been

destroyed through natural causes to be rebuilt on the same footprint. They are asking the planning board to allow them to rebuild that barn under Section 393, then continue on the original plan of using that barn.

Board member Kelly questioned John Allee if he had to redesign the structure of the old barn, does it change the design? John said they will use some of the timbers that were there, no changes were made in the design from the outside. In the former approval the building was originally for four bedrooms, 3,143 sq. ft., are down to 2,731 s.f. The original size of the barn was 643 s.f.

Board member Spense said it seems to him that this application wouldn't go under Section 393 that allows for restoration of something that previously existed. Presumably its of the same scale. The original filing of Section 330 is a conversion in an event where there is inadvertently the same knocked over barn, that to him is the rationale, that is reasonable.

Board member Jorgensen questioned if the footprint is the same, the number of stories is the same, where is the extra 2,100 s.f. coming from? John Allee said when they got their approval under Section 330 for the special use permit 643 s.f. was the original barn that predated 1989, based on that they could use that barn as essentially the start of a renovation then add to it. Said, the addition is now smaller. Board member Spense remarked what he is saying is that the footprint of the old barn is a subset of the footprint of the new barn.

Chairman Schwartz said the limit in the extension of preexisting, nonconforming, that exists in the Code it not cross referenced in Section 330. Section 330 is an open opportunity at this point in time, given what Section 330 says it is not unreasonable for them to ask for this extension which has now been scaled back.

Attorney Battistoni said he agrees with board member Spense analysis that this is a barn conversion, was approved, can see where someone would get to start. to get into the existing barn, realize this is rotten, this is falling down. Its not so much demolishing a site then reconstructing under Code 393, converting the barn, they did get approval for that. Thinks the problem here was a demolition without a demolition permit.

Chairman Schwartz said the building department did list this as top order so this could go forward.

Attorney Battistoni said he prepared two resolutions for tonight, completed the Short Environmental Assessment Form Part II and III. Questioned if the board has any comments on the resolutions, is satisfied with them.

Attorney Battistoni said the plans were last revised January 29, 2020 those are to be approved. Attorney Battistoni said the special permit approval and the site plan approval is combined in one resolution. The first resolution is the Negative Declaration for SEQRA purposes, the second resolution is an approval resolution Special Permit, Preliminary, Final, Site Plan Approval. Chairman Schwartz questioned if the board has to revisit the negative declaration? Attorney Battistoni said, “no” what happened was that the board approved it verbally last year subsequent to his preparing a resolution after the Board of Health approval. Chairman Schwartz indicated that the board would like to reiterate the negative declaration that they did last year.

A Motion to issue a SEQRA Negative Declaration and Notice of Determination of Non-Significance was made by board member Spense, seconded by board member Meaney. 6 ayes.

Chairman Schwartz next called for a motion for a Preliminary and Final Site Plan Approval and Special Permit Approval to reconstruct the Oken barn application. **A motion to grant the Oken Application Special Permit Approval and Site Plan Approval was made by board member Meaney, seconded by board member Kelly. 6 ayes.**

Discussion followed on Cary Institute of Ecosystem Studies Solar PV system (YSG) Solar Community LLC installation of an eight foot fence. YSG was notified that they need to submit a site plan with a fence on it, that they need to provide an angular view from a vehicle traveling east on Route 44 and Route 82, north of of Route 44 that is 44A vehicle height that their screening is appropriate to block visibility as well as from neighboring parcels. YSG was told without site plan approval could install a fence but may have to pull it down and they still have to put in screening.

Board member Kelly remarked the YSG has to present a site plan where the fence is going to be before they put up the fence.

Councilman DeBonis said YSG has to engineer it so it is covered with greenery. The location of the fence, the height of the fence has to be shown on the site plan, a variance may be required. The installation has to meet the requirements,, has to be invisible from both roads. Nancy Patrick, Zoning Administrator gave a stop work order, they put the fence in anyway.

Secretary Caul spoke to the outstanding \$1,455.00 monies due, to cover invoices rendered by VanDeWater and VanDeWater, a letter of notification was sent December 30th with no response. YSG is to pay outstanding monies plus proposed fees before being placed on the agenda.

There being no further discussion, comments, business, a motion to adjourn the meeting was made by Chairman Schwartz, seconded by board member Kelly. The meeting was adjourned at 8:35 P.M.

Respectfully submitted,

Nikki Caul, secretary

