

**TOWN OF MIDDLESEX**  
**PLANNING BOARD**  
Minutes – August 3, 2011, 7pm

**Board Members:** M. DeVinney, Chair; John Gilbert, Robert Mincer, Bruce St. Lawrence  
Others present: Dawn Kane, CEO; Mr. Steven M. Rippey, Mr. Andrew Ellison, Mr. Dan O'Brien, Mr. Doug Skeet-YCPB Member

**Agenda:**

**New Business:** Application #70611-SPR/ Mr. Steven M. Rippey of 5956 So. Vine Valley Rd., Middlesex (LDR) Site Plan Review for a two-story addition to an existing Single Family Residence; Application #070611-SPR/Mr. Andrew Ellison, Drew's Docks-representing agent for Mr. James Fox of 1223 So. Lake Rd., Middlesex (LR) requests Site Plan Review for installation of a permanent dock;

**Old Business:** Stop Work Order on property at 1163 So. Lake Rd., Middlesex (LR) owned by Mr. Dan O'Brien. Review of new site revisions from previous Site Plan approved by the Planning Board.

Meeting came to order at 7pm

Chairman DeVinney opened the meeting and invited a review summary from Code Officer, Ms. Dawn Kane:

1. **Application #70611-SPR/ Mr. Steven Rippey** of 5956 South Vine Valley Rd., Middlesex in the (LDR) Zoning District, requesting site review of a proposed two-story addition to an existing single family residence.

Ms. Kane stated the application was a proposed addition to an existing 2-story Single Family Residence at the corner of Dinehart Crossing and South Vine Valley Roads. The proposed addition will be constructed on flat land. It was necessary to move the existing septic and leach field and the new design has been approved by Canandaigua Watershed Inspector, George Barden. All setback requirements have been met.

Board inquired what the estimated time of project completion would be. Mr. Rippey stated that Mr. Walter Zimmerman, a local contractor, planned to start in September with the project wrapped up by snowfall. Board requested that all storm water runoff provisions should be noted on the site map, due to potential concerns in the front and side yards. Applicant stated that roof water runoff would be funneled through downspouts and tied into curtain drains that surrounded the foundation managing surface water. Construction spoils will be collected in various areas to the north. An onsite visit was noted as being made by Board Member Mincer.

Board requested that setbacks should be shown on the Site Map.

The Planning Board completed a SEQR determination, based on the application information and the analysis made, and declared the proposed action will not result in any significant adverse environmental impacts and provided the reasons supporting this determination. A motion to accept the declaration was offered by Mr. Gilbert and seconded by Mr. Mincer. All Board Members present voted in favor and the motion carried.

A motion to approve the Site Plan was made by Board Member St. Lawrence and seconded by Board Member Mincer. The motion carried with all Board Members present voting in favor. All maps were given back to applicant at the end of the review and Mr. DeVinney signed and dated the Site Map as approved.

1. **Application #070611-SPR/ Mr. Andrew Ellison of Drew's Docks**, representing agent for owner Mr. James Fox of 1223 South Lake Rd., (LR). Site Review is for installation of a permanent dock.

Ms. Kane gave a summary of the application stating the review was for a dock and not for a boat accessory structure at this time. Mr. Ellison, agent for the owner, confirmed the statement as true. Plans distributed, showed some additional information missing on the initial site plan submitted.

The plans showed (2) docks and a shoreline deck. Chairman DeVinney referenced the UDML, stating all structures lake ward of the High Mean Water Line are referred to as a dock, any structure upland of the mark is referred to in definition as a deck. This definition from the UDML would be used to review the application.

After a short discussion on the existing' water rights' line, Ms. Kane stated that according to the UDML it assesses who has water rights, lake ward from the property lines at shoreline. It determines the lake ward boundary of the parcel. She added the UDML sets a 10' setback on this invisible line in the water. A tie line is drawn from the parcel which is proposing construction, through parcel boundaries to the north and south. This tie line is then bisected to create the water rights boundary determination.

Board Member St. Lawrence was concerned that the square footage allowed for both docks shown on the site plan and the deck were not accounted for correctly and read from a UDML definition that stated that in categories where (2) or more docks are permitted, the consolidation of the (2) docks into (1) dock is permitted, however the consolidation can be no more than a maximum of 1080 or 32 sq. feet. It also specifies that any part of the dock that provides access to a dock is to be considered part of the dock's square footage.

Ms. Kane, explained that these were (2) pre-existing separate docks. In measuring the 1120 square feet allowed ( $720+400=1120$ ), she considered it as (2) docks, not a consolidation. Ms. Kane stated the UDML permitted adjacent upland parcels in a steep slope parcel, the ability under a hardship clause to exceed the maximum 720 sq. feet of dock space, in the amount of an extra 400 sq. feet. hence the calculation of 1120 sq. ft.

Board Member St. Lawrence inquired what the intent of the proposed action was. If the intent is for the (2) docks to remain separate, utilizing the existing dock system as built with one set of stairs accessing the shoreline, and with a pre-existing boardwalk tying into the dock system, than he would agree with the proposed sq. ft. calculation.

Agent, Mr. Andrew Ellison believed that the existing dock system was built by a previous owner. He confirmed that it would be kept separate.

Ms. Kane informed the Board; the property also had a pre-existing cottage and lake house on it.

Board Member St. Lawrence questioned if there was to be a proposed permanent boat station? His query, in reference to the UDML, was if one is allowed (2) docks and (4) slips, than does the law also allow a boat station also? He stated that the Boat Station was listed on the application, but not on the Site Map. It was his opinion that anything permanently installed on a boat slip or a dock, should be required to be noted/drawn on the Site Map. He would like to see it defined in the Town's Zoning Law, what is regulated as a structure if it is proposed as a permanent installation either lakeside or lake ward.

Mr. Ellison stated that the existing stairs would not change. A Permanent Boat Station would be installed in (1) of the (2) Boat slips shown. There would be a lift in the Station. Criteria for a Boat Station was discussed and it was requested that Mr. Ellison provide height, roof pitch and dimensions of the proposed Boat Station on the Site Map. Chairman DeVinney signed off on this additional data, given by applicant, and referencing UDML regulations.

Board Member St. Lawrence inquired how the quantity of boat slips allowed was determined by the UDML. He read the definition of both a "boat slip" and a "cleat" questioning how cleat(s) were measured off and if it was considered a temporary cradle or a permanent dock fixture? For example, if the UDML allowed a parcel, (4) boat slips, would this be considered for permanent storage or temporary use? Does this pertain to what is registered for each parcel?

Chairman DeVinney agreed the inquiry was pertinent and suggested referring the question to Mr. Kevin Olvany of the Canandaigua Watershed Council, who would be attending our next work session meeting on the 17<sup>th</sup>.

Board Member Gilbert inquired what the foundation of the docks consisted of. Mr. Ellison responded that each steel piling measured 8” diameter and would be pounded in to the lake floor.

Board Member St. Lawrence requested a notation made on the Site Map and/or permit, that the installation of a Boat Accessory Structure would require another permit with Site Plan Review by the Board to regulate further action. It was his opinion that an applicant should take home a document stating such, as well as also noted on plans.

The Planning Board completed a SEQR determination, based on the application information and the analysis made, and declared the proposed action will not result in any significant adverse environmental impacts and provided the reasons supporting this determination. A motion to accept the declaration was offered by Mr. Mincer and seconded by Mr. Gilbert. All Board Members present voted in favor and the motion carried.

Chairman DeVinney offered a motion to approve the Site Plan. Mr. Mincer made the motion to approve the Site Plan with revisions as discussed and Mr. St. Lawrence seconded the motion. The motion carried with all Board Members present in favor.

### **Old Business:**

1. Site Revisions on previously approved Site Plan, at property owned by Mr. Dan O’Brien, Application # 31309-SPR, at 1163 South Lake Rd., (LR).

CEO, Ms. Kane summarized reasons for a Stop Worker placed on the site, which has been an extremely challenging site from the beginning having gone through various variances and numerous site plan reviews. After a site visit inquiry referencing setbacks, it was learned that some revisions had been made to the previously approved Site Plan, which necessitated another Planning Board review. Revisions include the placement of a propane tank and septic pumping system in the front of the house. These were stamped as approved but due to the lay of the land, when installed, are now quite close to the foundation of the house. New site work involved restoning and replacement of the check dams, having been upset during installation procedures. There is a roadside parking area for (2) cars. It is dug out and the retaining wall is completed, meeting the required 15’ setback. Previous plans approved by this Board clearly showed a proposed walkway to the house which would be graveled due to the steep slope. This walkway now has been reconfigured into a dry laid stair system with risers. The proposed walkway of gravel was not considered a structure under current zoning and was shown on the plans to be primarily within setbacks; however it clearly is a stair system, complete with risers. It also does not meet the required setbacks and the stairs might need railings placed for safety. The house is nearly complete. The stairs provide the access to the dwelling.

After a discussion involving the installation procedures of a Dry Laid Stone System, it was interpreted by the Board that the stairs were not set in mortar, but placed on sand and gravel and could be removed, therefore as defined by current code, was not a “structure”. It was also stated that the railings, if affixed to the ground, would be required to be within setback; however defining the ‘stair system’ did not resolve the setback concern.

Chairman DeVinney noted that in future reviews on these small steep slope lots, it should be discussed that there just is no easy place to position walkways to access a dwelling. He read from the Zoning Ordinance that “structure” is defined in Sect. 200.101 as “anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground...to include but not limited to ...steps, retaining walls” etc. , however he understood as the access to the dwelling, it was necessary.

Mr. Dan O’Brien inquired where in the zoning it stated that you can’t place a structure within the setback. He referred to past definement of measuring side setback from the eaves of a house vs. the foundation, however when it applies to a fence line which is usually affixed to the ground right on a boundary line, it doesn’t seem to apply.

The Board discussed the interpretation of “affixed” meaning a fixed location on the ground or “dug into” Fence lines are not clearly defined in zoning but would be addressed in current Site Reviews as meeting setback requirements especially in a residential area.

Board Member St. Lawrence inquired of other options for the stair system to be redesigned to meet current side setbacks such as coming out to the side of the house, stepping to the side of the brick patio and then down.

Mr. O'Brien stated that because of the placement of the front entrance to the house, it was necessary to exit on that side to a brick patio and then down. Water lines and drainage pipes were on the north side, so the tanks had to go where they were placed. It was also stated that part of the previously proposed walkway was approved outside of the setbacks, however Mr. Fladd had only drawn in the steps, and it may not require as many as shown, however to place them coming straight down would be too steep a grade to navigate.

Board Member Gilbert suggested seeking legal advisement as a clear way to settle defining it as a structure and if the stairs are allowed as defined within the side setbacks.

Mr. O'Brien stated that the application for this house was submitted in October of 2008 and is now approximately two weeks to completion. He has been trying to obtain a Certificate of Occupancy by the third week in August. The Dry Laid Stone has not been placed yet. It can be done within a week. Mulching and clean-up are the only work left to do, after the stairs are completed.

The Board stated that there also unapproved extra excavation onsite was completed making it necessary to place a Stop Work Order on the site. Setbacks in our zoning protect neighboring parcels, and are important to be adhered to in tight parcels being developed in a residential setting. If a proposed action is in violation of code, than a variance appeal would be required. If it is deemed a violation of zoning, an amendment to our zoning may apply to specify clearly what is allowed within boundary setbacks.

Ms. Kane stated that she would acquire a legal interpretation on Thursday. If a variance is required, she will then place the application on the Zoning Board of Appeals for the September 6<sup>th</sup> agenda. If interpreted legally as only a technicality, the Stop Work Order will be lifted and the steps may be constructed.

Next meeting agenda: August 17<sup>th</sup>: Work session with Kevin Olvany to review Steep Slope Maps; Lu Engineers Steep Slope Standards as an addendum to the Draft Law; list of possible ZL amendments; and 9/7 agenda.

Chairman DeVinney requested a motion to adjourn. Motion was made by Board Member St. Lawrence and seconded by Board Member Gilbert. Motion carried with all members present voting in favor. Meeting adjourned at 9:15pm.

Minutes submitted by L. Lersch/Submit revisions to: [lynn.lersch@gmail.com](mailto:lynn.lersch@gmail.com)