



123 Mamaroneck Ave., Mamaroneck, NY 10543 phone: (914) 777-7700

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**VILLAGE OF MAMARONECK  
PLANNING BOARD MEETING MINUTES  
WEDNESDAY APRIL 22, 2020 7:00 PM  
ONLINE**

**NOTICE OF FIRE EXITS AND REQUEST TO TURN OFF ELECTRONIC DEVICES**

**These minutes primarily record the actions voted on by the Planning Board on April 22, 2020. The full public record of this Meeting is the audio/video recording made of this meeting:**

**[https://lmcmedia.org/videos\\_list/village-of-mamaroneck-planning-board-meeting-4-22-20/](https://lmcmedia.org/videos_list/village-of-mamaroneck-planning-board-meeting-4-22-20/)**

**PLEASE BE ADVISED, that the next Meeting of the Planning Board of the Village of Mamaroneck is scheduled for May 13, 2020 at 7:00 P.M.**

**PRESENT:**  
**KATHLEEN SAVOLT, CHAIR**  
**CINDY GOLDSTEIN**  
**LOU MENDES**  
**JOHN VERNI**  
**RICHARD LITMAN**

**GREG CUTLER, VILLAGE PLANNER**  
**CHRISTY MASON, PLANNING BOARD ATTORNEY**  
**BRIAN HILDENBRAND, VILLAGE CONSULTING ENGINEER**  
**ROBERT SPOLZINO, VILLAGE ATTORNEY**  
**SUSAN OAKLEY, VILLAGE LANDSCAPE CONSULTANT**  
**STUART MESINGER, VILLAGE CONSULTANT FOR THE HAMPSHIRE APPLICATION**

**EXCUSED:** **NONE**

**CALL TO ORDER**

Chair Savolt called the meeting to order at 7:03p.m.

**1. EXECUTIVE SESSION/ADVICE OF COUNSEL**

**A. EXECUTIVE SESSION**

**The Board will enter an executive session for the following reason:**

**"to enter into executive session pursuant to 105(1)(f) of the New York State Public Officers to discuss the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation."**

**On motion of Chair Savolt, seconded by Ms. Goldstein and carried, the Board entered into executive session at 7:04PM**

**Ayes: Mr. Mendes, Mr. Litman, Mr. Verni, Ms. Goldstein, Chair Savolt**

**Nays: None**

**Excused: None**

**On motion of Ms. Goldstein, seconded by Mr. Litman and carried, the Board returned from executive session at 7:27PM**

**Ayes: Mr. Mendes, Mr. Litman, Mr. Verni, Ms. Goldstein, Chair Savolt**

**Nays: None**

**Excused: None**

**During the executive session a unanimous vote was taken on a motion regarding the release of a memo from the Planning Board to the Board of Trustees**

## **2. APPROVAL OF MINUTES**

### **A. MINUTES – 2/26/20**

**On motion of Ms. Goldstein, seconded by Mr. Litman and carried, the Board approved the minutes of February 26, 2020 with a change to noting the late arrival of a Board member.**

**Ayes: Mr. Mendes, Mr. Litman, Mr. Verni, Ms. Goldstein, Chair Savolt**

**Nays: None**

**Excused: None**

### **A. MINUTES – 3/12/20**

Chair Savolt referencing the March 12<sup>th</sup> minutes:

On page 14 the 7<sup>th</sup> bullet should be 995 sf not feet. All my other comments are with regards to the 620 W. Boston Post Road section. On page 15 referencing comments I made, those comments were first before anything else happened, so they get moved to the front. Then Mr. Brescia spoke. On the top of page 17 there was a conclusion that's missing from the minutes. My notes show that after all the discussion the Board asked the applicant to work with the Planning Board's landscape consultant, Ms. Oakley and submit a new plan that would be acceptable to Ms. Oakley as our consultant and therefore the Board can review it.

I'm pretty sure but if you check it then we can do these minutes at the next meeting.

The Board was ok with that.

## **3. OLD BUSINESS**

### **A. 139 E. PROSPECT AVENUE LLC FOR PALLADIUM MANAGEMENT SITE PLAN AND CONTINUED PUBLIC HEARING FOR SPECIAL PERMIT REVIEW** (Section 9, Block 51, Lot 11B) Application for Site Plan and Special Permit Approval to demolish the existing residential structure and construct a new 3 story multi-family building with 8 one-bedroom units providing 1 unit pursuant to Section 342-50(B)(6) of the Village Code and associated parking. (C-2 District)

- 1/8/20 Initial PB review, Opened PH, SEQRA Unlisted Action, PB Authorized Circulation of Notice of Intent for Lead Agency
- 1/15/20 HCZMC SEQRA review and Consent to PB Lead Agency
- 2/8/20 Circulation for Lead Agency ended
- 3/18/20 HCZMC Preliminary Review
- 4/1/20 HCZMC Continued Review

Planning Board Meeting

April 22, 2020

Page 2 of 39

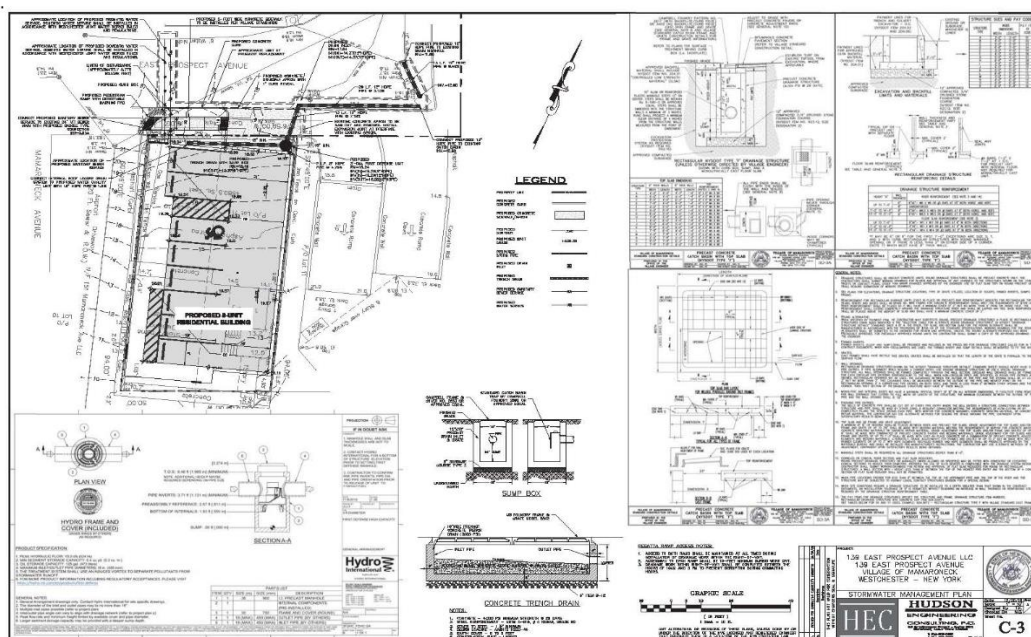
- 4/15/20 HCZMC Continued Review
- 4/22/20 PB continued PH, Consider SEQRA Determination

Chair Savolt:

This application came to us initially in January. We circulated for Lead Agency and started HCZM on their preliminary review. I think we declared Lead Agency. Tonight, it's back to us because HCZM had had several meetings with the applicant but we need to consider the SEQRA determination tonight so HCZM can continue.

We've gotten some public comments on this and I think there are plenty of people in the audience who are here because of this application. This is the first step on an application of this kind, the environmental review. After this they go back to HCZM and HCZM will consider consistency with the LWRP (Local Waterfront Revitalization Program) and then once they finish it comes back to us and we consider the site plan and Special Permit application. What would happen tonight would be if we decide to continue, would be the SEQRA determination and that's it. We have a lot of comments telling us about site plan and zoning issues, we're not quite there yet.

Mike Stein, P.E. presented a drawing on screen, sheet C-3 dated April 6<sup>th</sup>.



Tony Gioffre of Cuddy & Feder:

We are proposing to redevelop the premises with a new structure that will provide 8 one-bedroom units. One of those units will be an affordable housing unit in accordance with the requirements of the Code. We are providing parking, as you can see on this plan, in accordance with the requirements of the Code for off street parking. Since we last appeared before you, we have provided you with some additional materials which will assist you in your SEQRA analysis.

We provided a traffic analysis which provided, indicated and concluded that the estimated new trips would be nominal. The project will have no noticeable impact to the adjacent roadway network, that the required site stopping distance is achieved in both directions and that

emergency vehicle access is being provided and access to the adjacent building will not be restricted.

We also provided a school age children generation analysis which determined that less than 1 school age child will be generated by this proposal.

The New York State Office of Parks, Recreation and Historic Preservation submitted correspondence on February 24, 2020 which concludes, it is the opinion of OPRHP that no properties including archeological and or historic resources listed in or eligible for the New York State and National Registers of Historic Registers will be impacted by this project.

We believe with the supplemental submissions that we've provided to you that you have enough information within which to adopt a Negative Declaration for SEQRA purposes.

Ms. Goldstein:

Regarding the emergency vehicle access to the Regatta, we have the traffic and site distance study. On page 8 there's a discussion of the Fire Code and it seems, from my understanding, that the access will be adequate to this new building. There's a paragraph saying the proposed project will not result in any additional restriction of access to the drive aisle immediately west, which would be the Regatta. It's the opposite corner from where the driveway is that this new building will be closest to the Regatta residents, if I understand this correctly. I'm not so interested in the access to the drive aisle, but what happens when the firetruck gets back there, is there room to maneuver that far portion of the Regatta building because now there's a structure much closer to the Regatta than the current structure is.

Carlito Holt, Provident Design Engineering:

We reviewed the layout of the proposed structure versus the existing structure and we didn't find that the building footprint would encroach onto the emergency access in the back of the proposed building as well as the back of the Regatta building.

Ms. Goldstein:

I don't recall this report as saying that though. There's reference to the drive aisle but there's not reference to the other side of the building and this new building is closer to that part of the Regatta than the current building. When you say the footprint, I'm not just thinking the footprint, but the elevation of this proposed building. Could that impede access to the Regatta for fire service?

Mr. Holt:

In my opinion, no. The building is still within the footprint of the existing building, so however the emergency access vehicle passes that portion of the Regatta building, it will continue to do so in the same manner under this proposed condition.

Ms. Goldstein:

Isn't this building closer to the Regatta than the current building?

Rex Gedney, R.A.:

No, it's not.

Ms. Goldstein:

Many residents have spoken about this, that it gets very narrow. Their balconies and the corner of this building, not by the driveway, the other side, that there is a much closer connection between the 2 buildings. There's less space between the buildings, isn't that correct?

Mr. Gedney:

There is at what would be the eastern corner of the building. It is taller.

Ms. Goldstein:

If a firetruck comes down the access aisle, the existing aisle, to fight a fire at the Regatta on the east corner of that side of the building, can the firetruck effectively access and fight the fire in the Regatta with the location of this building?

Mr. Gedney:

I think both Carlito and myself believe yes it could, but I think maybe we should ask the Fire Inspector or the Fire Chief to make that determination.

Ms. Goldstein:

I think it needs to be definitely dealt with. I think the new building is protected but we have a very large, fairly densely populated building already there, so if you can get the truck down the driveway but you can't get the equipment around the building. I would appreciate some more definitive discussion about safety.

Chair Savolt:

I think if we're going to ask questions of the Fire Department, I'd also like to know once the firetruck got down the aisle and in the back of the buildings, can it turn around to get out? I don't know how much space is back there. Maybe the drawing we need up right now is the schematic, the footprint of the building as opposed to the engineering. If we're going to delay our vote and reach out to the Fire Department and get their input on this I think we should make sure that they answer all the questions that need to be asked and answered so we don't have to keep going back and forth.

Ms. Goldstein:

I think the issue of safety is serious enough and not easy to mitigate if a building is there. I would appreciate having answers to those questions.

Mr. Litman:

Is this or is this not in the flood plain? We seem to have gotten conflicting memos on this.

Mr. Gedney:

He tried to present a drawing on screen, sheet T-101, but wasn't successful. Mr. Cutler shared the drawing.



Chair Savolt:

Greg, maybe you can explain that there's 2 different definitions of a basement from the way I understand it, 1 for flood purposes and 1 for zoning purposes.

Mr. Litman:

But if it satisfies FEMA but doesn't satisfy the local Code, that's problematic, right?

Mr. Cutler:

It satisfies both in my view because the local Code allows you to have enclosed spaces that are within the flood plain. A basement in the Zoning Code isn't the same. A basement in the Zoning Code it's if 50% of the space is below grade. A cellar is if less than 50% if below grade. A basement by our Flood Code is not what this is, and it wouldn't be allowed if it was a basement. If it was below grade on all sides, it wouldn't be permitted in the flood plain.

Mr. Verni:

Last time this was on, wasn't there a question about whether or not there was a rear setback requirement?

Mr. Cutler:

That was a question about Multiple Dwellings Law. The Village did adopt Multiple Dwellings Law and the provisions within it. I looked at it with our Village Attorney and the requirement is if you're within a certain distance of an intersection, you have to provide a 30' setback, but the closest intersection was outside that distance. I don't have the exact distance, I'd have to look it up, but I think the concern was where Prospect turns, because it's a right angle, it was thought of as an intersection, but it's actually just a continuation of the road. It's just a very sharp turn on the road. It's in the C-2 Zone, there's no setback.

Mr. Verni:

There's no setback of any type, front yard, side yard? You can build this building full under the Code?

Mr. Cutler:

That's correct, subject to Building Code which would require light and air requirements.

Mr. Mendes:

I agree with your definition of a basement especially if it has flood vents. Are you allowed to park cars there? That basement is supposed to be a free and clear basement so water flows in and out through the vents.

Mr. Cutler:

I don't think they're proposing to park cars there.

Ms. Goldstein:

In the C-2, is that taking into account the Multiple Dwellings Law?

Mr. Cutler:

No, it's not.

Ms. Goldstein:

I'm confused by this and would appreciate a simplistic memo laying this out with citations, so I'll not only understand it now, I'll understand it in the future.

Mr. Cutler:

We can provide that.

Mr. Mendes:

My only comment is the closeness of this building to the Regatta building. We're talking about 10 – 12' window to window. Is that a Code issue?

Mr. Cutler:

Not that I'm aware of.

Mr. Gedney:

We had Spinelli Surveying go back and verify the balcony locations and heights. On the new building there are 2 balconies on each floor for a total of 4. The closest distance from the balconies to the first balcony on the Regatta, if you look at the Spinelli survey, he indicates the balconies by categories of A, B and C, the closest distance is 30' 4". From balcony to balcony there's a fair amount of separation.

Mr. Mendes:

It's not 30. If I remember the last site plan that you showed, the western tip of the building was very close to the Regatta.

Mr. Gedney:

If you look at the building itself, the closest point is approximately 9 ½'. He indicated the area on the plan that was shown on screen, sheet T-101. In the lower right corner, you can see the first balcony, which is shown, but the entire façade on the east wall, there's no windows so there's no privacy issue.

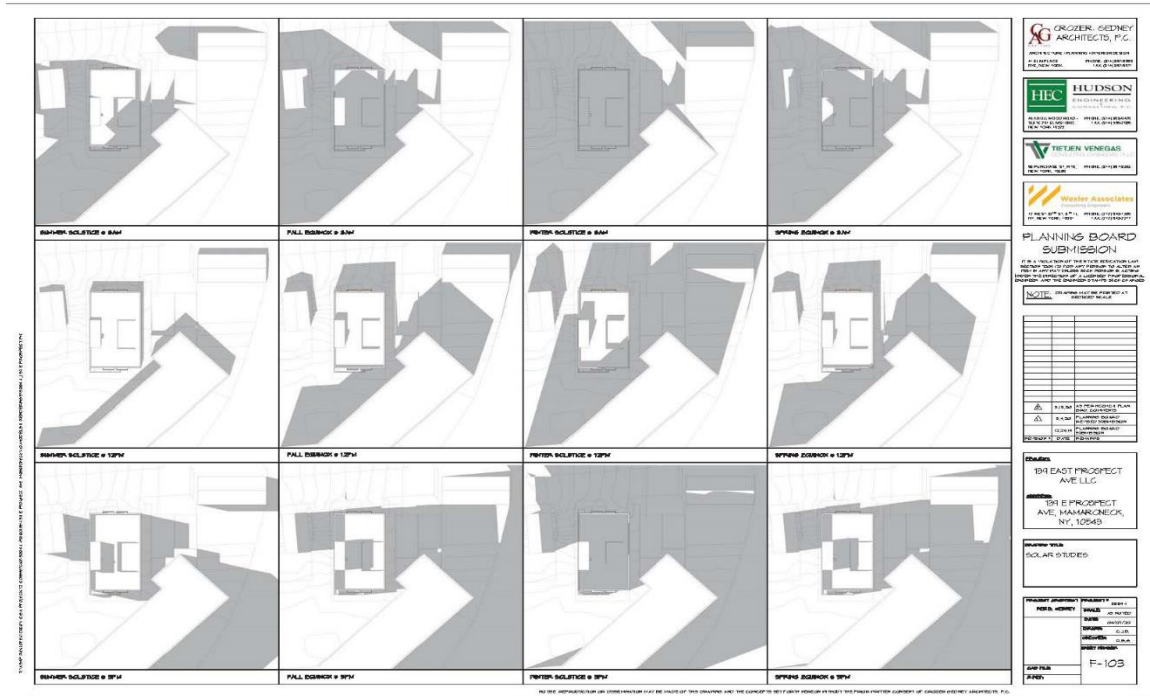
Ms. Goldstein:

There's a shadow issue.

Mr. Gedney:

As part of our study we included a shadow study, which is the last drawing in the set. The drawing was presented on screen. We used the current software to simulate the Regatta building with our building, our building is substantially smaller. It's located on the north side of the Regatta, which is roughly 6 or 7 stories tall. We had 4 seasons and we did 3 times a day, in the morning, noon and afternoon. With the exception of early spring or summer, the shadows are primarily cast by the Regatta down to our building.





Ms. Goldstein:  
Except for the lower floors of the Regatta.

Mr. Gedney:  
Only at an extreme time when the sun is low.

Mr. Gioffre:  
For a majority of the time and for a majority of the year, the shadows are actually cast from the Regatta onto this property.

Mr. Gedney:  
That's correct and it's shown in the study.

Mr. Cutler:  
If you think about when you're installing a solar panel, you want it to be south facing because the majority of the time, where we are in the northern hemisphere, the sun is more on the southern edge as it goes across the sky. The shadow is mostly hitting northward.

Ms. Goldstein:  
The top level of this building, what level of the Regatta is that, the 3<sup>rd</sup> floor, the 4<sup>th</sup> floor?

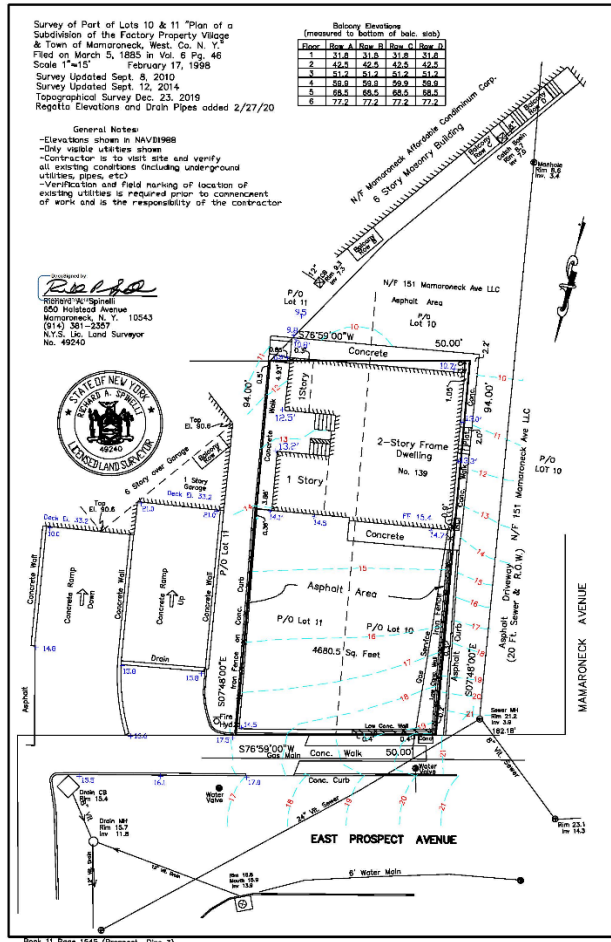
Mr. Gedney:  
There are no drawings in the set, but our building elevations have the proposed building height. Our new roof is at elevation 51 and the 3<sup>rd</sup> floor balcony is also at 51' 2" according to Spinelli's measurements.

Ms. Goldstein:  
There are 3 floors that are more affected than the upper floors.  
Planning Board Meeting  
April 22, 2020  
Page 9 of 39

Mr. Gedney:

That's correct, but the most impacted as indicated on the survey, are the B balconies. We can produce an elevation that shows that.

The survey was shown on screen.



Along the sidewalk it's elevation 21, in the parking lot behind it's elevation 10, there's a tremendous slope there. If you're looking at the survey, towards the top of the page it has balcony B, that's what I've been referring to and when I mentioned before the distance it was from the corner of balcony B to our building scaled out to be over 19'. It's that row of balconies on the 1<sup>st</sup>, 2<sup>nd</sup> floor that would be behind our building. The balcony on the 3<sup>rd</sup> floor is at the same elevation as the roof of our building, it's a flat roof.

Chair Savolt:

Balcony B, we don't know if that refers to the actual B apartments?

Mr. Gedney:

Correct, there's a chart at the top of the survey which shows the floor, the rooms and then the respective elevations of each one of the balconies.

He pointed out the location of the A balconies.

Planning Board Meeting

April 22, 2020

Page 10 of 39

Chair Savolt:

Oh, it's way over there, that's not affected at all.

Mr. Gedney:

In theory that's the closest to the proposed building. That's correct, there are no windows on that side.

Pictures of the existing site were shown on screen.

Public Comment:

Celia and Paulo Streno of apt. 102 in the Regatta:

Celia Streno:

Our apartment is essentially going to be looking at a brick wall. It's going to have a significantly negative impact to the use and enjoyment of our property. I would also like to echo the questions that Ms. Goldstein was asking regarding the safety and the availability of the emergency vehicles to turn around and get back there.

I heard someone mention that it's essentially the same footprint of the existing structure and I question that because to me it seems to be a lot larger and a much more imposing structure that regardless of the shadow study is going to impact how the light and how the views out of our apartment will be.

I have a lot of concerns over not only of the value of our property but also on a human level. Why do we have to build it that close, bring it back a little, give everyone some space.

Paulo Streno:

Our understanding is that we'll probably be the property most affected by the proposed construction. I hold a seat on the Board of the Regatta although in this instance I'm expressing my personal views. I'd like to invite the Board to not lose the big picture here before I raise issues on more technical matters. The entirety of that side of the Regatta will be adversely and significantly affected by this construction. There are safety and fire hazard issues, there is an issue of air quality, an issue of potential wind tunneling effects created, dust, unhealthy air which at a time of Corona Virus is a concern. Our understanding is that the building will sit 12' from our apartment. We have our own balcony that extends 4' away, we're talking probably from balcony to balcony of 4' in terms of distance.

The proposed construction in its' current configuration is an abomination and I'd like the Planning Board to take into account the big picture before looking into the fine details.

I would like to address a couple of comments from Mr. Cutler. My understanding is that the Board has sought and obtained independent legal counsel on the compliance of the proposed plans. I am particularly interested in Multiple Dwelling Law compliance. It is my understanding that under certain circumstances Multiple Dwelling Law would require a rear yard. It is my understanding that Counsel and Mr. Cutler concluded that a rear yard would not be required under the circumstances because there are no 2 streets intersecting. On that particular point we have significant issues on the interpretation of the MDL that has been proposed to the Board, in particular the statute requiring a rear yard, that so when a lot adjoins the point of intersection of

2 street lines. My understanding of Mr. Cutler's position is that because there aren't 2 streets, they have the same name, East Prospect, it falls outside of the language of the statute. That interpretation is arbitrary and capricious in my opinion. When the statute wants to indicate the requirement of intersection between 2 streets, the statute does so. In defining a corner lot, the same statute uses the language a lot which adjoins the point of intersection of 2 or more streets, but the portion that sets forth the requirements for the rear yard, the statute talks of the point of intersection of the 2 street lines. It doesn't say that the lines need to be from 2 different streets, it could be the same street and have 2 lines like in a situation like that when there is a very narrow angle. I would like the Board to explore that statutory language in more detail to ensure that it complies with the MDL statute. I'd like to opine that it is provided for exactly this type of situation to allow for multiple dwellings to have adequate access to light and air, open spaces, yards and so on.

That's my comments for the time being.

Chair Savolt:

Perhaps we should ask our attorney for a review of the Multiple Dwelling Law and how it's being applied to this project to make sure that everything is on the up and up.

Mr. Cutler:

Ultimately, it's a determination by the Building Inspector. He's done the zoning compliance on this project. You don't have a memo, but you should have the zoning compliance checklist that has been typically provided by the Building Inspector.

The resident of apt. 202 in the Regatta Doron Friedman:

I want to second everything Mr. Streno said and add that I'm going to lose 100% of my view and my river view, I'm going to be completely blocked of my river view. It has a toll on the value of my apartment and the quality of my living. I submitted a photo; I know that having a river view that's being taken away from me is something that has something to do with the Code.

He couldn't point out the balconies for apts. 102 and 202 on the survey.

Ms. Sherer:

His photos were shared at the Harbor Coastal meeting, they weren't shared or submitted at a Planning Board meeting. She sent the digital photos to this Board and they were added to the record.

Doron Friedman:

I'm not a lawyer, I'm asking you is there a law that protects me from losing my river view?

Chair Savolt:

I'm not aware of anything. Your residential building is in a commercial zone, there are Zoning Codes that apply to commercial zones and that's the framework within which we are all working. We're in the beginning of the process, hopefully we can work through and address most of the concerns, all of the concerns or some of the concerns.



The resident's picture was shown on screen. He stated as you can see the current building right now, it's going to be taller. I'm going to lose my whole view. I'm going to see a wall in front of me.

Mr. Litman:

That looks like balcony B. There's a construction fence at 172 Prospect, that's going to block the view too.

Mr. Cutler read a question from Bridget:

There's a stop sign there. Doesn't that make it an intersection?

Chair Savolt:

I think you already answered that question. It doesn't make it an intersection, there's no 2 roads intersecting, it's 1 road.

End of Public Comment

Chair Savolt:

Tonight, we are considering our SEQRA determination, but it sounds like we have some open questions with regards to emergency access and possibly zoning. It appears that we need to get some answers to some questions before we can proceed.

Public Comment

Mr. Cutler read a question from Celia Streno. I believe the regulation that Mr. (inaudible) was referring to is a municipal ordinance under the Revitalization Program.

That's a Harbor Coastal Zone question.

Chair Savolt:

Once we're finished with our SEQRA determination then this application will move to the Harbor Coastal Zone Management Commission with their review on consistency and the LWRP.

Mr. Verni:

Can't we ask as part of our analysis of the bulk, a viewshed analysis of this? It would be consistent with what LWRP will be asking for but the questions that were raised about what would be the viewshed of this and part of our consideration of the environmental impacts would be how to mitigate those viewshed problems.

Chair Savolt:

I'm not as conversive in the SEQRA Law as perhaps some other people are. Is this appropriate for this phase of where we are in this part of the project?

Mr. Cutler:

I think under character you could look at those things. It's also something you could look at through the Special Permit for infill housing, which gives you discretion of how the bulk fits in with the buildings nearby.

Mr. Gioffre:

That would be for the analysis as it relates to the Special Permit Criteria as opposed to the SEQRA analysis. The SEQRA analysis, as it relates to viewsheds and aesthetic impacts is for viewpoints that are considered significant resources for the municipality.

Ms. Goldstein:

Certainly, the river is one of those.

Mr. Gioffre:

172 is in the line of sight as well. The property owner certainly reviews the Zoning Code and develops the property in reliance on the Zoning Code. I know there's an analysis this Board must do, there's considerations that you must undertake but so does a property owner looking to develop his property.

Mr. Cutler:

In the past we have done viewshed analysis as part of the SEQRA review, I think you have discretion on this. I'll defer to our attorney, but it has been done in the past.

Ms. Mason:

I'll have to take a look at the Environmental Assessment Form and circle back with you.

Ms. Goldstein:

Is it correct that HCZM has been looking at this already? Maybe they've brought this up.

Ms. Mason:

I believe they've brought up the viewshed, but in terms of the LWRP. I'm not sure if they brought it up in terms of SEQRA.

Mr. Verni:

At some point we're being asked to make a Negative Declaration, wouldn't that be one of the things we would consider before we make a Negative Declaration is what is, that's one of the

factors. If we know what the viewshed impact is, we need to know that before we consider a Negative Declaration.

Chair Savolt:

We're in a position now where we need additional information and are not ready to make a SEQRA determination this evening.

Mr. Gioffre:

So, I understand for the applicant, the 2 items that you're looking at in order to make a SEQRA determination are more information with respect to the emergency access and firefighting capabilities as well as the viewshed concerns.

Chair Savolt:

I think Mr. Gedney had talked about helping us understand the distances between the balconies with some kind of a rendering to compare the elevations. You're saying the closest distance between 2 balconies would be 30' 4" and we have people from the Regatta saying it's going to basically be 4'. That's quite a difference, so I think it would help everybody understand if we have a picture of it.

Ms. Goldstein:

I would be more comfortable if we had the analysis on the applicability of the Multiple Dwelling Law and the rear yardage and that issue as well. I think that makes a big difference in terms of where the building goes.

Mr. Cutler:

If it would help the Board, I have 3D software available. If the applicant is willing, they could provide the rendering file and I could just drop it in our model downtown.

Chair Savolt:

Sounds good.

Mr. Verni:

That would be helpful.

Mr. Spolzino:

Greg and I did take a look at the multiple dwelling issues before this came to you, but we will take another look and write up the comments.

Chair Savolt:

Additional information requested:

- More information on emergency access
- Firefighting capacity
- Viewshed
- Elevation comparisons
- Complete analysis on MDL and rear yards
- Mr. Cutler will do a 3D modeling and present to the Board

It sounds like we have a plan for moving forward with this.

#### 4. WETLANDS PUBLIC HEARINGS

**A. 1 SHORE ROAD, NAUSET LLC FOR SEA 146 LLC WETLANDS PERMIT REVIEW** (Section 4, Block 77, Lot 25-1A) **CONTINUED SITE PLAN REVIEW, CONTINUED PUBLIC HEARING ON WETLANDS PERMIT AND REVIEW OF FLOOD PLAIN DEVELOPMENT VARIANCE APPLICATION** – Application for a Wetlands Permit, Marine Structures Permit, Site Plan review and Flood Plain Development Variance to construct an addition to the existing residence with alterations to the existing single family home, construct a new garage, gatehouse, a pier, boat lift and two docks. The Applicant is also proposing to replace the existing pool, spa, patio areas and septic system and reconstruct portions of the driveway, install new stormwater management improvements and new wetland buffer plantings. The property is located in the R-15 Residential District.

- 9/25/19 Initial PB review and Opened PH
- 10/30/19 HCZMC Preliminary Review
- 11/13/19 PB Site Plan Review & SEQRA Type II Action
- 12/18/19 HCZMC Review, 2/1/20 HCMZC Site Visit, 2/25/20 HCZMC Review
- 4/1/20 HCMZC Consistency Determination
- 4/22/20 PB Continued PH

Chair Savolt:

The next item on the agenda is a Wetlands Public Hearing on 1 Shore Road. We have applications for a Wetlands Permit, a site plan and a Flood Plain Development Variance Application. This application has been to HCZM. It originally came to us in September 2019 and went to HCZM in October. HCMZ has had multiple meetings with the applicant with regards to their application. They also have a Marine Structures Permit Application before HCZM. We have a single application before us. At their April 1<sup>st</sup> meeting, HCZM decided on advice of Counsel to split the application and award partial consistency. What we're being asked to do today is to continue the public hearing on the wetlands and the site plan for only the upland portion of the application. We would then consider the waterfront at a later time. This is unusual, it hasn't been done before, we just want to make it clear that's what we're doing.

Ms. Mason:

I didn't advise them the split the application, I advised them that they could split the application.

Chair Savolt:

We have 3 applications before us. I'm not sure how you split site plans since the whole site is the whole site. We have a Wetlands Permit required because most of the site is in the 100' buffer. It's a peninsula with the Mill Pond on one side and the Long Island Sound on the other.

Since you haven't been before us since September, a review of the applications and what it is and what's changed from September to April would probably be a good place to start.

Ms. Mason:

This will be between Counsel and the Board but moving forward you will want the applicant to confirm that their application has been amended. The new cover letter and I believe they submitted a new site plan, just confirmation that what they've given you so far is an amended application for a Wetlands Permit and site plan.



Chair Savolt:

We got a memo we didn't get a new site plan.

Ms. Mason:

I thought there was a new site plan from Kristin Motel last night.

Ms. Sherer:

I wasn't sure who that was being submitted for because it wasn't for a deadline. I wasn't clear on that.

Chair Savolt:

Last night was probably a little too late for tonight's meeting, frankly.

Ms. Mason:

Otherwise then, without that information it would just be the memo noting that they're requesting to move forward with the Wetlands Permit and the site plan application for the portions that don't require a Marine Structure Permit.

Mr. Verni:

Why was there a request to split this?

Ms. Mason:

The request didn't necessarily come from the applicant, it came from HCZM. The applicant had been before HCZM for several months. Every time we came close to wrapping it up, we had new issues moving forward, so HCZM decided they had enough information on the portions of the application that don't require a Marine Structures Permit to find consistency and move forward. The portions that require the Marine Structures Permit, especially the boat lift and the dock, there have been several meetings and conversations, they didn't feel they had the necessary information to vote on the Marine Structures portion of the application, so they felt that in order to allow the applicant to move forward, to get them consistency, they bifurcated the application.

Ms. Goldstein:

I'm kind of flabbergasted at how this evolved. I guess I understand the good intentions of HCZMC, but this is highly unusual, nothing I've ever seen in 7 years of sitting on Land Use Boards. Doesn't the site plan encompass the entire project?

Ms. Mason:

Yes. The site plan, the way that we said that you could move forward with the site plan, if you choose, keep in mind you don't have to move forward with either application tonight, but if you chose to move forward we felt that because the site plan doesn't require consistency, you could put a condition on the site plan. What is would be is that the site plan application that includes marine structures, they're going to have to get a Marine Structures Permit to get the building permit to do any work on the site plan that requires a Marine Structures Permit, so they can't move forward with that portion, so it would have to be the portions of the application that don't require a Marine Structures Permit. You don't have to have consistency so you can essentially approve the site plan with the condition that if anything changes when they get an approval for the Marine Structures Permit, they would have to come back to the Planning Board for a new site

plan approval. If anything changes on the site plan in evaluating and approving the Marine Structures Permit, they're going to have to come back to Planning.

Ms. Goldstein:

Normally a condition like that would include qualifying language that would have to be something of substance that would change, not that you made a very minor change. We get these issues all the time, you have field changes that they don't come back to the Land Use Boards to approve unless it's really quite dramatic and even then sometimes I suspect they're forgotten about, they're overlooked, so I am particularly reticent to put in such a big catchall, not even evaluating whether or not it would be likely that there would be any kind of significant change. We could just go ahead and approve everything and say if something changes you come back and then frankly, we have no work to do.

Mr. Cutler:

That happens all the time just on regular site plan applications. For instance, on 422 E. Boston Post Road they did their whole site plan, got approved, started construction and then they wanted to do a covered part of the garage in the back, they had to come back for a site plan amendment. The same with Brixmor vegetated swales being too close to the building.

Chair Savolt:

What I'm curious about is, right now New York is on Pause, so construction unless it's emergency and on the Governor's list as essential construction can't even begin. I'm not sure what the urgency was for us to do this tonight, to break standard procedure and to do something that's never been done before.

Tony Gioffre, Esq:

This wasn't something that the applicant did request. I believe the HCZM was trying to assist the applicant in moving forward. As you're all aware the existing site and the existing structures on the site are in a state of deterioration, but there is work ongoing on the site. There's a lot of good comments being made, I think there's significant progress that can be made. We're hopeful that the Planning Board can take action on at least a portion of the application. I believe the HCZM was trying to make the distinction between what is upland and what requires a Marine Structures Permit. With all that being said, the news is changing daily with what's happening on the Governor's orders and on Pause and to the extent that we could move forward, and we need to move forward with the construction of the house and the approval because that is ongoing. If we are moving through this process and the building permit process and the Governor's orders change such that we can continue with the construction, we'd like to be in a position to do that. I know this isn't the typical situation that your Board is normally faced with, neither with the applicant as well, but we're begging your indulgence to enable us to move forward.

This was last before the Board in November, you determined it was a Type II Action for SEQRA purposes. It has been a significant amount of time since it's been before you, so we'd like to continue letting you know where we are, presenting to you some of the modifications that have transpired while we were before the Harbor Coastal Commission and we're hopeful at the end of the day that you'll be in a position where you feel comfortable approving the application with the appropriate condition and as was indicated, if there are any amendments that are material,

obviously we would need to come back to you. We fully anticipate being back to you once Harbor Coastal has made their final Consistency Determination and issued the Marine Structures Permit.

Chair Savolt:

Is everybody comfortable with proceeding?

Ms. Goldstein:

I have no problem listening.

Mr. Verni:

I accept that explanation. Just to clarify on 422, the structure for the parking wasn't because anyone was caught, they made a change while they were going. We considered that at the appropriate time. It was a significant change, they came back to the Board, it was just an amendment.

Chair Savolt:

Looking at the documents that were submitted for this meeting versus the documents that we had back in September, it seems like there were some changes made to the building.

Mr. Gioffre:

The structures on the site were in a state of deterioration, the existing home was constructed in 1925. This proposal seeks, in addition to the existing 2 ½ story home and new garage, the other proposal aspects provide in-kind replacements to deteriorating improvements such as the pool, spa and patios. The improvements will be in approximately the same area as the existing improvements and unvegetated areas. We're proposing in place a failing septic system, a new environmentally friendly geo-thermal system, a driveway with improved circulation and safety in providing a turnaround area, new stormwater infrastructure, a robust landscaping plan that includes native coastal buffer plantings to provide habitat, renovating and improving planting beds, low maintenance plants and removing invasive species.

Ira Grandberg, R.A.:

When we started the project, we attained a building permit, an emergency repair permit, for the existing structure. The existing structure had extensive structural damage. The roof was coming off in many locations, the exterior façade was rotted underneath, there was no insulation in many of the walls, the pool had a tree growing through the middle, the patios were equally in disrepair and the Building Department gave us a repair permit to stabilize the house.

In the interim, the seawall behind the house on the Sound was falling down and it was an emergency to repair the wall. We filed an amendment on the building permit to demolish the existing garage/greenhouse structure in order to get equipment in the back of the property to repair the seawall. The existing garage/greenhouse on the western façade of the house, which occupies about 45% of the whole running front of the house, the steel was completely rotted. It was in a near state of collapse, we have engineer's reports of such and demolishing those structures whether now or later, had to be done in order to repair the seawall. In the last many months, we've been rebuilding and stabilizing the main structure under the arena of the building permits that have been issued. The Building Department has been to the site many times and is on board with everything we've done so far.



(rear of house shown)

The new addition, which will replace the garage/greenhouse structure, is part of the presentation. We have 2 renderings, the 1 exhibiting the rear of the house was shown on screen. We did a very careful historical analysis of every timber, every dimensional criteria of roof pitches and overhangs, we're replicating those completely to the existing 1920's established design and details. We also have saved all of the exterior stone that had to be demolished, it will be reused in the new addition and the new timber details will complement the existing timber details. The new roof lines will match the pitches and dimensional criteria of the entire structure.

Chair Savolt:

Some of that has changed from the original submission that you gave us, correct? I saw a lot of changes in the roof lines and things like that.

Mr. Grandberg:

Not that many roof lines, we ended up modifying the roof lines to comply with the existing structure so they will all be harmony. He shared the north elevation rendering on screen.





Chair Savolt:

For the members of the Board who haven't looked thoroughly at this, when they say a dock and boat lift, it's a little bit more extensive than what you might be picturing. It's a long pier and a sizeable structure that encompasses a boat lift, I guess the boat is going to be stored there for the winter.

Peter Gross, the applicant:

The only thing that's really held us up and the reason why Chairman Burt bifurcated this was purely, overwhelmingly in and around a proposed boat lift. To be very clear, I have no intention or plan in the winter to have a boat on that lift. The length of the dock is really symmetrical and mirrors the dock that's next door at 2 Shore Road.

The reason for the boat lift, I was trying to be extremely environmentally conscious of the ecosystem where this house is. In conjunction with the Army Corps of Engineers and the State Department of Conservation, in that area in the low-low tide, it can get quite shallow and to protect the marine life underneath that dock, the idea was essentially to lift that boat out to make sure that the boat and the tidal movements isn't banging along the bottom of that ocean. Sven Hoeger also concurred that this was the prudent and measured way to address that. I've had 8 folks on the street who have written letters in support of this. Boat lifts even though they're quite ubiquitous in Greenwich and the Connecticut coastline and even though the Department of Environmental Conservation in New York has been issuing them more frequently to protect the ocean floor, it's been something that's been new. Sometimes when something is novel, even if it's for a righteous and good cause, it takes a little more acclimation for folks to get used to. I think Chairman Burt expected in the last go-round that it would all be approved, and I think he realized there was more specificity, people wanted to know more. My strong intention is only to have it and use it to protect the floor of the ocean and in the winter to get it out I'll dock it nearby and have it taken up to land by a local harbormaster.

Mr. Verni:

Can we make it a condition on any approval that the boat be removed for the winter?

Chair Savolt:

We certainly can, when we get to that point. Right now, if we do site plan approval, we're not considering that because apparently there's a new site plan that's been submitted that we don't have.

Ms. Mason:

Just to clarify what I mentioned earlier about that condition on the site plan, that was an idea that you would do that in lieu of reviewing an amended site plan. It would be the site plan as is, it wouldn't be that you were looking at an amended site plan and that they would have to come back for the remaining portions of the site plan.

Ms. Goldstein:

If we were to proceed with this, we would be doing 2 Wetlands Permits? One on the uplands then one on whatever else is covered.

Ms. Mason:  
Essentially, yes.

Chair Savolt:  
Do we anticipate that HCZM will do this at their next meeting?

Ms. Mason:  
I want to say yes, but this applicant has been before them several times and there were other times that we thought they would get consistency and move forward. I can't speak for the Commission. I know that the hope is that it will get wrapped up at their May meeting.

Mike Stein, P.E.:  
The revised plan that was submitted was specifically removing the kayak dock and the other dock and adding the geothermal wells. There was a separate plan that was submitted for the geothermal wells, but it wasn't being shown on the stormwater management plan.

Chair Savolt:  
We don't have 1 plan that has everything, so if we decide not to continue and vote on anything in a bifurcated manner, we would need 1 plan that includes everything.

Mr. Gross:  
The next plan would just add the marine structures that you're not being asked to approve tonight.

Ms. Goldstein:  
HCZM meets May 20<sup>th</sup>? The applicant would be appearing at that meeting to hopefully finalize the outstanding consistency decision that HCZM would have to make. Would it then be possible for the applicant to get on our agenda for the 27<sup>th</sup> of May?

Ms. Sherer replied correct.

Ms. Goldstein:  
I don't imagine, I don't think from what I hear at this moment, I don't think Cuomo is lifting any construction requirements before May 15<sup>th</sup> at the absolute earliest. I'm not sure why we couldn't take this up on May 27<sup>th</sup> and deal with it once and for all.

Mr. Gross:  
I beg you to think about this a little differently. We've been in front of Harbor Coastal 5 or 6 times. I beg you to consider this tonight, there's been so much discussion around the boat lift that even though I'm cautiously optimistic that we'll get through on May 20<sup>th</sup>, I thought that the last 2 meetings. The Army Corps of Engineers, the State Department of Environmental Conservation and Sven all agreed that it's the right and judicious way to approach it.

I'm not a business, I'm a private individual. This has cost me about \$128,000. so far just to get through Harbor Coastal. There's a degree of uncertainty with Harbor Coastal. What really is very tough in the middle of trying to get a project done like this, which I'm hopeful is a real benefit to the Village and the surrounding area, which is revitalizing a dilapidated structure, that if we do

get an opportunity from the Governor to keep going with the project that we can and we're not sitting here having the same discussion in May and not moving ahead with the project. It wasn't my idea to bifurcate it, but it was a thoughtful response from the Chairman.

We're only really talking about adjustments that would come in later, the dock and boat lift. Those would be the only new things we'd be talking about, plus the fact that we got an emergency permit on the seawall, which is almost rebuilt. The whole totality of the rest of the project has gotten the approval of the consistency review of HCZM.

Mr. Gioffre:

If we were able to obtain approval this evening on the portions that don't include the Marine Structures Permit, we could then proceed with those portions to the Building Department for the building permit review which would require us to put together materials for the review. The quicker we can make it through and obtain approval from this Board, the quicker we can make it through and obtain approval for the building permit so we can continue the upland portion of the work so we're that much further along.

Mr. Grandberg:

After your hopeful approval, as architects we have to go through again before the Architectural Review Board then we can submit plans to the Building Department for permitting, which has a review period as well. It's not just a question of waiting until the end of May for your approval, there's an enormous amount of time for completing all the agency work to get the final building permits so that construction can continue. I would hope you would be sensitive to that reality.

Mr. Cutler:

You can apply to the BAR at any point in time. You don't have to wait until you get approval from this Board.

Ms. Goldstein:

Maybe you could explain a little about the seawall. I know you've referred to emergency repairs, I think I've seen in the paperwork that some of the seawall needed emergency repairs and some didn't. A few years ago, I thought DEC turned down the emergency repair application. Where are we on the seawall repairs overall?

Mr. Gross:

The seawall completely started to fall into the water. At the time that we started to talk about the seawall to the DEC, the seawall was pretty well in place. We started the regular work with the DEC and as we got through the DEC and were about to get the permit, we got these massive cavities along the seawall where the land started to cave in and holes that were so significant they were about 15' long and 7 or 8' wide. We got the emergency permit because we were worried that the seawall would come down in and around the dam and then the Mill Pond would start to essentially go through the property and the property would leech out. When we started to get the holes, we had runoff from the property that started going into Long Island Sound. I wanted to fix that immediately, probably 70% of the seawall has been rebuilt. The repair had to be so extensive that it almost didn't make any sense and the idea was to rebuild it.



Chair Savolt:

You're basically asking up to approve the site plan for the upland portion, which is a document that we don't have at this point in time before us.

Mr. Gioffre:

The only thing submitted with the plan last night was just to remove the marine structures, just so as a visual reference you had the plan before you with the things that we're not asking you to approve. The geothermal was submitted under separate cover.

We submitted an application for the Flood Plain Variance. If you like we can go through that.

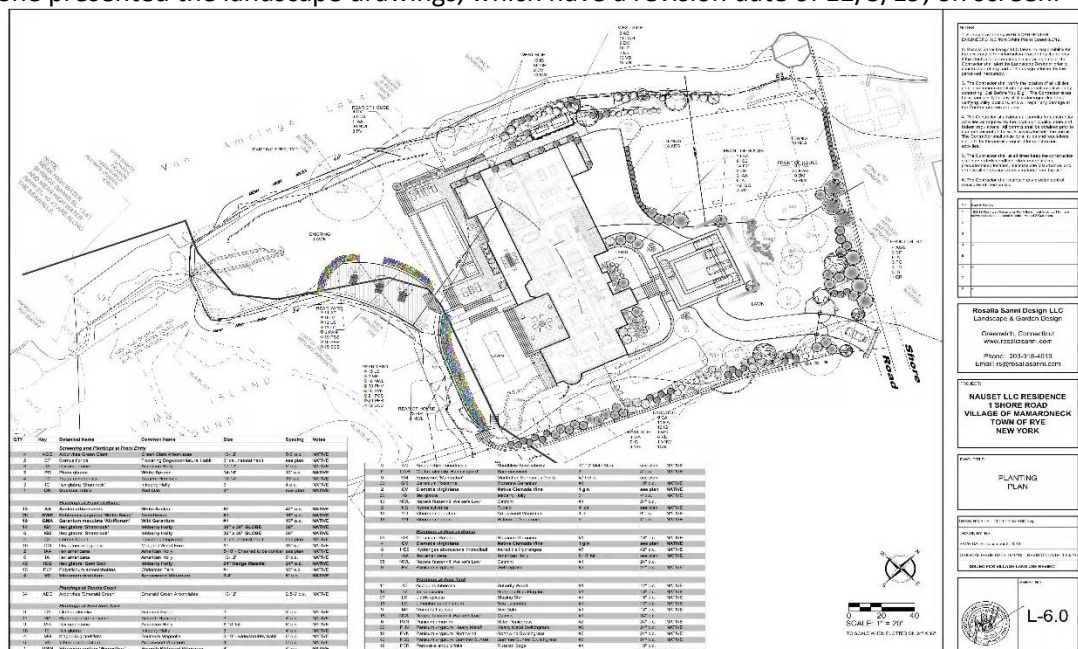
Chair Savolt:

We're still going through the site plan stuff, it's complicated and extensive, let's try to get through it all unless the Board feels uncomfortable continuing, it's not my call. I'm uncomfortable about this because it's not the way we normally do business. As we said at the beginning, we're willing to listen and see where it goes.

We would have to do a site plan approval for just the upland portion but then we don't need a site plan, somebody said for the waterfront portion unless it changes from what we've seen? We'll need 2 Wetlands Permits and we also need the variance application for the fill that's going in the uplands portion, we haven't gotten to that yet. We've talked about the building and the changes to the building. We've talked about the waterfront and the marine structures and the boat lift and the pier/dock. I would like to hear, if we're going to continue tonight, we have 2 other items on the agenda. I would like to hear briefly from the landscape person about the changes so that we have a complete picture of the site and what we're being asked to approve.

Rosalia Sanni:

She presented the landscape drawings, which have a revision date of 12/3/19, on screen.





The septic is currently under the tennis court. The new septic system is here (he pointed out the location on screen) and part of what the requirements are for the Health Department is that you have certain requirements for separation from ledge rock and ground water. Based upon the testing that was done, the elevation of the system had to be raised up so it would have the proper separations. In this area at the bottom the screen (he pointed out the location on screen) is where the new septic system is going. In order to meet those requirements, the fill has to be added to raise the area up. In the rear of the house (he pointed out the location on screen) is where you have a tremendous amount of ledge rock and in order to put the stormwater management system in that we are, we're either going to be chipping rock, which will cause more disruption compared to us filling it in to bury the system. There's also some landscape bedding at the front entrance to the house (he pointed out the location on screen), this is relatively minor with the amount of fill going in.

There will be a total of 1,415 cubic yards of net fill coming in. The main intent of what the regulations are for with adding fill in is that in a flood zone you're potentially causing flooding on another property. Being that this is going directly into the Harbor and the Long Island Sound, there's no potential to cause any issues to any other properties.

Chair Savolt:

This is a public hearing. We can now open, any member of the public who is participating in this meeting. Mr. Cutler will manage public comments for the public hearing.

Mr. Cutler gave the public instructions on how to ask questions and make comments.

Public Comment

Glenn Tippet of Hill Street:

It's a new experience, I just wanted to let you know we're still following you and best of health.

End of Public Comment

Chair Savolt:

We have to decide if we want to close these public hearings and vote or whether we want to keep them open until HCZM finishes their consistency review.

Mr. Verni:

Can we ask staff to prepare a resolution to consider because there's a lot to be considered and coordinated?

Chair Savolt:

We have a meeting on the 13<sup>th</sup>. We would be able to, if we wanted to proceed before HCZM, we'd be able to have resolutions for the meeting of the 13<sup>th</sup>.

Mr. Cutler:

Yes, I can prepare those.

Chair Savolt asked Mr. Hildenbrand if he had any comments.

Planning Board Meeting

April 22, 2020

Page 27 of 39

Mr. Hildenbrand:

My comment on the fill was that it was submitted. They did an analysis justifying that there's no significant impacts and based on that it was needed to make a viable septic area and reduce the rock removal. My opinion is that I agree with the results of that report.

I had some outstanding comments on stormwater but it's really housekeeping as far as getting the proper paperwork filed, nothing substantial.

Chair Savolt:

Board, do we want to direct the staff to prepare the resolutions?

Ms. Goldstein:

I think John had a good idea. I can't commit that I'm going to, I have to think about it some more and review some more records and think more about what the impact of doing something so unusual. I think we would all like to help the applicant out, I'd like to keep things moving forward. It takes a while to draft a resolution, we'll see where we are at the next meeting.

Chair Savolt:

There have been discussions between me and the attorneys with regard to where in the Code it says we can do this. There is no place that says we can do it, but there's also no place that says we can't do it because nobody ever anticipated this happening, in my opinion. It's not best practices, it's setting a precedent. Would any Land Use Board now be able to do this since it's been done because it doesn't say we can't do it?

Ms. Mason:

I basically said I think the circumstances are unique and I don't think it necessarily would be setting precedent. Does that mean you're not going to get requests for it, no but I think the circumstances here are such that they're not necessarily, the applications do take a while, it's not like you've never had an application that's taken months but I think HCZM made the decision to do this. It was unique among that Board how they felt to handle applications. This application came before them several times, there were several instances where we thought it was going to be moving forward and it didn't.

Ms. Goldstein:

In their defense, they need more information for their decision-making process. They're taking it seriously it's taking a long time. They want to get through it, and we want to help them get through it.

Mr. Verni:

I think it's important that it was initiated by HCZM not by the applicant. That would be a dangerous precedent if the applicant was starting the process of asking for these bifurcated reviews. I think it helps us coordinate between the Land Use Boards to consider it this way since they've passed it. If they have to go before the BAR, we've had problems with the coordinated review before, so maybe we should make sure we're at the end of the process and are comfortable before we give our final approval to anything.

Mr. Cutler:

It's a Type II Action so segmentation isn't as big of an issue. Bifurcation wouldn't have happened if you were in the midst of the SEQRA process where you're looking at the big picture.

Ms. Goldstein:

The concept of all this is to evaluate everything at one time. That's why you submit an application with all the elements included, some could be separated out and have nothing to do with others, but other things are integrated and that's what I think I'm wrestling with.

Chair Savolt:

I think we can take the next steps to have the staff prepare resolutions to reflect the different segmentations and the different circumstances that are here. The applicant can apply to go to BAR as soon as possible. HCZM will continue to do what they're doing. We'll go on parallel tracks and the parallel lines may meet and they may not meet. When we get to the next step, which could be as early as the 13<sup>th</sup> of May, we can determine whether we have enough, and we feel comfortable going forward.

Mr. Cutler:

You want resolutions for every application aside from the unknown second Wetlands Permit?

Chair Savolt:

Correct, it would be 3 resolutions. You don't do it all in 1, right?

Mr. Cutler:

I sometimes do but I think it would cleaner to do these separate.

Mr. Verni:

The removal of the boat in the winter should be a condition.

Mr. Gioffre:

I would suggest that that would be when we come back after HCZM because that wouldn't be what you're approving in this application.

Chair Savolt:

It's on the site plan.

Ms. Goldstein:

Not on this site plan.

Chair Savolt:

It's not on this site plan. This is what we've been struggling with for the past several days.

Mr. Cutler:

In order to prepare that resolution, that isn't something that I think we need (inaudible) or we need an answer on if you'd prefer me to write a resolution assuming that their initial site plan with the marine structures is what you'd be voting on, providing that they add the geothermal to that site plan, because that changes how I write the resolution. I'll provide 2 options.

Chair Savolt:

I'm leaning toward the original one with the geothermal. We can put in conditions that if there's major changes.

I think we have a plan to move forward. We're keeping the public hearing open and we're moving onto the next item on the agenda.

## **5. PUBLIC HEARING**

### **A. 355 PHILLIPS PARK ROAD – CAPPETTA INC, SITE PLAN REVIEW and SPECIAL PERMIT PUBLIC HEARING – (Section 9, Block 19, Lot 18C1) Application for Site Plan and Special Permit to renovate the existing structure to add 2 residential stories for 6 residential units with ground floor retail and a Special Permit for providing 1 FAHU and ground floor retail and associated parking. (C-2 District) Circulation of Lead Agency ends April 12, 2020**

- 3/12/20 Initial PB review, SEQRA Unlisted Action, PB Authorized Circulation of Notice of Intent for Lead Agency
- 3/25/20 PB Opened PH
- 4/1/20 HCZMC SEQRA Review and Consent to PB Lead Agency
- 4/12/20 Circulation for Lead Agency Ended
- 4/15/20 HCZMC Preliminary Review
- 4/22/20 PB Continued PH, Consider SEQRA Determination

Christie Addona of Silverberg Zalantis:

The applicant is proposing to convert the existing 1 story vacant structure to a mixed use development with commercial space and parking on the ground level and 6 one bedroom units on the 2nd and 3rd floors that will be constructed over a portion of the existing 1 story structure. We'll be providing the required on-site parking with 1 curb cut and 1 affordable housing unit.

We were last before this Board on March 25<sup>th</sup> when the Board opened the public hearing. At that meeting Mr. Stanziale went over the design and Mr. Stein discussed the engineering with the Board.

With respect to SEQRA, the Board circulated a Notice of Intent to be Lead Agency for a coordinated review of this Unlisted Action. On March 13<sup>th</sup> we understand the HCZMC has consented to the Planning Board being Lead Agency and as that was more than 30 days ago that the Notice was circulated, we believe the Board could declare itself Lead Agency.

On April 15<sup>th</sup> we appeared before HCZMC for a preliminary discussion of this application, we are still in the process of responding to their comments but in doing so we will be making some changes to the plans including to respond to their comments by incorporating dark sky lighting to reduce any lighting impacts. We will also be submitting a revised landscape plan and providing additional renderings to show the proposed structure from additional perspectives.

Given the short amount of time since we've received HCZMC's memo on Monday, we haven't been able to prepare a written response yet, however we intend to do so and will submit that to this Board. We are confident that all the issues raised in the memo can be sufficiently addressed such as there will not be a potential for any significant adverse environmental impacts and that a Negative Declaration can ultimately be issued by this Board.

I'm going to briefly address some of the items that the HCZM raised in their memo. The first is the age of the structure, the Phase I that we submitted reported that the structure was built in the 1930s. It was originally used as a paper carton and x-ray film storage facility and was most recently a facility to assemble redwood swing sets. There was no information on the CRIS system from SHPO and it is not identified in the LWRP as having historic significance. In addition, SHPO was provided with the Board's Notice to be Lead Agency and as far as we aware, hasn't responded. However, we are willing to reach out to SHPO directly to try to get some affirmative confirmation from them that this property is not eligible for historic designation, and we will pursue that.

With respect to the fact that there are other eligible historic structures within 500' of the property, based upon our review of SHPO's records there are 2 properties within the 500' radius that have been identified as being eligible for listing on the historic register, neither 1 of them have actually been listed as historic. As far as we can tell, neither is identified in the LWRP as having historic significance. Those 2 properties are 4 Staub Court and the Ward Avenue Bridge. 4 Staub Court is located just within the 500' radius of the property, from the assessor's records it appears to be an apartment building. Other than the fact that it was designated as being eligible, we weren't able to find any additional information regarding this property for potential significances.

Mr. Cutler:

I believe the Ward Avenue Bridge may be within the NEPA review for the Army Corps of Engineers project. That may be a place to find some information.

Ms. Addona:

That's certainly something to consider. Based upon the records on the CRIS system, it was identified as being eligible along with 3 other bridges when there was a proposal to have them removed. Per Mr. Cutler's suggestion, we can certainly look on the Army Corps' records to see if we can find any more information about that, however, we do submit that there will not be any impacts to either of these sites from the proposed project.

The renovations are going to be an aesthetic improvement to the existing conditions. The height will be zoning compliant with the new reduced permitted height that is lower than it was previously from 45' to 40'. The property is also at a lower elevation than other structures in the vicinity of the bridge.

With respect to the Phase I environmental site assessment, they made certain recommendations for future actions to take with respect to the site. That Phase I was provided to the Board and the applicant does intend to fully comply with all of the recommendations made therein. For instance, there are 2 above ground storage tanks located in the cellar, the applicant will remove them both as part of the project. In addition, because 1 of the prior uses of the property was a garage for an auto and machine repair shop the Phase I recommended that a limited Phase II be conducted to see if there were any impacts to the property from this former use and do any necessary remedial activities.

It was recommended that the Phase II include an evaluation of subsurface soil, soil vapor and groundwater, if encountered. We are confident in conducting the Phase II we will be responding

to those comments raised by the HCZM as their concern seemed to be that any potential contaminants would've leached into the soil. We'll be doing the soil testing as part of the Phase II.

With respect to the wetlands, we haven't been directed to date to apply for a Wetlands Permit and it's our understanding that the property isn't in the wetlands or wetlands buffer. Mr. Cutler did speak to this a little bit at the HCZM meeting, so I was wondering if you might speak to the Board about that.

Mr. Cutler:

At the Harbor Coastal meeting there were some members of the Commission that believed that the river is a wetland. This has been an ongoing debate for many years, but the Code states that a wetland is defined as either being on a specific map or being an area that 2,500 sf or larger that supports hydrophytic vegetation, which I don't believe is the case in this portion of the river. I've checked the wetlands maps, we have 4 different wetlands sources, none of them indicate that there's a wetland in that part of the river. There are other locations in the river that do support hydrophytic vegetation which are wetlands and we would enforce wetlands regulations in those locations.

Ms. Addona:

The applicant intends to comply with all best management practices to ensure that there are no issues with the river given the proximity. The Commission also raised that the proposed project is within 50' of the river. As we've explained to this Board on prior occasions, the design was specifically intended to avoid interfering with the Code requirement that there be no construction within 50' of the river and that's why the 2<sup>nd</sup> and 3<sup>rd</sup> stories are only going to be constructed over a portion of the existing building.

At the request of this Board after the March 25<sup>th</sup> meeting, the Building Inspector did issue a subsequent memo in addition to the zoning compliance checklist that opines that the proposed project wouldn't increase the non-conformity of the property, so that's basically what we're working off of at this point.

Chair Savolt to Mr. Cutler:

Tonight, we're here to review SEQRA, do we have to make a Declaration of Lead Agency?

Mr. Cutler:

The 30 days has gone by, so you assume Lead Agency. You don't have to declare it, no one challenged it.

Chair Savolt:

I have a problem with the Short Environmental Assessment Form, which is one of the bases for our determination, that was submitted with the application. It's not filled out correctly, there's some pieces and information missing and there are some questions that were supposed to have more information.



On page 1 question 2, the action is going to require permit approval or funding from the Planning Board, the Building Department, HCZM and Westchester County to get a Stream Permit, that should be changed to reflect that.

Question 17B, the question was answered in the affirmative, therefore we need a description.

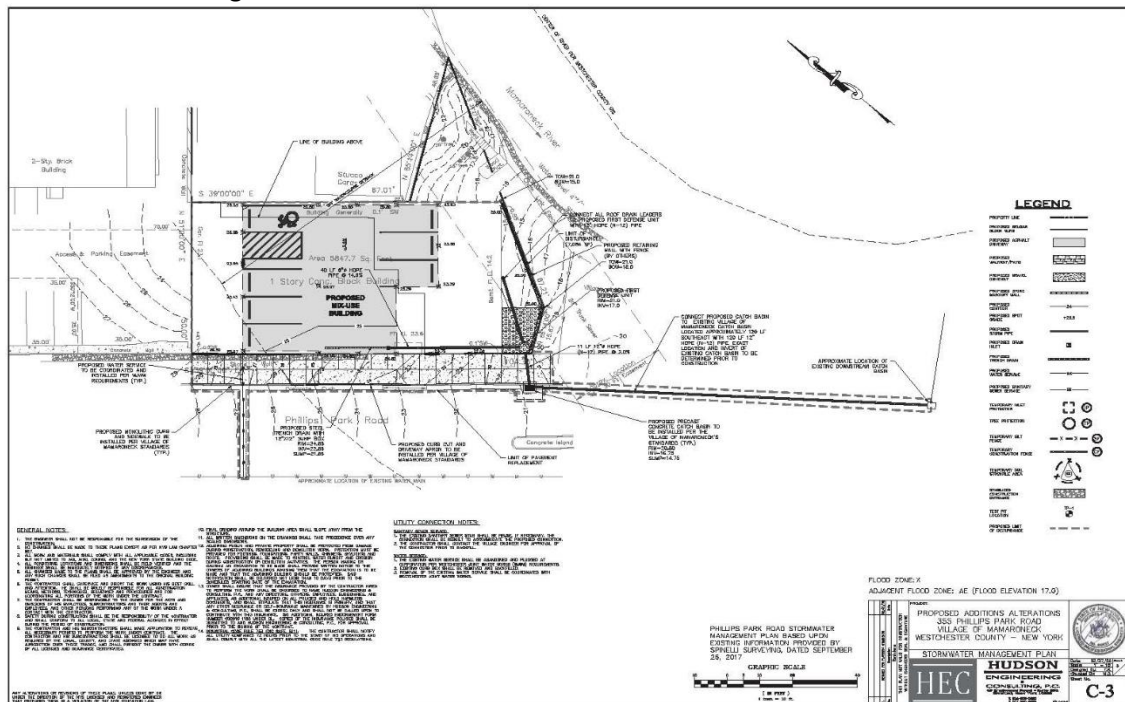
Ms. Goldstein:

There's a sentence in the HCZM's memo talking about the project may not be able to control stormwater or CSO. I'm not sure what they're basing that on, is that just the slope issue to the river?

Mr. Stein:

The stormwater on the site, currently the building, there is no controls for the water leaving the site. There's no water quantity or water quality control. We're proposing to collect all the runoff coming from the roof and to collect any snow melt that may accumulate in the garage and bring it all to a mechanical separator.

He shared a drawing on screen.



Currently, everything is leaving the site and discharging directly into the river. We're picking up the roof liter drains at this point. (He indicated the area on the drawing.) We also have a drain in the compactor/garbage room and we also have a trench drain along the front of the garage. That is all piped into a mechanical separator here. (He indicated the area on the drawing.) We tie into a new catch basin and then we tie into a catch basin further down the road. (He indicated the area on the drawing.)

One of the comments is showing some additional detail on where we're putting this pipe in the street. We're waiting for the survey to be updated so we can include that information.

Ms. Goldstein:  
What was their concern?

Mr. Stein:  
I'm not sure, I don't recall having heard that when we were at the meeting.

Mr. Cutler:  
It may have been about the potential for some ponding behind the wall that I think Brian brought up.

Mr. Hildenbrand:  
I'm not too sure either where that comment came from unless they didn't have the full plan that shows the connection to the existing basin. It's pretty straight forward, there's plenty of pitch. It's more of a grading issue that can be easily resolved. I don't see that there's an issue with any potential discharge.

Mr. Stein:  
We've received Kellard Sessions' review comments. We're either going to adjust the grades to eliminate any spots that may potentially cause ponding, or we may put a drain inlet in at that point, so we collect it in. It's relatively minor in the sense that we have a solution that's relatively simple.

Mr. Hildenbrand:  
For the Board's clarification, there's a terrace area above the retaining wall, that wall has a reveal, I was just making sure it's not a dead spot and has a positive pitch out to the collection system. It seems like it can be done.

Ms. Goldstein:  
That was another of their concerns, a retaining wall being built within the buffer. Is that retaining wall necessary for the stormwater system?

Mr. Stein:  
This is the retaining wall right here. (He indicated the area on the drawing.) I don't believe it's necessary for the stormwater system, this one area does have, what's being put in is a bike rack, it's basically somewhat of a level area. This is not within a flood zone so it's not that we're filling in a flood zone.

Chair Savolt:  
But it's within the 50' buffer?

Mr. Stein:  
Correct, right here. (He indicated the area on the drawing.) That's the 100' water course setback at this line.

Chair Savolt:  
That might be a problem. Greg, the Code says no construction at all in the 50', not even a wall?

Mr. Cutler:

It says buildings, structures or parking areas. We'd have to go to the Building Inspector he's already done his compliance. The question is whether it's a structure, but it does accommodate the bike parking that we requested on the outside.

Chair Savolt to Ms. Addona:

Is there anyone else you would like, you mentioned a landscape, do you want to do a short presentation because it's getting late and it looks like we're going to have to come back on this and we're not going to make any decisions this evening.

Ms. Addona:

My understanding is that we'll be revising the landscape plan.

Mr. Litman to Mr. Cutler:

Could you repeat what you said about the Building Inspector, that issue of non-compliance, of not furthering the non-compliance?

Mr. Cutler:

He's provided a memo, a determination that this is zoning compliant and doesn't increase the non-conformity on the site.

Mr. Litman:

It's a C-2 Zone so housing is permitted, but the existing use was a commercial building in several incarnations. In the old days, a change of use furthered non-compliance.

Mr. Cutler:

If it was a change to a use that wasn't permitted, not in this circumstance. There are 2 types on non-conformity. In the City you would call it non-compliance which is related to dimensional standards. Non-conformity is related to use standards. In this circumstance the use is permitted, and it wouldn't be non-conforming in the use perspective because it's a permitted use. The changing of the use doesn't increase the non-conformity and there's nothing in here that would increase the non-compliance in terms of dimensional standards.

A change of use in our Code does require a site plan if it increases the requirements under the Code. There's no increase in non-conformity here, it's a permitted use. How would that increase the non-conformity?

Mr. Verni:

It's a change of use from what was essentially a warehouse to a residential use and a mixed-use potential commercial store. Can we ask about traffic circulation and parking requirements as it relates to this use? I'm concerned about cars coming through that area. How is the traffic going to be impacted there? Is there a study we can access to find out if it would have an impact? I know it's not a lot of apartments but cars coming in and out into an apartment parking lot in

what's really a back way behind the Village was a concern when it first came before us. It's been cleaned up a little bit, but still a concern about traffic circulation and parking.

Mr. Cutler:

That's all under your purview in the site plan review and the Special Permit. I think the Special Permit has a more limited scope in terms of what you're reviewing but the site plan gives you the jurisdiction to look at parking, bulk and environmental concerns.

Chair Savolt:

We wouldn't do it as part of the SEQRA review, we'd do it during site plan?

Mr. Cutler:

I think some of these items overlap. You have jurisdiction over environmental aspects of any site plan by Code.

Chair Savolt:

So, we should get some traffic information now.

Ms. Addona:

We can provide you with something.

Chair Savolt:

We did it for the application that we heard earlier tonight that's just down the street.

There was no public comment.

Chair Savolt:

We have requests for additional information and some clarification. When the applicant is ready, it can be put back on the agenda.

Mr. Verni is recused from the next application for previously disclosed reasons.

Mr. Hildenbrand left the meeting.

Mr. Mesinger joined the meeting.

## **6. WORK SESSION**

- A. WORK SESSION 1025 COVE ROAD HAMPSHIRE COUNTRY CLUB:** 1025 Cove Road (Section 9, Block 35, Lot 700; Section 9, Block 36, Lot 1; Section 9, Block 42, Lots 568, 695 and 367; Section 9, Block 43, Lots 1 and 12) Hampshire discussion of Final Environmental Impact Statement for an application for a proposed Subdivision, Site Plan and Special Permit. **BOARD DISCUSSION OF FINDINGS**

Chair Savolt:

We have 2 items to discuss with regards to Hampshire. We have the Findings Statement and we have a draft resolution adopting the Findings Statement. I think we have a few comments, some that are more substantive. I don't think we anticipate passing the resolution tonight. Let's go through the Findings Statement and then we'll talk about the resolution.

Ms. Goldstein:

On page 7 paragraph 12, I think in other places where we've had, the applicant has a study and others have a study we've referred to having conflicting information, so I think in the middle of that paragraph it says we have insufficient information maybe it's more accurate to say we have 2 credible reports that provide conflicting information about the downsizing of the golf course. It's conflicting because we have 2 sets of experts who don't agree.

Chair Savolt:

On page 28 paragraph 24, I'm not sure why we underlined that section. Off of the project site, we don't need the of. The underline is there for emphasis?

Mr. Mesinger:

Yes, but let's get rid of it.

Ms. Goldstein:

On page 65, I think sometimes we're talking about lower density or lesser density, we use them interchangeably, I guess we should pick 1.

Chair Savolt:

I think when we're talking about impacts, we use lesser and when we talk about density, we're using lower.

Mr. Mesinger:

Or reduced.

Ms. Goldstein:

The other thing in paragraph 3, we're talking about the reduced density alternatives or the lower density alternatives, we should also refer to the no action alternative there.

Mr. Mesinger:

We'll say the reduced density alternatives as well as the no action alternative.

Chair Savolt:

We have the same issue in paragraph 5, none of the lower density alternatives nor the no action alternative.

Ms. Goldstein:

Upon reading this and trying to make it as clear as possible, last time we had taken out the first sentence in paragraph 7 and I think we should put it back. It's a lead in.

Chair Savolt:

If we can change that sentence to read a little differently, I think I'm fine with it. We can restore that sentence and say based on the applicant's choice not to provide a complete costs analysis for the alternatives the Planning Board finds, instead of concludes that a complete costs analysis could establish the need for action and the financial feasibility for some of the alternatives.

Mr. Mesinger:

What do you mean by the need for action?

Chair Savolt:

It gets back at the original, the need for the action. The golf course isn't financially feasible therefore we need housing, but then we've also had documents that say we're building housing because or we're reducing the golf course because we're building housing. It refers to both sentences.

Mr. Mesinger:

I would like to use the word an before action.

Ms. Goldstein:

After we're talking about notwithstanding the applicant's costs submissions, I'd like to throw in there incomplete and inadequate costs submissions.

In paragraph 8, I think we need to add the no action alternative in that list of the 25 unit.

Chair Savolt:

Then the next sentence has to change to reflect that. The applicant hasn't submitted information on the costs of the alternatives other than to state or if that's not 100% correct, then we have to fix that to make it correct.

The new paragraph 10, which I rewrote and e-mailed to Stuart.

Mr. Mesinger read the paragraph as rewritten by Chair Savolt.

The Board agreed with the wording of the new paragraph.

Chair Savolt regarding the draft resolution:

We need to rewrite the first Whereas paragraph because we don't have all the applications listed and we have the wrong Code reference to the Wetlands Permit, there's some pieces missing. The Wetlands Permit is referencing the flood plain chapter.

Mr. Spolzino:

The flood plain is a little complicated because technically the flood plain is a variance, it's not a permit. I don't believe the applicant has ever applied for a variance, in fact it's the applicant's position that it doesn't need a variance for the flood plain.

Mr. Cutler:

There's a Flood Plain Permit but that goes to the Building Department and my understanding is that Dan Gray had opined that they would need a variance at some point in this process.

Chair Savolt:

The purpose of this Whereas clause is to list everything that was submitted, it's just what they applied to this Board for. If the flood plain application doesn't come to us, then the chapter reference for the Wetlands Permit is moot.

The Board didn't have any other comments.

Our next meeting on Hampshire is May 4<sup>th</sup>. Our next regularly scheduled meeting is May 13<sup>th</sup>. The May 4<sup>th</sup> meeting is a public hearing.

Mr. Spolzino:

If you decide not to adopt a resolution that evening, you'll have to have another meeting between May 4<sup>th</sup> and May 8<sup>th</sup>.

## **7. ADJOURN MEETING**

**On motion of Ms. Goldstein, seconded by Mr. Litman, and carried the Board adjourned the meeting at 10:27 p.m.**

**Ayes: Mr. Mendes, Mr. Litman, Ms. Goldstein, Chair Savolt**

**Nays: None**

**Excused: Mr. Verni**

Respectfully submitted,

*Betty-Ann Sherer*

Betty-Ann Sherer