

**TOWN OF NORTH EAST PLANNING BOARD  
MINUTES  
DECEMBER 18, 2013**

The regular meeting of the Town of North East Planning Board took place on Wednesday, December 18, 2013 at 7:30PM in the North East Town Hall, 19 N. Maple Ave, Millerton, NY. Board Members present were Chairman Dale Culver, Bill Kish, David Shapiro, Willem deVogel, Evelyn Garzetta, Charles Barrett and Leslie Farhangi. Also present were Whitney Joseph, Bob Trotta, Richard Cantor, and members of the public.

- **Doris Reeves, 65 Rudd Pond, Site Plan for an Accessory Apartment**
- **The Watershed Center Inc., 33-44 Kaye Rd, Site Plan Continued Public Hearing**
- **Paul Williams Realty, 5723 Route 2, Amended Site Plan**

**Public Comment**

There were no public comments.

A motion was made by David Shapiro, seconded by Evelyn Garzetta and agreed upon unanimously to open the meeting at 7:35PM.

A motion was made by Leslie Farhangi, seconded by David Shapiro and passed unanimously to open the public hearing.

**Doris Reeves  
65 Rudd Pond Rd  
Site Plan for an Accessory Apartment**

Chairman Culver asked if anyone desired to speak. There were no public comments. Chairman Culver then asked if there were any questions from the board members. There were no questions.

Chairman Culver then reviewed the SEQRA form aloud.

A motion was made by William Kish, seconded by Willem deVogel and passed unanimously that the proposed action does not have an adverse environmental impact.

A motion was made by David Shapiro, seconded by Leslie Farhangi and passed unanimously to close Public Hearing.

A motion was made by Willem deVogel, seconded by William Kish and passed unanimously to approve the accessory apartment.

**The Watershed Center Inc**  
**33-44 Kaye Rd**  
**Site Plan Continued Public Hearing**

A motion to open the Public Hearing was made by David Shapiro, seconded by Leslie Farhangi and unanimously passed by all.

**Richard Rennia**, architect for the Watershed Center, gave a brief summary of the project describing the buildings, parking spaces, and lighting. Both water & sewer lines have been designed and approved by the Dutchess Board of Health since last meeting.

**David Shapiro** stated that at the last meeting, George Rodenhausen stated that there was no legal reason that the Planning Board could move forward despite Article 78

**Chairman Culver** asked Mr. Rodenhausen to comment on Richard Cantor's letter to the Planning Board.

**George Rodenhausen**, council for the Planning Board, discussed Richard Cantor's letter. Mr. Rodenhausen stated that it was his opinion that were Mr. Cantor's client to have to sue, there would not be much additional expense in the proposed litigation. He went on to say that he believed the issues now before the board were technical issues and made reference to Mr. Neiler's letter regarding sprinkler systems.

The board members did not have any additional questions for Mr. Rodenhausen at that time.

**Chairman Culver** asked Mr. Trotta if he had any questions.

**Bob Trotta** said he has a problem that the same attorney (George Rodenhausen) is representing the ZBA and the defense of the lawsuit while also representing the Planning Board. He stated that a lawyer is "duty bound" to take opinions of ZBA in court. Is there an overlap? Mr. Trotta stated that Mr. Rodenhausen must take the same stand across the board. Mr. Trotta argued for independent legal advisement for the Planning Board. He said that since it is the applicant's money paying the bill, she is entitled to independent council. Mr. Trotta stated that Dutchess County has many skilled attorneys and suggested the Planning Board ask the Town Board about legal advice.

**Richard Cantor**, attorney with Teahan & Constantino, LLP, is opposed to the Watershed Center application. He agreed there is no legal stay but said it is "common sense" for the Planning Board to hold in abeyance their decision until the court has made a determination on Article 78 for the Zoning Board of Appeals. There is a 30 day statute of limitations when you make the decision of Site Plan and were the Planning Board to make the decision before the Article 78 decision is made you would be putting everyone

back into litigation positions unnecessarily. Mr. Cantor then referred to his own letter and those of Mr. Neiler, architect, and Mr. Koehler, engineer. He stated that zoning law for site plans lists a list of submission materials applicant must submit and a lengthy list of standards for approval. One key standard is that the Planning Board must determine if the site plan and the architectural plan harmonize with the neighborhood. Other standards include proper provision for fire protection facilities and access as well as water supply, sewage and waste disposal. Mr. Cantor stated that these standards are matched by submission requirements. The Special Use Permit that was granted provides for 1) up to 40 guests and staff on premises housed on the property plus an additional 20 on the people during the day, 2) up to 200 people on the property not more than 4 times per year for special events. Potentially up to 260 person depending upon the day of the year. Mr. Cantor asked, the question arises how can this intensity of use harmonize with this low density, agricultural neighborhood? Mr. Cantor stated that it is up to the Planning Board to define the nature of the neighborhood.

Mr. Cantor referred to a letter dated December 20, 2013 and 3 earlier letters to the Zoning Board of Appeals from Eric Neiler, of Tinkelman Architecture. Mr. Cantor stated that it is Mr. Neiler's opinion that the current buildings cannot house that many people, there's simply not enough room without major changes. Given the wood frames of the structures and number of people, sprinklers are required. Mr. Neiler also identified a number of fire safety issues. Mr. Cantor stated that as far as he can tell, the applicant has not submitted architectural details to address fire protection, water supply and waste water. Mr. Cantor then summed up a list of standards that can be extracted from case law regarding Special Use Permits. Mr. Cantor stated that Planning Board does not have authority to waive or modify the standards and that with Article 78 pending it is "common sense" to hold the public hearing in abeyance until court makes its decision.

**Richard Rennia** stated that water and sewer system and storm water have been approved by Department of Health. There is still a question of whether fire suppression is required. Mr. Rennia read from a code analysis letter dated November 12, 2012 which stated: the Main House can achieve a positive score with addition of a fire alarm and detection system and emergency lighting, exit signs and a one hour enclosure of both stairways. The Cottage achieves a positive score with addition of a fire alarm and detection system, emergency alarm system and emergency lighting and exit signs. The Studio w/ garage below achieves a positive score with addition of a Fire Alarm and Detection System, Emergency Alarm System and Emergency lighting and Exit Signs. Mr. Rennia went on to say that no large modifications were required if a sprinkler system is not needed.

**Leslie Farhagi** asked if a fire escape was required.

**Richard Rennia** replied that in the main house the exit windows are large enough and there are two staircases so there are multiple access points in and out of the building.

**George Rodenhausen** said he thought that the fire inspector would make the decision regarding fire accessibility and asked if Mr. Rennia if Ken McLaughlin, the Building Inspector, had made any determinations regarding adequacy.

**Rich Rennie** said he believed that they had discussions a year ago.

**Greg Osofsky** stated that there had been discussions more recently. Kevin Donahue found methodology to be sound.

**Brooke Lehman** stated Kevin Donahue and Mike Segelken have been through the house multiple times.

**George Rodenhausen** asked if Mr. McLaughlin would have to sign off eventually on a building permit.

**Greg Osofsky** said that Mr. McLaughlin found that the reasoning Kevin Donahue put forward to be perfectly sound.

**Chairman Culver** stated that it might be good to have a paper trail from the Building Department and have its submission put into the record.

**Chairman Culver** asked if anyone else would like to speak.

**Bob Trotta** stated that he did not see a floor plan for sleeping rooms and bathrooms for the main house in the records. He asked if the floor plans have been submitted for these buildings.

**Ed Downey** stated that the floor plans are presented to the Building Inspector when applying for a building permit.

**Bob Trotta** stated he thought it would be very difficult for any code person to look at and score what you can and can't do with 40 people or with 60 people without a layout. If you look at the definitions in our code, of dormitories, it says that dormitories are allowed in educational institutions. It is silent about dormitories or eating facilities in educational centers. Now how do you shoehorn an educational center into an educational institution? Mr. Trotta went on to say that dormitories are defined as fraternities, and sororities, and are allowed in educational institutions. If you adopt their idea that the area for both is the same then effectively there is no distinction between an educational institution and an educational center. However, if you look at dormitories you see that you need permission from the educational institution. So, if they presented to you an educational institution, i.e., a college or university that will allow these dormitories the answer is no. Why are there no plans? It's because these are dormitories, there's no possible way this will be a hotel because it's only 3,000 square feet. There's a lot we don't know.

**Richard Cantor** stated that contrary to Mr. Downey's statement, architectural plans are not required until you get to the building inspector. The Zoning General Code of North East §98.27.d which covers site plan requirements states:

... architectural plans of all proposed buildings and structures, and signs and outdoor illumination facilities unless otherwise provided in connection with the

site plan, as applicable to the particular application, which plans may be preliminary in form but shall include ... the interior uses of the floor area ... all prepared by an architect or professional engineer.

**Ed Downey** stated that what has been heard tonight has two elements to it, the first is the theme that there is never enough information. The second is the tactic of coming in at the last minute and throwing all sorts of suggestions and allegations that are all intended to get the board to further delay the process. Mr. Downey said he believes that the answer to what is going to happen and how it will be resolved is best expressed by the ZBA decision stating, "Mr. Neiler argues that the building code be altered as proposed by the applicant to house the number of overnight participants that the applicant wishes to accommodate or altered to comply with relative safety requirements." The short answer is the special use permit to compliance of all building codes and safety requirements to the extent the applicant is unable to comply it will not be able to use the building as it intends. The issues that are being addressed are building code issues and they will be determined by the building inspector as part of the building permit process. The Watershed Center has gone through an extensive process to determine what was needed with the Zoning Board of Appeals and they have responded to all requirements. Mr. Downey stated that the Planning Board is being urged to delay the decision because of the allegation that the Watershed is not an educational center and the assertion is that they will have to sue you should you make this determination. The fact is that the opposition has already sued on this issue. They are urging this upon you because they just want you to further delay this applicant getting its permit. That issue will be decided by a court and when that court makes its decision the issue will be resolved. If they want to sue the town a second time on the same issue they can do it. Mr. Downey stated that in regard to the issue of community character, the Zoning Board of Appeals dealt precisely with that issue in the SEQRA determination as well as a part of the Special Use Permit standard. On both page 13 of the SEQRA decision by the Zoning Board of Appeals and on page 7 of the Special Use Permit decision you will see the discussion.

**Charles Barrett** asked if the Planning Board needed to wait until the building inspector to determine size is correct for occupancy.

**Richard Rennia** stated that if building inspector says they can only accommodate 20 guests they will abide by his decision. That is why they have a Phase II, for the future. The building permit will show maximum occupancy.

**Brooke Lehman** stated the number put forth is their maximum vision. "We went to the Zoning Board of Appeals with that. We have been doing this consistently for 15 months. At our maximum build out someday we will have 40 overnight guests. That is not now. We have been working with both parts of the Health Department, with Mike Segelken, with Ken McLaughlin, and the kitchen safety side of the health department. Both have done walkthroughs. We have been in constant dialogue with them and we have every intention of following their recommendations. Forty people overnight is not going to happen until we have the capacity that we want to have. We didn't want to go back to the zoning board 5 years from now if in fact we are able to reach that. Prior to that time we

will be coming back to you because we will be proposing a first build out to be able to accommodate that part of the plan. I am totally comfortable with the process and it upsets me every time the two lawyers play with the numbers and just so that you know, we're never getting to 260 people on the property. It's 200, they know that. It includes whoever happens to be there overnight, it includes the 20 people who might come as overnight guests. The cap is 200. It is a waste of my time and a waste of your time when there is a deliberate attempt to confuse you. I would appreciate if everyone stuck to the facts."

**Chairman Culver** asked George Rodenhausen if § 98-27.D applied to existing buildings as well as new buildings.

**George Rodenhausen** stated that he believed it did.

**Chairman Culver** asked if the code book used the word "existing".

**George Rodenhausen** stated that the code read "all buildings" in §98-27.C and "all proposed buildings" in § 98-27.D. He said it read it to mean .D only applied to new buildings.

**Chairman Culver** stated that if the board felt that "proposed" should include existing buildings then they should deal with that.

**Mr. Trotta** stated there are prohibitions against segmentation. He said this was the first time he had heard that 60 is what they wanted permission for.

**Brooke Lehman** stated 40 is the maximum.

**Mr. Trotta** said 40 guests and 20 staff.

**Brooke Lehman** responded that including overnight staff, 60 is the total for programming including daytime staff. There will be people coming for daytime programming, local people.

**Mr. Trotta** stated that if the building code only allows 10 sleeping in that house or 15 they want an approval for 40 so that they don't have to return to the board for a building permit. This is segmentation.

**Ed Cantor** stated that this is a dual phase project where there is an additional building being considered.

**Chairman Culver** stated that the Watershed Center did not wish to build entire project at the inception but they are giving us information on everything so that we know that as we go forward.

**Mary DiPasquale** stated that she is a tax payer and she owns a summer home on Mt. Riga. Both the Department of Health and the town consultants say things are items

missing from submissions. Ms. DiPasquale then read her letter into the record. She asked that Planning Board "carefully read Eric Neiler's and Daniel Koehler's reports. Based on their experience as architect and engineer, respectively, these experts state that 'the modifications required to bring the existing structures into code compliance for new uses will be significant.' These issues should be resolved at the time of site plan approval, not resolved when building permits are sought."

**Charles Barrett** asked if there is a requirement that all building would have driveways for access by emergency vehicles.

**Richard Rennia** said that his answer was yes. Mr. Rennia then referred to drawn plans and explained additions to existing parking. He explained that there is an existing gravel road that runs the length of the property and stated that that road would not be used for parking. Mr. Rennia stated that plans were submitted to the Fire Department in September and they were waiting for an official letter. Mr. Rennia stated that he did not believe a building of this size would require a sprinkler system but if it did, a storage tank would be installed in the basement and there would be a separate fire pump .

**William Kish** asked if there would need to be exterior cisterns or storage tanks.

**Richard Rennia** stated that they would not be needed in a building this size. He added that they would put in a high flow rate pump to get the water there fast and to supply that demand very fast for a short period of time and get the occupants out. That is point of a sprinkler system.

**Willem deVogel** asked how big is the tank in your mind?

**Richard Rennia** stated that the system would have to be designed but along the lines of a 4,000 or 5,000 gallon tank.

**Chairman Culver** stated that Mr. Rennia had said they have a well that produces 43,000 gallons a day so we know they have the water on site.

**Richard Rennia** said part of the Health Department's submission included the design of a pump capable of doing 25 gallons per minute.

**Charles Barrett** asked when occupancy rate would be determined by the building inspector.

**Richard Rennia** stated that will be taken care of when they go to apply for the building permit.

**Evelyn Garzetta** asked if the process could be changed so that the board could get the information before application for the building permit.

**Richard Rennia** stated their estimates are as follows: the main house would have up to 18 overnight guests, and the cottage would have facilities for up to 8 overnight guests. That's what they would be starting with. He stated this is on the Health Department approval plans.

**Richard Rennia** stated that the water and waste system had been calculated on a per person basis. For example, if there were 200 guests for a day they would use 12 gallons per day for a total of 2,400 gallons per day. The system is sized for 3,000 - 3,400 daily.

**William Kish** asked if the Department of Health had reviewed the composting toilets.

**Richard Rennia** stated that the composting toilets were beyond the scope of the Department of Health because there are sanitary facilities provided on site.

**William Kish** asked if the composting toilets had been sized for 8 people.

**Brooke Lehman** stated that the composting facilities are rated. They are only looking at companies that do national ratings and the standards are based upon occupancy. The occupancy will coincide with rating of the facilities. We will also provide hand washing stations.

**Richard Rennia** stated that only one absorption bed for the septic system for the main house will go in initially. Once construction is done we will submit to the Health Department a certification will inspect construction and we will recommend to them what the capability is for that system and they will issue an authorization to operate. that. There will be one tank and two absorption beds.

**Holly Nelson**, a neighbor, stated that she had attended parties the home of Calvin and Pat Thompson, the previous owners. There were at least 100 people twice a year and she thought that the number of people was not noticeable until you actually were on the property. She believes, as a neighbor, that 200 people 3 times a year would not create a negative impact or be a nuisance. .

**Chairman Culver** asked if Mr. Downey wanted to speak.

**Ed Downey** stated that the board had been urged by letter and presentation that the Planning Board does not have the authority to waive standards. Town Law § 274-85 says that when a town board delegates authority for Site Plan Review to a Planning Board they are giving that Planning Board the authority to waive those requirements. Zoning Chapter § 98-26.B gives the Planning Board that right. Mr. Downey stated that to further illustrate how this process has been drawn out he cites a letter from the Hudson Land Firm that states they don't have the benefit of a Storm Water Pollution Prevention Plan on file but it has been on file since the beginning. Mr. Downey further stated that all the issues being raised have been turned over and over. He asked that the Planning Board close the Public Hearing that evening.

**Richard Cantor** stated if the Board were to ask for a time limit for further comment he asked that time limit be a reasonable such as 10 days to two weeks after receiving the comments from these consultants.

**Walter Hert**, a builder from Vermont and a friend of Gregg Osofsky's, believes that they have complied with everything requested by the town.

**Chairman Culver** asked George Rodenhausen if the Public Hearing should be continued until the next Planning Board meeting or closed that evening.

**George Rodenhausen** asked Mr. Cantor what were the latest Watershed submissions he had seen. Mr. Rodenhausen stated that the letter from Ray Jurkowski dated December 2, 2013 did not ask for further submissions from the Watershed Center. A letter from Will Agresta dated November 26, 2013 did request an expansion on existing notes but that these could be put on the Site Plan. He stated that neither letter was requesting the applicant submit new data, therefore he believed that the consultants had all that they had asked for. Mr. Rodenhausen stated that the Planning Board had, that evening, requested a letter from Ken McLaughlin stating on the record that he agrees with Kevin Donohue's calculations for the number of people who can be in certain buildings but that can come in after the close of the public hearing. The Planning Board is also waiting for a letter from the fire department, so there are two documents outstanding that the PB wants to see. Mr. Rodenhausen stated that if the PB wanted more information they should not close the public hearing until that information comes in. If the board were to accept additional information after the close of the public hearing and make that the basis of this decision it would foreclose comment by the public and that might lead to an error in procedure that might overturn the decision. If you do want to get more information you should keep the hearing open until that information comes in. Mr. Rodenhausen further stated that §98.26.B(3) requires the PB make a determination within 45 days after the close of a Public Hearing and you can't hold the hearing open to avoid that while waiting for litigation to be determined. You hold a hearing open to get more information and once you get that the public hearing must be closed. Therefore, you really don't have the option to hold this in abeyance. Mr. Rodenhausen stated that he agreed with Mr. Downey that the PB does have the authority in §98.26.B(2) to waive specific information requirements in §98.27 if applicant makes that request and the Planning Board deems that appropriate. The question of holding this public hearing open is if the PB wishes to get additional information on the record.

**Chairman Culver** stated that he wanted to see the Ken McLaughlin and the fire department letters before closing the public hearing.

**Willem deVogel** made a motion, seconded by Leslie Farhangi and passed unanimously to continue the Watershed Center Public Hearing to January 8, 2014.

**Paul Williams Realty (Harney Tea)**

**5723 Route 22  
Amended Site Plan**

**Bob Trotta** stated that he had received comments from Matthew Rudikoff on December 16 and will have their engineers respond. He stated he was there to speak about the use of the building they had proposed at the last PB Meeting and address concerns regarding making the iced tea and what might be going into the ground as a by-product. He stated that he did not have that information yet but they had determined that the effluent used to wash the equipment was acidic. They have no information yet regarding what it would do to the ground water and the brook over a period of time.

**Doug Kenyan**, architect, distributed drawings of what the proposed exterior of the new site. Building Phase 1 is for 50,000 square feet. Phase two is located on the map but may never be built and is proposed for 75,000 square feet. The proposed building would have a warehouse, loading dock, some office space on second floor, but the building is primarily for storage. About 15% of building is for a small process line on the bottom. The eave height is 30 feet, while the existing building is about 32 feet. The building color will be neutral, earth-tones with a metal roof, much like the existing building. The building will utilize energy reduction methods and the roof will be designed for solar panels.

Chairman Culver asked if the new building would be 2 feet shorter than the existing building.

**Doug Kenyan** stated that due to the grade if the so if the building were 6 feet it would be 4 feet higher. He stated that they would like to put Phase II on the SEQRA form and receive approval although they did not know when the phase would be started.

**William Kish** stated that if Phase II was not built within the next two years the Planning Board would want to review as zoning laws change.

**Chairman Culver** stated that the Planning Board appreciates seeing everything planned out but complete approval would not be granted on a long term project because so many of the environmental issues are changing the Planning Board cannot anticipate future requirements.

**Leslie Farhangi** stated that a goal might be to screen the buildings from the road with landscaping.

**Doug Kenyan** stated that there are hedgerows along the Route 199 side of the property and trees that were planted 20 years ago.

**Chairman Culver** requested that the plans include a highway view from Route 199.

**Leslie Farhangi** stated that she was interested in seeing a view from Route 22.

**William Kish** stated that the Planning Board will want to see photometric and lighting cut sheets.

**Doug Kenyon** stated that the wet lands along the brook have been flagged by the DEC. The plans were being brought before the Planning Board to present an idea of the scope of the project. Mr. Kenyon requested that the Planning Board circulate the EAF to lead agencies.

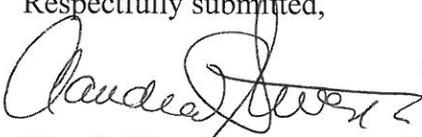
**Chairman Culver** requested that the SEQRA be updated and sent to the interested agencies including the DOT, DEC, DOH, Dutchess County Planning, Fishing and Wildlife and the EPA.

**General Business**

There was no General Business.

A motion was made by Evelyn Garzetta, seconded by Leslie Farhangi, and passed unanimously to close the meeting at 10:00PM.

Respectfully submitted,

 Approved 2/26/14  
Claudia Stevens  
Planning Board Secretary