

Meeting of the Planning Board of the Town of Lewisboro held at the Town Offices at Orchard Square, 20 Cross River Plaza, Lower Level, Cross River, New York on Tuesday February 19, 2013 at 7:30 P.M.

Present: Jerome Kerner, Chairman
Ronald Tetelman
Gregory LaSorsa
Robert Goett
John O'Donnell
Jan Johannessen, Kellard Sessions Consulting, Planning/Wetland Consultant
Joseph Cermele, PE, Kellard Sessions Consulting, Engineering Consultant
Lawrence Praga, Esq., Planning Board Counsel
Janet Andersen, CAC Chairwoman
Aimee Hodges, Planning Board Secretary

Also in Attendance: Peter Parsons, Town Supervisor

The Chairman called the meeting to order at 7:30 PM and pointed out the emergency exits.

I. PUBLIC HEARING

Sarner/Trunzo Lot Line Change, Bishop Park Road, Pound Ridge – Application for Lot Line Change from Adam and Nancy Sarner, 25 Bishop Park Road, Pound Ridge N. Y. and Stacy Trunzo, 27 Bishop Park Road, Pound Ridge, N. Y. The proposed action will result in ±1,694 s.f. of land being transferred from Trunzo to Sarner - Cal. #9-12 P.B.

Charles Banks, Esq. was present representing the applicants. Stacy Trunzo was present.

There were no objections to the time or place of the public hearing and there were no requests to have the notice of public hearing read aloud.

Mr. Banks displayed the proposed subdivision plat advising that the proposed lot lines were the result of a settlement of litigation between the property owners. A variance for a side yard setback was granted by the Zoning Board of Appeals in July 2012. Ed Delaney, PE met with the Westchester County Department of Health who has tentatively agreed to waive jurisdiction. The subdivision plat has been amended to include a Health Department endorsement, which contemplated their waiving jurisdiction.

Mr. Johannessen advised that all previous comments had been satisfied. He further advised that he had prepared a draft resolution for the Board's consideration.

There were no comments from the public.

On a motion made by Mr. O'Donnell, seconded by Mr. Goett, the resolution Preliminary Subdivision Plat Approval and Negative Declaration of Significance, Adam Sarner and Stacy Trunzo was adopted.

Vote: In Favor: Tetelman, LaSorsa, Kerner, Goett, O'Donnell

II. SEQR

“Silvermine Preserve”, Ridgeview Designer Builders, Inc & Daniel Higgins, owners of record, Silvermine Drive & Lockwood Road, Lewisboro – Applications for Subdivision & Wetland Activity Permit Approvals – Declaration of Intent to be Lead Agency in coordinated SEQR Review

Mr. Johannessen reviewed the draft resolution he prepared for the Board’s consideration.

Mr. Johannessen advised that the applicant had advised that the tree survey had been ordered. As soon as the snow disappears, in March or April, a site walk will be scheduled.

Mr. O’Donnell suggested that the Katonah-Lewisboro School District be added as an interested agency.

On a motion made by Mr. O’Donnell, seconded by Mr. Goett, the resolution Notice of Intent to be Lead Agency, Silvermine Preserve Subdivision, Lockwood Road was adopted as amended as suggested by Mr. O’Donnell.

Vote: In Favor: Tetelman, LaSorsa, Kerner, Goett, O’Donnell

III. PROJECT REVIEW

Rudolph Petruccelli, Oscaleta Road, South Salem – Applications for Final Subdivision Plat Approval & Wetland Activity Permit Approval to construct a single-family residence – Cal. #'s 8-12 P.B. & 61-09 W.P.

Mr. Tetelman stepped down from the podium as he had previously recused himself from this application. Ms. Andersen reminded the Board that she too had recused herself as Chairwoman of the CAC.

Rudolph Petruccelli was present.

Mr. Petruccelli displayed a site plan with three alternate locations for the proposed home and noted that the third plan was least desirable because of its close proximity to the neighbor but takes the house outside of the wetland. He advised that he had spent a lot of time and money and questioned what the Board would consider approving.

Mr. Kerner advised that although the house location is a concern, it is not the ultimate concern; mitigation is the primary concern. He noted that there are other approvals which are out of the control of the Board. In addition, Mr. Kerner advised that the Board is waiting for a response to the last set of comments from the Town’s consultants.

Mr. O’Donnell questioned whether there had been any quantification with respect to the amount of fill that would be necessary.

Mr. Petruccelli advised that this would depend on the proposal.

In response to a question of Mr. O'Donnell, Mr. Petruccelli advised that the NYSDEC Wetland Permit was for the construction of a septic system in the NYSDEC wetland buffer.

In response to a question of Mr. O'Donnell, Mr. Johannessen advised that the data regarding the varying measures of height above sea level had been satisfactorily addressed.

Mr. Kerner noted that the invert for the septic was being placed fairly close.

Mr. Petruccelli advised that it met the Health Department's rules and regulations. It is above ground water.

Mr. Johannessen reviewed the Kellard Session February 15, 2013 memo to the Board.

Mr. Cermele advised that his office believed that a pond or pocket type wetland would be beneficial but design details are needed. He noted that he is okay with the concept and preliminary design.

Mr. Kerner advised that correspondence from 1971 regarding this property between the Chairman of the Conservation Advisory Council and the Health Department had been found in another file. He provided copies of these documents to Mr. Petruccelli. This correspondence addressed the issue as to whether or not these were considered wetlands in 1971 regardless of the current wetland ordinance. He noted that the Town's consultants have contended that the 6 ½ inch pipe had not created the wetland. At this point, the Planning Board is not prepared to give a definitive answer.

Mr. Petruccelli acknowledged receipt of the February 15, 2013 Kellard Session memo, February 12, 2013 memo to the Board from the CAC, February 12, 2013 correspondence addressed to the Board from Frederick O. Cowles, correspondence addressed to the Planning Board received February 6, 2013 from Harold Rosenbaum and the February 9, 2013 correspondence addressed to the Board from Three Lakes Council. He further noted that he could not go further with mitigation until he knows where they are going with the structure.

Mr. Johannessen advised that regardless of the alternative selected that it was critical to develop a mitigation plan.

Mr. Kerner agreed stating that the stormwater treatment and protection of the wetland area is the larger picture.

Mr. Petruccelli advised that he would respond to the latest memo and resubmit.

Leon Levy Preserve Parking Area (Town of Lewisboro, owner of record), NYS Route 123, South Salem - Cal. #7-06 P.B.

Mr. Johannessen reviewed the plan to develop a new entrance and gravel parking lot at the preserve. He noted the presence of NYSDEC and Town of Lewisboro wetlands. The parking lot is located

entirely within the Town's 150 foot regulated buffer and the NYSDEC 100 foot wetland buffer. He reviewed the proposed mitigation. An application has been submitted to the NYSDEC. He advised that his office had been out to the site in January and confirmed that the wetland boundary originally delineated in June 2006 by Matthew D. Rudikoff had not changed. He advised that the NYSDEC had previously confirmed the boundary of the DEC wetland. Correspondence from the Westchester Land Trust confirming their acceptance of this plan has been received. Comments have been solicited from the NYCDEP with respect to their jurisdiction.

Mr. Parsons advised that although they have not received an official approval from the NYSDOT, the same gentleman who approved the entrance the first time is still there and he is happy with this proposal.

Mr. O'Donnell clarified that his question was not whether the NYCDEP has any geographic jurisdiction; it is whether or not they have any easement on the property.

Mr. Tetelman questioned why the driveway was not being paved considering the amount of use that it would probably have. He expressed concern with the maintenance.

Mr. Johannessen advised that there is not a lot of slope in the driveway and that it is 15 to 20 feet away from the wetland. He believed that the NYSDEC would have something very strong to say about paving.

Mr. Goett questioned if there is any signage proposed to make people aware of which sections are to be utilized by the horse trailers and other large vehicles.

The Board agreed to the scheduling of the March 12, 2013 public hearing.

Mr. O'Donnell requested that the application be forwarded to OSPAC & PRAC with a request for their comments.

Mr. Parsons advised that ACARC wanted to see a cross section.

IV. REQUESTS FOR EXTENSION OF TIME

The Meadows at Cross River Homeowner's Association, NYS Route 35, Cross River – Applications for Site Development Plan Approval and Wetland Activity Permit Approval to install water line from existing Well #6 to an existing valve pit, new electric service from the Clubhouse to Well #6, and generator. Well #2 will be taken off service and utilized for MTBE remediation purposes; treated well water will be pumped into existing stormwater conveyance system – Cal. # 3-12 P.B.

Charles Banks, Jr. was present representing the applicant.

Mr. Banks advised that the applicant has requested a 90-day extension of time. He advised that the Westchester County Department of Health had given preliminary approval for a single ultra-violet disinfection system at the time the approval was granted by this Board. The Health Department has

since rescinded their prior approval and is now requiring two systems, a primary and back-up system at a substantial additional cost. The applicant is now in discussion with the Health Department to determine a practical solution. He is confident that this can be accomplished within this 90-day period. This change does not affect the site plan.

On a motion made by Mr. Tetelman, seconded by Mr. O'Donnell, the Planning Board granted a 90-day extension of time to complete the conditions of the resolution granting site development plan approval and wetland activity permit approval dated August 14, 2012.

Vote: In Favor: Tetelman, LaSorsa, Kerner, Goett, O'Donnell

Cross River Wine Merchant (Trilex, LLC), applicant, (June S.C. Yozzo, owner of record), 16 North Salem Road, Cross River – Cal. # 4-12 P.B.

Michael Novak was present.

The Board acknowledged receipt of the January 26, 2013 request of Michael Novak for a 90-day extension of time.

Mr. Novak advised that the NYS Liquor Agency finally approved his application. He advised that a bond would no longer be necessary for the parking lot as it was his intention to pave.

On a motion made by Mr. Goett, seconded by Mr. LaSorsa, the Board granted a 90-day extension of time to the resolution dated August 14, 2013 granting Site Development Plan Approval.

Vote: In Favor: Tetelman, LaSorsa, Kerner, Goett, O'Donnell

Pasquale Popoli & Angelo Sicuranza, 1437 Route 35, South Salem – Applications for Final Subdivision Plat Approval for a six (6) lot residential subdivision – Cal. #8-02 P.B.

Michael Sirignano, Esq. was present.

The Board acknowledged the December 14, 2012 request of James DeLalla, ASLA for a 90-day extension of time.

Mr. Sirignano advised that his clients are currently marketing the property for sale. An extension is needed to find a suitable buyer.

On a motion made by Mr. Goett, seconded by Mr. La Sorsa the Board granted the request for a 90-day extension of time to the resolution granting Final Cluster Subdivision Approval and Wetland Activity Permit Approval dated December 8, 2009.

Vote: In Favor: Tetelman, LaSorsa, Kerner, Goett, O'Donnell

Barry Nesson, 228 Smith Ridge Road, South Salem /Thomas J. & Nancy Torti, 3 Beaver Pond Lane, South Salem – Applications for Lot Line Change and Wetland Activity

Permit Approval to accommodate the remediation/expansion of a sewage disposal system located at 228 Smith Ridge Road – Cal. #13-10 P.B.

Michael Sirignano, Esq. was present.

The Board acknowledged the January 29, 2013 request of Michael Sirignano, Esq. for a 90-day extension of time.

Mr. Sirignano advised that his client had advised that this is the last extension that would be required.

On a motion made by Mr. Tetelman, seconded by Mr. Goett, the Board granted the request for a 90-day extension of time to the resolution granting Final Subdivision Plat Approval and Wetland Activity Permit Approval dated August 9, 2011.

Vote: In Favor: Tetelman, LaSorsa, Kerner, Goett, O'Donnell

Smith Ridge Housing, LLC, 202 Oakridge Commons, South Salem, New York – Site Development Plan Approval, Wetland Activity Permit Approval & Stormwater Permit Approval to construct a 46 unit condominium complex known as “Oakridge Gardens aka Laurel Ridge”- Cal. #6-02 P.B

Philip Pine was present.

The Board acknowledged the February 8, 2013 request of Philip Pine requesting a 90-day extension of time.

Mr. Pine advised that everything was in place. The mylars have been reviewed and waiting for signature. The project was on the ZBA agenda for an extension.

On a motion made by Mr. Goett, seconded by Mr. O'Donnell the Board granted a 90-day extension of time to the resolution granting Site Development Plan Approval, Stormwater Permit Approval and Wetland Activity Permit Approval dated June 12, 2012 and as last amended September 24, 2012.

Vote: In Favor: Tetelman, LaSorsa, Kerner, Goett, O'Donnell

V. TOWN BOARD REFERRAL

Proposed Zoning Text Amendment – Proposed Amendments to § 220-23 Schedule of Regulations for residential districts, regarding minimum acreage and number of horses permitted and § 220-47 Waiver of Application Procedures, regarding agriculture uses on properties located within a state or county agriculture district

Mr. Johannessen defined and reviewed the background of the agriculture districts. He advised that being included within an agriculture district did not give the farmer as of right exemptions or waivers from the local ordinances it just requires that the Town is not unreasonable. He advised that the Westchester Agriculture District was adopted in 2001; in 2010 the Board of Legislatures limited the

district to eight municipalities. He advised that North Salem has the vast majority of properties included within the Agriculture District. He noted that the Town Board is currently considering some legislation drafted by the Town Attorney, Anthony Molé. As required, the proposed legislation has been circulated to the Westchester County Planning Board as well as to this Board. In addition, the legislation had also been circulated to the Department of Agriculture and Markets for their comments. He provided a packet of information for the Board and suggested that they review and digest prior to making any recommendations.

Mr. Kerner noted his belief that the Ag & Markets is a special interest group representing their constituency. This Board represents all of the residents of this Town and is concerned with the impacts on the adjacent properties.

Mr. O'Donnell questioned whether other towns had faced this situation and if so, what have they done.

Mr. Johannessen advised that he had worked in another municipality that had received a similar letter from Ag & Markets and they revised their ordinance to permit expedited procedures for legitimate agricultural uses within the Agricultural District. They still have to go through the process; SEQR, file for stormwater and wetland permits. Rather than a three step process the applicant files one application. A public hearing is still required. He noted that there is good mapping information available to the public for free. He believed that North Salem went through the process with Ag & Markets, but still require a special use permit.

Mr. O'Donnell advised that it would be useful to this Board to have some data as to what other towns had done particularly in response to a request from Ag & Markets.

Mr. Praga advised that the correspondence from Ed Burroughs was thoughtful and had some positive suggestions. He advised that there had been a suggestion that the Planning Board be granted the unlimited discretion to expedite the procedure. As a general proposition, the Planning Board needs standards and cannot be given an unlimited discretion by a higher Board to do something solely within the Planning Board's ultimate discretion.

Mr. O'Donnell suggested that Mr. Praga and Mr. Johannessen prepare some standards; to come up with a proposal, which would resolve many of the concerns.

Mr. Johannessen advised that the Town Board should look at the wetlands ordinance as well to ensure that the codes are consistent.

Mr. O'Donnell suggested that a waiver provision be considered.

Mr. Parsons advised the Board that if they needed additional time, they should ask and that he would recommend that the Town Board leave the public hearing open.

Mr. Praga advised that he and Mr. Johannessen discussed Mr. Burrough's recommendations. Mr. Johannessen will draft something comprehensive for the Board to consider at the next meeting.

VI. CORRESPONDENCE & GENERAL BUSINESS**397 Smith Ridge Road, LLC/Kaplan Holding Corporation**

Steven Kaplan was present with his legal counsel, Michael Sirignano, Esq.

Mr. Sirignano advised that his client had complied with all of the conditions of the resolution with the exception of the five year bond. He had talked to his insurance agents and is unable to obtain a five year bond and few companies want to get into a wetland mitigation bond at all. He advised that the current extension runs to the 24th of this month which is a Sunday, and wanted to verify the true expiration date.

Mr. Praga advised that it would sweep over to Monday.

Mr. Sirignano did not believe that the requirement of the bond should be grouped with the other requirements in the resolution that were required prior to the signature of the mylar because the time of the bond is measured from five years of the date of the issuance of the wetland certificate of compliance. This certificate would not be issued until after the plantings had been installed. He asked that the resolution be amended to include this condition with those conditions to be met prior to the issuance of the certificate of occupancy. As an alternative, he questioned whether the five year requirement starts after the issuance of the building permit.

Mr. Johannessen advised that it would be difficult getting a bond in place after the construction. He advised that this is not an unusual requirement; a number of approvals have had this condition and this has not been an issue.

Mr. Sirignano advised that the main issue was that the brokers would only go out two years, not five. He noted that other clients of his had deposited a cash bond.

Mr. Praga questioned whether his client had the resources to obtain a Letter of Credit. He noted that the resolution required a bond or other security acceptable to the Planning Board.

In response to a request by Mr. Sirignano for additional time, Mr. Praga advised that the applicant had already received two 90-day extensions; this condition must be met by the 25th of this month. As long as he submits something by Monday guaranteeing in the same manner as the security agreement, the approval would not expire.

Mr. Kaplan asked whether the Board would consider a two year renewable bond.

Mr. Praga advised that he would have to take a look at the language of the bond.

O'Shea, 29 Brundige Drive

Barry Naderman, PE was present.

Mr. Johannessen displayed the proposed plan for an application recently filed technically under the Planning Board's purview. He noted a wetland that did not exist when the subdivision was created. It is an area where drainage was directed to resulting in an area that now meets the criteria of a wetland.

Mr. Naderman advised that the O'Shea's recently purchased the property and have noticed drainage issues after heavy rain events. He advised that there is a steep driveway down to the garage and noted an existing eroded channel. There is an existing catch basin at the edge of the pavement. The previous owners laid down some stones and mulching to hide the erosion problem. The water shoots straight down the driveway into the garage. The applicant is seeking to intercept some of the runoff and add an additional trench drain. The runoff will be discharged to a stone apron and stabilized at the outlet point. The channel will be stabilized. Currently the applicant has sand bags across the garage doors. There is no new impervious surface being proposed.

The Board authorized the Wetland Inspector to handle the application on an administrative basis. Mr. O'Donnell advised that he might know the previous owner and took no position on this application.

Lake Katonah Pump House

Chris Weigert was present.

Mr. Johannessen advised that he had received a wetland questionnaire for a generator at the pump house. Last year the Board authorized an administrative permit for a chlorination system a few months ago for this location. He reviewed an aerial of the site and noted the wetland approximately 40 feet of the rear of the building. The applicant is now proposing a generator and a 500 gallon above ground propane tank to the rear of the water pumps. As the property is not residential, Planning Board approval is required.

Paul Ceferelli, the operator of the water system and Board Member of the Lake Katonah Club advised that during power failures that they had to get Durkin in to fill the water tanks. They have proposed propane because of the proximity of the wetland.

Ms. Andersen advised that the Twin Lakes Water Works went through the Planning Board approval process for a generator. She did not believe that the full process added anything but cost more money and delayed the process. The Planning Board was concerned with the noise and the visual impact to the neighboring properties.

The Board noted the proximity of the generator to adjacent residences which appeared to be far. The Board authorized the Wetland Inspector to handle the application on an administrative basis.

Goldens Bridge Community Association

Ronald Arnstein was present.

Similar to the Lake Katonah project, the Goldens Bridge Community Association is seeking a wetland activity permit to install a generator and a 500 gallon above ground propane tank adjacent to the pump house. The generator will comply with the noise ordinance.

The Planning Board authorized the Wetland Inspector to handle the application on an administrative basis.

Eager Beaver

Mr. O'Donnell noted that the Board had received the Stipulation of Settlement and Discontinuance and expected as some point this Board will have to take some action.

VII. MINUTES OF January 8, 2013

On a motion made by Mr. O'Donnell, seconded by Mr. Goett, the minutes of January 8, 2013 were adopted.

Vote: In favor: Kerner, Goett, O'Donnell
Abstain: Tetelman, LaSorsa

On a motion made by Mr. Goett, seconded by Mr. LaSorsa, the Board entered into Executive Session with counsel under attorney/client privilege at 9:07 P.M.

Vote: In Favor: Tetelman, LaSorsa, Kerner, Goett, O'Donnell

On a motion made by Mr. LaSorsa, seconded by Mr. Goett, the Board exited the Executive Session and adjourned the meeting at 10:37 P.M.

Respectfully submitted,

Aimee M. Hodges
Planning Board Secretary