

TOWN OF MIDDLESEX
PLANNING BOARD

Minutes – Wednesday, October 3, 2012, 7pm

Board Members present: Marty DeVinney, Chair; John Gilbert, Robert Mincer, Bruce St. Lawrence; CEO Ms. Dawn Kane

Public Present: Mr. Terry DeKouski, Mr. Jim Spelman, Mrs. Barbara Ames, Mr. Calvin Ames, Ms. Debbie Samardjian, Mr. Bob Gunderman, Mr. Gary Hoffman, Mr. Jeremy Fields, Mr. Tom Fromberger, Mr. Thomas Langdon.

Agenda: **App. #071112-SPR/Mr. John Meagher**, represented by Mr. Jeremy Fields, request Site Plan approval for replacement of an existing stone driveway retaining wall at 1255 So. Lake Rd., (LR); **App. #080312-SPR/Mr. Jeremy Fields** of 1443 So. Lake Rd., (LR) request site plan approval, referencing the UDML, to construct a 1012 sq. ft. permanent dock and (2) boat slips/hoists; **App. #080112-SPR/Mr. Jeremy Fields**, representing agent for **Mr. & Mrs. Tom Masachi** of 640 Fisher Rd., (LR) requests site plan approval, referencing the UDML, to construct a 700 sq. ft. Permanent Dock & (2) boat slips/hoists; **App. #081612-SPR/Mr. Jeremy Fields**, representing agent for **Mr. Carl & Douglas Cunningham** of 1288 S. Lake Rd., (LR) requests site plan approval, referencing UDML, to construct a 457 sq. ft. permanent dock and a deck; **App. #080212-SPR/Mr. Jeremy Fields**, representing agent for **Mr. Craig Jerabeck LLC** of 90 East Lake Rd., (LR) requests site plan approval, referencing UDML, to construct a 907 sq. ft. permanent dock, with (2) covered boat slips/hoists and a proposed deck; **App. #082212-SPR/Mr. Jeremy Fields**, representing agent for **Mr. William Dolan** of 648 Fisher Rd., (LR) requests site plan approval, referencing UDML, to construct a 493 sq. ft. permanent dock & boat slip/hoist; **App. #091112-SPR/Mr. Thomas Fromberger, P.E.**, representing agent for **Mr. Andrew Komarek** requests Preliminary Site Plan approval of a Major Subdivision of (4) lots totaling 8.5 acres on E. Lake Rd., (LR), Tax Map ID #2.03-1-2.1 for a Special Use Permit Coordinated ZBA review; **App. #091212-SPR/ Mr. James Spelman** requests Site Plan approval of demolition of his cottage at 771 Newago Cove and reconfiguration of (2) lot lines to annex Tax Map ID #11.74-1-13.1 to Tax Map ID #11.74-1-12.3 at 6366 Glenn Avenue. (LR); **App. #122011-SPR/Mr. Jason & Terry** DeKouski requests Site Plan Approval for (2) Special Use Permit(s) granted by the ZBA in September for the commercial storage of boats & trailers at property bordering So. Vine Valley Rd., Tax Map ID # 12.03-1-1.9, (AG/R)

Chairman DeVinney opened the meeting at 7:15p

Approval of Draft Minutes of 7/5/12 were approved .

Board Member St. Lawrence moved to approve the minutes. Board Member Gilbert seconded the motion. All Board Members present voted in favor and the motion carried.

Site Plan Reviews:

1. **App. #091212-SPR/ Mr. Thomas Fromberger, P.E.** from the MRB Group and representing agent for owner Mr. Andrew Komarek 's (4) lot Major Subdivision on East Lake Road, (LR).

Mr. Fromberger requested Board comments from their onsite visit on September 24th from 4-5pm This included Mr. Michael Hanscom, P.E. from Town Engineer - Lu Engineers. Mr. Fromberger also mentioned the letter dated October 3rd, sent to the Planning Board by Mr. Robert Place, representing lawyer of the Komarek Subdivision.

Chairman DeVinney reminded those in attendance that tonight the Board was only reviewing a possible Preliminary Plat Approval on the (2) Site Plans submitted. This application would be a coordinated review with the Zoning Board of Appeals to determine, after reviewing the Planning Board's recommendation which would have the least significant impact on the fragile steep slope environment and after so doing could determine whether or not to grant a Special Use Permit for the purpose of using a Private Road to be built in the Lake Residential Zoning District which is currently not allowed. In order for the Planning Board to make a recommendation to the Zoning Board of Appeals, the Planning Board would first have to deem the Preliminary Plat complete. A part of this step would be to review and declare a full EAF assessment of the project. The onsite visit was part of the necessary steps for the Board to assess its determination on the EAF assessment.

Board discussion focused on the current existing slope of the Komarek Subdivision with existing gravel access to include a range of slopes from 4-18%. Reference to the intent of the Town Private Driveway/Private Road Law which was adopted approximately two years ago was to minimize slope and that 10% is currently the standard recommended on all new construction, being compatible with safe egress by emergency vehicles. Mr. Fromberger cited other dedicated Town Roads that vary from this and it was stated by the board that even though there are other percentages on Town roads, most of these were installed prior to the law.

Board Member St. Lawrence proposed that the current Komarek Subdivision slope be reviewed for a more constant slope from East Lake Road down to and including the first switchback, regardless of benching and/or retaining walls required. Chairman DeVinney added that our State and Town Laws reflect the point that the percentage of slope for safe egress/ingress on private roads was for the safety of future owners and not for the convenience of the developer.

Mr. Fromberger replied that they would indeed review this and the Boards' recommendation to reduce the percentages of slope currently proposed for the private road access as well as the radius turn at first switchback to become safer and more constant.

A Planning Board meeting summary and comments from the Board of the September 24th site visit follow:

1. Board Chairman DeVinney entertained an option to place (2) of the (4) houses with their septic systems at the top where there is a level ridge towards the road. Mr. Fromberger replied that due to measurement of offsets from the septic and the severe grades in that area, this was not an alternative design option.
2. Concern for the amount of fill required to the lay of the land which is 1:5 and 2:5 in order to provide safe access from the proposed driveways to the proposed garages off of the Private Road Site Plan option. As proposed, lot owner(s) would enter the house from the second floor from a slope of 2-5%.
3. Concern for proposed height of retaining walls and the amount of fill necessary to build up the new grade to accommodate the design both on the uphill and downhill side.
4. As proposed, the applicant's tentative footprint of the houses/garages may be difficult to navigate through Site Plan Review.
5. It is the Board's objective before making a SEQR declaration, that site visit comments from Lu Engineer be reviewed since the site visit was to allow the Board with a review from the Town Engineer to gather appropriate information firsthand in order to determine

environmental significance as proposed with both sets of Komarek's Site Plans, designed by the MRB Group for owner Mr. Komarek.

Mr. Fromberger requested a recommendation from the Planning Board on the (2) submitted plans regardless of receiving comments from the Town Engineer.

Chairman DeVinney stated that in his opinion, the board could not make a recommendation as the board had not as yet determined the plat complete. Mr. DeVinney proposed that in his opinion, he would like to wait for the Town Engineer's comments from the site visit to be part of the information necessary to make this determination. Also forthcoming are comments from Lu Engineer on which of the (2) submitted Site Plans would be the most feasible from an environmental standpoint as was outlined our work order and still forthcoming.

Board questioned what spoils, if any would be hauled off site during construction. Mr. Fromberger stated there would be little to none and what was collected would be used onsite along with fill which would be brought in.

A review of the submitted Full EAF Assessment was completed with multiple revisions to be done. Chairman DeVinney requested whether DEC approval of the SPDES permit had been received and Mr. Fromberger replied that they were still reviewing it.

Board Member John Gilbert requested that Mr. Rick Ayers, from the Yates County Soil & Water Conservation District and Mr. David Hartman, Yates County Highway Superintendent review the current alternate Site Plan for this Major Subdivision which utilized access to (4) building lots by using parking spaces and trams/stairways from East Lake Road. This request was in reference to Attorney Mr. Robert Place's letter of Oct. 3rd which cited Mr. R. Ayers, and Mr. David Hartman had approved the Private Driveway Site Plan approach (2) years ago, but as yet had not reviewed the current alternate option.

A tentative Planning Board meeting of October 10th at 7pm was proposed with Mr. Fromberger, the Planning Board and Mr. Mike Hanscom from Lu Engineers to review all information if completed by then. Newspaper deadlines for Public Notice of this meeting were discussed and it was determined that this review would best scheduled for the October 17th regularly scheduled meeting. Currently outstanding data to review the preliminary plat, prior to determination, were: the requested Site Plan revisions for a more constant and reduced slope on driveway egress from East Lake Road; DEC SPDES permit approval; a review from county resources of the resubmitted plans showing the (2) current design options for access to the subdivision.

2. Ms. Kane, CEO summarized the next Site Review for Mr. Terry DeKouski. The requested approval was for (2) ZBA Applications for a Special Use Permit. The Application originated with the Planning Board and was then referred to the Zoning Board of Appeals for a Special Use Permit since the Land Use was not listed in current zoning. The following sequence shows each applications' data history:
 - a. Planning Board App. #122011-SPR/ Mr. Jason DeKouski of FL Boat Repair & Storage requests Special Use Permit for commercial storage of boats and trailers at 843 Elwell Rd., at property owned by Mr. Terry DeKouski (A/R) Tax ID #12.04-1-10.1
 - b. Zoning Board of Appeals App. #090612-Z/Mr. Terry DeKouski, owner of property at S. Vine Valley Rd., Tax ID #12.03-1-1.9, requests approval for outside storage of commercial boats and trailers.

- c. Zoning Board of Appeals App. #080712-Z/Mr. Terry DeKouski, owner of property at 843 Elwell Rd., Tax ID #12.04-1-10.1, requests approval for outside storage of commercial boats and trailers.

The ZBA Special Use Application became (2) separate applications when the application's location changed to include (2) contiguous properties both owned by Mr. Terry DeKouski and each with its' own Tax Map ID #. Both ZBA Applications received approval for a Special Use Permit on October 2nd for the proposed land uses. According to current zoning, Article V, Section 502.2.1, these ZBA applications must now receive Site Plan Approval from the Planning Board before permitting is allowed. The original Planning Board Application #122011-SPR for Mr. DeKouski has been abandoned and will remain vacant land. The new site location was moved to South Vine Valley Road for both inside and outside storage of commercial boats & trailers as well as farm equipment.

Ms. Kane also stated that all erosion control measures had been addressed. Retention ponds, swales, berms had been graded and were not stabilized with growing alfalfa and clover until Spring 2013, Mr. DeKouski will do additional planting of two year old evergreen seedlings. This will be monitored by the Code Enforcement/Zoning Officer and inspected for full compliance by the spring of 2015.

Chairman DeVinney asked to review the plans submitted. Ms. Kane stated that all plans submitted to the Zoning Board of Appeals were available for the Board to review as well as any additional information that the Board felt necessary to make a determination. The Zoning Board of Appeals did meet with the applicant on (3) separate Public Hearings and as well went onsite to view the site to be able to come to a determination of approval.

Mr. DeKouski added that the application was referred by the Planning Board to the Zoning Board of Appeals and the ZBA was very thorough. They requested us to create the swales, berms high to obstruct view of the boats, once planted. Most of the boats were currently hidden from view. They also requested ingress/egress off of S. Vine Valley Rd., to be improved by adding another driveway to improve traffic flow and we did that. I involved the Town Highway Supervisor in the design of both driveways and will request appropriate siting signage as soon as possible.

Ms. Kane added that in making their determination, the Zoning Board of Appeals met with the Town Attorney for advisement prior to their decisions. It was determined that legally, they could not control the quantity of boats stored onsite, however they could regulate the space in which they were stored and so they accomplished that prior to their determination. The DEC had also reviewed the application and visited the site determining that no further action was required by them. Under current zoning, the construction of a pole barn, berms, swales and retention ponds are all allowed land uses in the AG District.

Chairman DeVinney inquired of those in attendance if there were any comments. Mrs. Barbara Ames inquired if this commercial land use was allowed in the AG District. Chairman DeVinney explained that the Special Use Permit application was for the purpose of determining a Land Use that was not a listed use in our ZL. The Planning Board and the Zoning Board of Appeals felt that based on Sect. 501.14 of the zoning law, they determined that if our current ZL allowed the sales of boats and trailers, it was probable that an applicant could also store them. Furthermore, a Special Use Permit requires certain criteria to be met and the ZBA in granting the approval, has determined this criteria has been met.

Chairman DeVinney asked for further comments and there was none. He then entertained a motion to approve the Site Plan Review for the (2) Special Use Permits presented. Board member St. Lawrence made a motion to approve as presented and Board Member Gilbert seconded the motion. All Board Members present voted in favor. Motion to approve carried.

3. **App. #091212/Mr. James Spelman**, requests Site Plan Approval of a reconfiguration of (2) properties (one at 771 Newago Avenue & 6366 Glenn Avenue). He is also requesting permission to demolish 614 sf structure at 771 Newago Avenue and annex the footprint of this cottage onto the property at 6366 Glenn Avenue to make it 24, 714 sf lot.

Mr. Spelman presented his application stating that in 2003, at the time of purchasing 771 Newago Avenue, he had obtained a variance to build a garage and a mother-in-law apartment above the dwelling. Since that time, he has purchased more properties to include 6366 Glenn Avenue. Due to the density of dwellings in this area, we are asking if we can add the footprint of 771 Newago Avenue, once demolished to the structure at 6366 Glenn Avenue and rebuild that structure, using the approved 2003 variance and build an apartment on top of the dwelling. I would be placing the same exact footprint on top of 6366 Glenn Avenue.

Chairman DeVinney inquired of approval from George Barden for the addition to the dwelling at 6366 Glenn Ave.

Ms. Kane, CEO interceded that the goal of tonight's approval was only to receive permission to demolish 771 Newago Avenue and to annex both parcels into one. Mr. Spelman will then come back later to obtain approval to build a second story onto the garage. These two parcels are currently pre-existing and non-conforming due to the way it sits on the lot. To further develop the property would make it more non-conforming and so would require a variance. My inquiry to the board is if he had a previous variance for that land, and he annex's that land, might he lose that variance? I am seeking legal counsel on this determination.

Mr. Spelman stated that he did not want to demolish 771 Newago Avenue if he would in fact lose the footprint. He stated that his proposed plan would decrease density in a congested area without adding a structure. All abutting properties are part of the Spelman family.

Chairman DeVinney stated that variances go with the land, so it would be appropriate to seek legal advice prior to approving any demolition or rebuilding the second phase of your project. I propose that we approve annexing the two lots tonight and awaiting legal advisement on the demolition.

Board Member St. Lawrence made a motion by resolution to approve the action to combine both lots in review and to allow the demolition of 771 Newago Avenue, once legal advisement procured on the existing 2003 variance. Board Member Gilbert seconded the motion. The motion carried with all Board Members present voting in favor.

SEQR Declaration to be reviewed and declared on Oct. 17

4. **App. # 120811/Mr. John Porter/Field's Construction**, requesting site remediation approval of construction site at 446 East Lake Road, (LR)

Ms. Kane, CEO summarized that remediation plans suggested by engineer Mr. William Grove in a letter dated 12/28/11. After reading the letter, she stated that this remediation had been

reviewed by the board and Mr. Field's has agreed to restore it, however Mr. Porter has not initiated the work.

Board Member St. Lawrence proposed a motion to have the Board send a letter to Mr. Porter and copy to Mr. Fields setting a deadline of November 1st for site restoration in order to establish vegetation before winter on steep slopes and to be monitored by the Code Enforcement Office. Board Member Gilbert seconded the motion and it carried with all Board Members present in favor.

5. **App#080112-SPR/Field's Construction** requests Site Plan Approval for a 700 sf permanent dock & (2) boat hoists to be constructed at shoreline property of owner Mr. Tom Masachi at 640 Fisher Rd., (LR)

Ms. Kane, CEO stated that referencing the UDML, all proposed construction is allowed because of the amount of lake frontage. There exists a pre-existing dock that is shared by the applicant and the neighbor to the North..

Mr. Fields stated that the linear footage at shoreline of 192.4 ft. allows him the opportunity to build multiple docks and he is well under the amount allowed with this proposed dock. In addition to this proposed permanent dock, there is an existing dock. It is actually old cribbing with piers that is built under the water. He planned to modify it but stated that it was not to be considered a "dock."

After a short discussion about referencing the Uniform Docks and Mooring Law, the board questioned if the pre-existing cribbing should be included in the formula to determine what is allowed on parcels, the Planning Board completed the short form SEQR and determined that the proposed project would have no significant adverse effect to the environment. A motion to accept the declaration was offered by Chairman DeVinney and seconded by Board Member Mincer. All members present voted in favor and the motion carried.

Approval of the Site Plan is pending further reference information necessary on the Site Map. The application was placed on hold until such time as it is available.

6. **App. # 080312-SPR/Mr. Jeremy Fields**, owner of property at 1433 South Lake Rd., (LR) requests Site Plan Approval for construction of a 1012 sq. ft. permanent dock and (2) boat hoists.

Ms. Kane, CEO requested documentation stating this property qualified for a steep slope hardship UDML waiver. She stated that his allowable amount based on linear shoreline footage was 720 sf and the hardship clause for steep slopes was an additional 400 sf which totaled 1120 sf allowed and Mr. Fields was well within this amount. She was however concerned about data missing and that the plans were unstamped from Venezia & Associates and suggested since the project would not start until next spring, that the application should be place on hold until required data was submitted correctly

Chairman DeVinney entertained a motion to place this application on hold without completing a SEQRA at this time until all information was submitted as required and Board Member Gilbert seconded the motion. The motion carried with all members present voting in favor.

7. **Application #081612/ Mr. Jeremy Fields of Fields Construction, and representing agent for Mr. Carl & Douglas Cunningham of 1288 S. Lake Rd.,** (LR) requests site plan approval, referencing UDML, to construct a 457 sq. ft. permanent dock and a hoist.

Mr. Fields' stated that shown on the plans was an existing wall at shoreline and that this installation was a minimum request based on his linear ft. at shoreline.

The Board completed a SEQRA determining that the proposed action would not result in any significant adverse environmental impacts and provided reasons supporting the determination. Board Member St. Lawrence made a motion to accept the negative declaration and Board Member Gilbert provided a second. The motion carried with all members present in favor.

After a short discussion, Chairman DeVinney entertained a motion to approve the application. Board Member St. Lawrence seconded the motion. The motion carried with all Board Members present voting in favor.

8. **Application #080212-SPR/ Mr. Jeremy Fields of Fields Construction and representing agent for Mr. Craig Jerabeck LLC of 90 East Lake Rd.,** (LR) requests site plan approval, referencing UDML, to construct a 907 sq. ft. permanent dock, with (2) covered boat slips/hoists and a proposed deck.

Mr. Fields presented the application stating that there was 226 linear feet of shoreline frontage. UDML allowed 1120 ft. or multiple docks. Mr. Jerabeck is requesting (1) permanent dock and double boat slips.

Board discussion focused on missing data on engineered stamped plans: a pre-existing boat house shown was not included in the formula for allowable square footage. Also the shoreline measurement and scale shown on the map did not coincide with the allowable 60 ft.

Approval of this application and the completion of a SEQRA declaration was placed on hold, pending further information required prior to determination.

9. **Application #082212-SPR/ Mr. Jeremy Fields of Fields Construction and representing agent for Mr. William Dolan of 648 Fisher Rd.,** (LR) requests site plan approval, referencing UDML, to construct a 493 sq. ft. permanent dock & boat slip/hoist.

Mr. Fields stated that shoreline measured 207 linear feet. There is an existing crib, so he would be allowed 720 feet. Applicant is requesting a minimum of 493 ft.

Board Member St. Lawrence clarified that the measurement on the plan showed 505 ft. although still allowed. Chairman DeVinney stated that because of the existing stone wall, it was not clear on the maps, as drawn, where the frontage was measured from.

Mr. Fields stated the wall was also tied into the neighbor's wall to the north, Mr. Tom Masatchi.

Chairman DeVinney entertained a motion to place the application and SEQRA declaration on hold, pending further information required to prior to the board's determination.

10. **Application #071112-SPR/Mr. John Meagher**, represented by Mr. Jeremy Fields, requests Site Plan approval for replacement of an existing stone driveway retaining wall at 1255 So. Lake Rd., (LR)

Code Enforcement Officer, Kane summarized the application for the board by stating it was a new application from a new owner who had purchased the old Wood hams' property. The house is situated on a very steep slope. The driveway is paved and the existing dry-laid man-made slate retaining wall that borders the driveway is failing.

Mr. Fields proposed that the new replacement would be pile-driven so as not to disturb the steep embankment and these piles would be driven into the existing driveway in front of the new wall.

Board Member St. Lawrence questioned Mr. Fields about his process in installing the wall and what the existing 32% driveway would be used for since proposed plans showed some widening of the radius turn at the house. He also questioned if a variance had been applied for because it seemed that the existing stone wall was beyond the abutting property line. The proposed wall was considered a structure by definition of it's' installation. Mr. St. Lawrence was also concerned with the % of slope and the storm water run-off that would clearly end up in the road. He suggested catch basins and dam checks to be considered for this site as had worked in a similar case on So. Lake Road with steep slopes as well.

Ms. Kane stated that the neighboring parcel was once a contiguous piece and it was divided out and sold, leaving the existing dry-laid stone wall tapering down into the neighbors' property line. The new wall would be considered new construction, not a replacement and would need a variance. She also shared with the Board that there was an existing deck that had been built in the Highway's ROW on the lakeside of the road.

After some discussion, the Board decided to meet onsite to discuss what would be best while determining the site plan. The application was placed on hold pending further information required prior to Board determination.

A motion to adjourn was made by Board Member Mincer and seconded by Board Member St. Lawrence. Motion carried with all Board Members present in favor.
Meeting adjourned at 9:38p

Draft Minutes submitted by L. Lersch/revisions to LSammy5@frontiernet.net
Minutes approved: November 7, 2012