

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 October 9, 2012 at 7:30 P.M.

Present: Jerome Kerner, Chairman
Ronald Tetelman
John Gusmano
Robert Goett
John O'Donnell
Joseph Cermele, PE, Kellard Sessions Consulting, Town Consulting Engineer
Lawrence Praga, Esq., Planning Board Counsel
Margaret Clark, Esq., Special Counsel
Janet Andersen, CAC Chairwoman
Aimee Hodges, Planning Board Secretary

The Chairman called the meeting to order at 7:30 P.M. and noted the emergency exits. Mr. Kerner welcomed Robert Goett, who was recently appointed to the Planning Board.

I. WETLAND VIOLATION

Charles & Martha Ehlers, 37 Conant Valley Road – Cal. #4-11 W.V.

Charles and Martha Ehlers were present with their attorney, Michael Sirignano, Esq. and engineering consultants, Peter Lind and Peter Gregory of Keane Coppelman Engineering.

Mr. Sirignano noted that there were two matters before the Board, rectifying the wetland violation and the wetland activity permit application filed to pave a portion of the driveway. He requested that the Board keep in mind when considering any civil penalty for the violation that the cost to implement the remediation is at least \$15,000.

Mr. Lind displayed the revised site plan prepared based on the comments received from Kellard Sessions. The wetland locations were revisited and details have been provided for the level spreader. He advised that based on their experience that they believed that the level spreader would manage the stormwater correctly.

Mr. Cermele advised that the applicant had responded to the previous comments. The plan displayed this evening has addressed the last minor comment in the October 5, 2012 Kellard Sessions memo.

It was noted that the applicant's engineer and the Town's consultants met in the Town offices on July 12th. Subsequent field meetings occurred in August.

Mr. Kerner noted that the Board would discuss the disposition of the violation with counsel at the October 23rd meeting. The Board waived the public hearing and authorized the Wetland Inspector to issue the wetland permit administratively.

II. PROJECT REVIEW

Sprint Spectrum, LP, & Nextel Communications of New York, Routes 35 & 123. South Salem – Renewal of Special Permit – Cal. #7-98 P.B.

Edward Dawson was present representing Sprint Spectrum, LP.

Ms. Clark reminded the Board that the Special Use Permit had expired necessitating that the process begin again. The Board should determine what if anything of the application process can be waived. She advised that the planner had indicated that he would like to visit the site to determine the current status. In addition, the planner noted that the plans submitted with the application did not correspond with the approved plans on file in the Planning Board office. With this in mind, Ms. Clark advised that it might be wise to get this information with one more appearance with a representative prior to scheduling a public hearing.

Mr. O'Donnell suggested that Mr. Dawson schedule a time to meet with the Town's consultants to address the concerns and a site walk. He further suggested that the Board schedule a public hearing.

The Secretary was directed to schedule the public hearing for November 13, 2012.

III. SKETCH PLAN REVIEW

Frederick Stark, 7 North Lake Circle, South Salem – Application for Wetland Activity Permit Approval to construct a two-story addition, and deck/screened porch – Cal. # 85-12 W.P.

Frederick Stark was present with Scott Blakely, R.L.A. of Insite Engineering.

Mr. Blakely displayed the revised site plan, which responded to all of the previous comments. He advised that the shed is being removed. The turn around area has been modified to allow a planting area to filter the runoff. There was a request to pick up the roof drains from the front of the house and advised that there was not enough room to get the drainage into the rain gardens. What they were able to do was to pick up all of the impervious surface and half of the roof drainage, which will now be treated by the rain gardens. He advised that the septic system is located in the front so the remaining drains spill onto the surface.

Mr. Cermele referred to the October 5, 2012 Kellard Sessions memo to the Board and advised that all of their comments had been addressed.

Ms. Andersen advised that the CAC had reviewed the application and questioned whether there could be some sort of buffer plantings at the very end of the lot line to keep any nutrients, fertilizer or pesticides from the lawn from leaching into the wetlands as possible mitigation.

Mr. Kerner questioned whether it would be feasible to suggest a prohibition from utilizing fertilizer or pesticides.

Mr. Stark advised that the association prohibits the use of fertilizer and pesticides.

Mr. Tetelman suggested that the approval memorialize this prohibition.

The Board authorized the wetland inspector to issue the permit on an administrative basis and asked that this approval include the condition that the property be included in the septic maintenance program.

IV. DECISION

Cross River Westchester Associates, 890 Route 35, Cross River – Cal. #4-12 W.V.

Ms. Clark reviewed the draft resolution she prepared for the Board's consideration.

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, the resolution Violation of Wetland and Watercourse Law, Cross River Westchester Associates, Cal. #4-12 W.V. was adopted.

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

V. REQUEST FOR AN EXTENSION OF TIME

Grissini Restaurant (Formerly Nino's Restaurant), applicant, (Nuo & Christine Camaj, owners of record), 355 Smith Ridge Road, (NYS Route 123), South Salem –Site Development Plan Approval to permit Seasonal Outdoor Restaurant Seating on an existing 365 SF patio, construction of a handicap accessible walkway, proposed lighting and landscaping, dumpster enclosure and the removal of a previously installed but unapproved side patio and fence – Cal. #8-10 P.B.

Bruno Gioffre, Esq. was present.

Mr. Gioffre advised that the ownership of the restaurant had changed hands two months ago. With the exception of removing the side patio, the new owner has not been able to comply with the conditions of the approval dated May 8, 2012. Changes of ownership have resulted in substantial changes to the restaurant; the interior has been upgraded, a new chef was hired and the menu changed.

Mr. O'Donnell noted that frequently new owners are not aware of the conditions of the resolutions and questioned whether there was any way to ensure that they were.

Mr. Gioffre advised that Nuo Camaj, the property owner, had signed an acknowledgement that he would abide by the conditions of the resolution. The restaurant owner's are tenants, but he had no issues with them signing a similar document.

In response to a question of Mr. Kerner, Mr. Gioffre advised that the interior renovations did not include a handicap toilet facility.

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, the Board granted a 90-day extension of time to the resolution granting Site Development Plan Approval dated May 8, 2012 subject to submission of an affidavit by the owner and operator acknowledging the conditions of the

resolution in writing within 30 days of this meeting. If not received within 30 days, the extension will expire.

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

**Mary E. Clark, c/o Arthur Clark, Deepwell Farm Road, South Salem, New York –
Application for Wetland Activity Permit Approval – Cal. #5-05 W.P.**

Arthur Clark was present.

Mr. Praga advised that he had erroneously advised the Board that as the result of the expiration of the initial wetland permit that any extension would have to proceed through the same procedures as the original wetland permit except for the public hearing as he was operating under the incorrect assumption or state of facts that the map had not been signed; it had been signed. Therefore, he advised that the Board under the wetland law can extend the existing wetland permit approval.

Mr. Kerner read the October 9, 2012 e-mail from Mr. Johannessen summarizing the background of the application and the conditions that had been met by the property owner.

After an initial motion made by Mr. O'Donnell to grant a 90-day extension of time, the Board considered the request of Mr. Clark for additional time given that he is trying to sell the property.

On a motion made by Mr. O'Donnell, seconded by Mr. Gusmano the Board granted a 180-day extension of time to the resolution granting Wetland Activity Permit Approval dated September 14, 2010.

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

On a motion made by Mr. Gusmano, seconded by Mr. Tetelman, the Board entered into Executive Session with counsel at 8:08 P.M. under attorney/client privilege.

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

On a motion made by Mr. O'Donnell, seconded by Mr. Gusmano, the Board exited the Executive Session at 8:15 P.M.

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

VI. CORRESPONDENCE & GENERAL BUSINESS

Estate Motors

Alfred DelBello, Esq. was present.

Mr. DelBello advised that all of the conditions of the Board's resolution were to be completed by October 8, 2012; with the exception of the matter of the variances all of the conditions have been met.

He advised that his firm had been under the impression that the old practice of the Zoning Board, which allowed the variances to continue so long as the applications before the Planning Board and other outside agencies continued. At some point in time, the ZBA changed that procedure and he advised that he had no notice of this change and therefore was under the assumption that the variances were still in effect. He advised that an application was made to the ZBA to renew the variances and expected that they would be. He requested that the Chairman sign the mylars and hold them in escrow until the variances are reinstated.

Mr. Kerner advised that after discussion with counsel, the Board has agreed to sign the mylars and hold the document in escrow until there is evidence that the variances have been reinstated.

RESOLUTION

BE IT RESOLVED, that the Chairman is authorized and empowered to execute the relevant site plans for Estate Motors, which are to be held in escrow until such time as the expired variances are once again granted by the Zoning Board of Appeals. This approval shall expire January 23, 2013 in the event the variances are not granted.

On a motion made by Mr. O'Donnell, seconded by Mr. Gusmano, the Board adopted the above resolution.

Vote: In Favor: Tetelman, Gusmano, Kerner, O'Donnell
Abstain: Goett

Mr. DelBello advised that they currently have an appeal before the NYCDEP, which is being handled by John Meyer Consulting.

Mr. O'Donnell referred to the August 6, 2012 correspondence from Mr. DelBello's office, which referred to the Meyer report. He advised that he had the opportunity to review this report, especially pages 7 through 11 and appendix D regarding the finding with respect to the oil spill and the septic system and thanked Mr. DelBello for the reference.

Meadows III

Bill Bocchino, property manager of Katonah Management Group was present representing Meadows III condominiums.

Mr. Bocchino reviewed a site plan for units 165 through 169 where they would like to replace the arborvitaes, which is not surviving with privacy fencing between the units. The Board of Meadows III has approved this proposal. As the proposed fencing is 8 feet high the Building Inspector has advised that it will require a variance from the ZBA. Mr. Bocchino reviewed photographs of the existing conditions. An environmental questionnaire has been submitted to determine whether a wetland permit would be required.

If a wetland permit is required, the Board authorized the wetland inspector to review the application on an administrative basis. The Secretary was directed to forward a letter to the ZBA advising that the Planning Board approved this proposal in concept.

Love Preserve/Westchester Land Trust

Mr. Cermele reviewed a proposal to install a boardwalk/plank system on an existing trail.

The Board authorized the wetland inspector to review the application on an administrative basis.

VII. DISCUSSION

- **Amendments to Section 7-3 B Architecture and Community Appearance Review Council**

Mr. O'Donnell stated that it was his understanding that there had been a recent development where there was a question as to whether an applicant was required to make an application to ACARC and who should submit the documentation to ACARC. In reading the statute concerning ACARC, Section 7-4 states that the referring Board or department should provide the necessary plans and pertinent data.

Ms. Clark advised that at issue is that the referring Board or department does not necessarily have the necessary plans for ACARC. An issue has arisen as to who has to fill out the application and pay the appropriate fee.

Mr. O'Donnell suggested that if the statute is amended to address the issue with respect to making an application and paying the fee, it may also be appropriate to amend the section relative to providing the necessary plans and pertinent data.

Ms. Clark advised that without seeing an ACARC application it was not clear whether or not there are other materials that might need to come from the Planning Board. It is the actual filing of the application where there was a struggle.

Mr. Kerner advised that this Board refers when it is determined that this application is at a point where it is past any question of acceptability. It is up to the applicant to make the submission; the Planning Board does not deal with the external appearances other than landscaping and fencing.

Mr. O'Donnell suggested that the Chairman speak with the Chairwoman and clerk for ACARC prior to recommending any changes to a statute that governs another board or committee.

Ms. Clark noted that she had spoken with the Town Attorney who is in the favor of the concept.

The Board discussed whether it would be prudent to request that the sentence "The referring board or department shall provide necessary plans and pertinent data to the ACARC for its use." in Section 7:4 be deleted. The Board agreed that the applicant should be required to make the application along with

whatever materials are required by ACARC. They further agreed to recommend that the last two sentences of Section 7-4 be deleted.

Prior to the Planning Board making any recommendation to the Town Board, Mr. O'Donnell strongly suggested that there be a conversation with the Chairwoman of ACARC. Mr. Kerner will contact Ms. Conran, the ACARC Chairwoman to discuss these recommendations.

At the completion of her services for the evening, Ms. Clark exited the meeting at 8:50 P.M.

- **Amendments to Chapter 217 Wetlands & Watercourse Regulations**

Mr. Tetelman advised that the current law requires that the applicant notify adjacent property owners within 200 feet of the property subject to a public hearing. In some cases he did not believe that the notification requirements covered a large enough area because of the size of some of the lots. He suggested that the 200 feet be extended to another distance dependent upon the zoning district.

Mr. O'Donnell suggested that the Board look at the time requirements. He further suggested that property owners downstream from a watercourse be notified. He asked that the Planning Board counsel provide his opinion on these suggestions.

Ms. Andersen advised that the CAC had also recommended that the downstream neighbors be notified as they could be impacted.

The Secretary advised that the watercourses are not identified on the maps utilized for determining adjacent property owners.

Mr. Praga was not sure how one could define property owners downstream other than distance. He could not think of a manner which one could objectively indicate who would get notified.

Mr. Gusmano believed that the notices are posted in the newspaper to advise those outside of the immediate notification area. He did not see how the Board could add any rule that defines downstream without adding any extreme hardship to a homeowner because there are watercourses all over.

It was noted that the applicant is responsible for notifying the neighbors for wetland applications but not for subdivisions, special use permits and site plans. The Board agreed that the applicant for all applications should be responsible for notification.

Mr. Praga noted that the required notification distances are not consistent for all applications. He agreed that it would make sense to have the distance vary by zone. He asked that the Board provide the appropriate distance.

After some discussion about distance, Mr. O'Donnell suggested that Mr. Praga look at codes for other municipalities when drafting the amendments.

It was noted that surrounding communities post signs advising of public hearings on the subject properties. Mr. Tetelman requested that Mr. Praga look into the regulations for signs for the surrounding communities.

Ms. Andersen suggested that the public hearing notices be posted on the Town's website.

The Board discussed the language proposed by Mr. Praga for special circumstances.

Mr. Kerner noted that the proposed amendments previously sent to the Town Board were circulated with the intent to keep them in the back of the Board's mind. They have been sent to David Sessions for his comment and suggestions.

VIII. MINUTES OF September 24, 2012

On a motion made by Mr. Tetelman, seconded by Mr. O'Donnell the minutes of September 24, 2012 were adopted.

Vote: In Favor: Tetelman, Gusmano, Kerner, O'Donnell
Abstain: Goett

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, the meeting was adjourned at 9:13 P.M.

Respectfully submitted,

Aimee M. Hodges
Planning Board Secretary