

TOWN OF MIDDLESEX
PLANNING BOARD
Minutes – April 3, 2013 7pm

Board Members present: Marty DeVinney, Chair; John Gilbert, Lynn Lersch, Robert Mincer, Bruce St. Lawrence

Others present: Ms. Dawn Kane, CEO; Kris Jesmer, Ivan Zimmerman, Burnell Rieff, Shanna Williams, Tom Fromberger, Reuben Ortenberg, Scott Hartar, Eberhard Muechler, Thomas Northrop, Neil P. Elli, Dan O'Brien, Lorin Frye, David Albright, Dan Hackett of Ted Collins Assoc., John M. Mulligan, Jim Ghostlaw of Brooks Construction, Ron Rauscher of Larsen Engineers

Agenda: SEQRA Full EAF Assessment Part 2, 3 for Mr. Andrew Komarek Major Subdivision – East Lake Rd; Site Plan Reviews: App. #020213-SPR: Mr. Neil Ellie, represented by Mr. Dan O'Brien, agent seeking Site Plan Approval for construction of a structure built w/o a permit at 1091 South Lake Road, (LR); Application #110812-SPR/Mr. William Allison of 702 East Lake Rd., represented by Mr. Ivan Zimmerman requesting site plan approval for new construction of a single family residence. (LR); Application #012913-SPR/Mr. Isacc Von Rhedy, represented by agent, Mr. Ron Rauscher requests Site Plan approval to construct a single family residence with attached garage & site improvements to his property on East Lake Rd., Tax Map ID #002-03-1-22, (LDR); Application #03113-SPR/Mr. Rick Agnello of 940 South Lake Rd., (LR), represented by agent Mr. Don Miller, requests Site Plan Approval to construct an addition to an existing dwelling; Application #030213-SPR/Dr. Eberhard Muechler of 6351 Glenn Avenue (LR), represented by agent, Ms. Shanna Williams, Architect, requests Site Plan Approval to construct an addition to an existing dwelling; Application #030413-SPR/Ms. Lorin Frye of 6362 Robeson Rd.(LR), represented by agent, Mr. Dan Hackett of Ted Collins Assoc. requests Site Plan Approval for shoreline landscaping improvements; Application #030313-SPR/Mr. Burnell Rieff of 217 Bare Hill Road, (AR) requests Site Plan Approval for new construction of a single family residence with attached garage to an existing building.

The Planning Board Meeting came to order at 7:10pm.

Approval of Minutes: February 20th, March 6th, and March 20th

The Board motioned to accept February and March minutes as presented. Board Member Mincer made the motion and Board Member DeVinney seconded the motion. The motion carried with all Board Members present voting in favor.

Chairman DeVinney introduced the meeting's agenda items, introduced Board Members and Attorney Ms. Wendy Marsh, Environmental Lawyer from Hancock and Estabrook of Syracuse, NY who will propose the Board's review of the SEQRA FEAF Process.

Ms. Marsh explained the SEQRA(State Environmental Quality Review Act) Process and the FEAF (Full Environmental Assessment Form) – Part I , completed by the applicant. Part II and III, (*Attachment A*) to be reviewed by the Board as declared Lead Agency with intent to complete a Determination of Significant in accordance with the SEQRA regulations (6 NYCRR 617.7) for the Komarek 4-lot major subdivision of Tax ID # 2.03-1-2, a property with steep slopes located on East Lake Road and located within the Lake Residential Zoning District. The project involves the creation of (4) lots for single family residences and the construction of a private road to access each of the residences. The project requires major subdivision approval, site plan review and a special use permit from the Zoning Board of Appeals for the construction of the private road in the LR District. To prepare for this assessment review the Planning Board requested a review by Town Engineers, Lu Engineer, as well as the Board's current knowledge and research of various impacts to the environment of this area. *Attachment A* also covered Part III of the Assessment which addressed "Project Impacts and their Magnitude." The Planning Board proposed relevant findings for determination with respect to the project to be part of their determination. The Board deemed the Komarek Major Subdivision constituted an "Unlisted Action" and may have significant effects on the environment, some of which the Board deems to be potentially large in nature including some of which they believed could not be mitigated. Hence, the Board prepared to review Part III, in order to evaluate the importance of these impacts. *Attachment B*, a map produced by Yates County Soil & Water as requested by the Planning Board,

was presented as reference to a 'Soils Analysis' of the Komarek property. After due review, consequently, the Planning Board moved to declare a Positive Declaration, *Attachment C*, with respect to the project. The Planning Board further plans to engage in "Scoping" pursuant to 6 NYCRR 617.8 to allow opportunity for public participation. The Board will therefore request for a Draft Environmental Impact Statement to be prepared by the applicant, Mr. Andrew Komarek.

After a short discussion and review of by the Planning Board, and reading of the proposed Resolution to issue a "Positive Declaration" and "Determination of Significant" read into the minutes by Ms. Marsh, the Board motioned to approve as presented with minor changes as discussed. Board Member Gilbert made the motion to approve as presented which was seconded by Board Member St. Lawrence. The motion carried with all Board Members present voting in favor. Ms. Marsh then offered to the Planning Board a document of Resolution of Findings & Determinations with respect to the project. A motion to accept as read with minor changes as discussed was made by Board Member Mincer and seconded by Board Member Gilbert. The motion carried with all Board Members present voting in favor.

It was declared by resolution that the Planning Board intends to engage in "scoping" pursuant to 6 NYCRR 617.8 to allow an opportunity for public participation which will be submitted to the Planning Board by the applicant, Mr. Andrew Komarek. Ms. Marsh will make all proposed changes and submit a final document to the Board to send out to all interested agencies.

Mr. Rueben Ortenberg, representing Attorney for applicant Mr. Andrew Komarek, requested documentation of the process of the proposal for SEQRA Determination of Significance presented by Ms. Marsh to the Board and such request was duly answered by Town Attorney, Alaine Espenscheid, Ms. Marsh.

A letter was read into the minutes, submitted by Mr. Robert Gunderman a neighbor, referencing concern for the process of development of the fragile land and cliffs, located within Komarek's Major Subdivision on East Lake Road.

Old Business - Site Plan Reviews :

1. Application #020213-SPR/Mr. Dan O'Brien, representing agent for property owners, Mr. Neal and Kathy Elli for site plan approval for the construction of a structure built w/o a permit at 1091 South Lake Road, (LR).

Ms. Kane summarized the application for the board and introduced the applicant's agent, Mr. Dan O'Brien who offered a past history to date of the application providing the Board with more photographs for review. Mr. O'Brien advised the Board that the applicant's position was that the retaining wall constructed without a permit in the gully south of the applicant's property was to be considered a "repair" built on Mr. Elli's side of the gully when the old retaining wall deteriorated and the gully suffered two major storm events which greatly impacted the applicant's property and threatened to undermine the existing house foundation in the future. Suggestions from the Canandaigua Watershed were viewed as not a practical solution. Mr. O'Brien submitted affidavits from a structural geo-technical engineer consulted on the project as well as from the contractor who was hired to construct the retaining wall, both of which made positive claims as to the integrity of the wall.

Ms. Kane stated that the construction of the current retaining wall had never been considered a "repair" by the Code Enforcement Office. As constructed, it left the neighbor's property to the south exposed and was positioned within 2 feet of the setback between properties. A Stop Work Order had been issued by the Code Office and professional advisement from the Canandaigua Watershed was sought. An open channel lined with rap-rap was suggested at that time by Mr. Kevin Olvany, and Mr. George Barden, Canandaigua Watershed Inspector; however the applicant chose to install a culvert pipe which clogged and created site damage during a second storm event. In May of 2012, Mr. Scott Hartar, Engineer and representing agent for the project, appeared before the Planning Board seeking Planning Board advisement. At that time, it was advised that Mr. Elli seek Site Plan Review from the Planning Board with a set of complete engineered plans of the proposed work as stated with recommendations from the Board and the Canandaigua

Watershed Council and Watershed Inspector. It was stated by the Board that the culvert pipe currently in place, be removed to allow an open flow channel in case of recurring storm events and submission of the Site Plan as soon as possible to be placed on the next possible Planning Board agenda. The current retaining wall was constructed without a Site Plan Review and without a permit on July 4th weekend 2012.

After a discussion, the Planning Board was concerned about water flowing through the gully would now with the new retaining wall as built, impact the vulnerable property to the south and felt the wall as installed needed a variance. This southern side of the gully was now unprotected and may need large rock to slow down the erosion from the flow of water run-off. The Board felt Lu Engineer should review the current status of the project to ascertain what would happen, if left unchanged, there was another major storm event. They also felt advisement on the culvert at roadside would now need an upgrade from its present size or the size suggested by Lu in the South Lake Road Study since it was done prior to the Elli project's installation.

The applicant's agent, Attorney Dan O'Brien questioned the need for a variance and referenced the lack of clear definement in current zoning of structures within setbacks, such as retaining walls and steps.

Chairman DeVinney stated the Board had two concerns which would need advisement from outside resources and so proposed tabling the application until the following was researched:

- a. The appropriate current culvert sizing at roadside
- b. Legal definement of current zoning as it referred to construction of a structure within setbacks.

The application was tabled for future review by the Planning Board or may be heard by the Zoning Board of Appeals in May if a variance request is necessary.

2. Application #110812-SPR/Mr. William Allison of 702 East Lake Rd., represented by Mr. Ivan Zimmerman requesting site plan approval for new construction of a single family residence (LR)

Ms. Kane summarized the application, stating County approval had been given in February. The Code Office had not received requested site plan revisions, yet had received Architectural changes for the application from R. Hargrave. These changes showed revisions to the siting of the footprint approved in March which then signaled a new Site Review by the Board. To date, items requested in March for the missing front porch measurement and explanation for the roofline drainage plan around the perimeter of the foundation had not been submitted. Ms. Kane requested the Planning Board send a letter to Mr. Allison explaining what was requested and suggested applicants attendance in order to present detail on the project.

The Board requested the following to be resolved prior to Board Determination:

- a. A grading plan to show the contours of the land and how water run-off would be managed on site and in particular around the house foundation.
- b. The percolation pit should be noted on the site plan indicating the size, type and quantity of stone used to line it
- c. The size, type and quantity of stone to be used as fill around the foundation to address roofline runoff.

A letter by the Planning Board will be sent to the Applicant stating all outstanding concerns necessary for resolve prior to determination.

3. Application #012913-SPR/Mr. Isacc Von Rhedy, represented by agent, Mr. Ron Rauscher requests Site Plan approval to construct a single family residence with attached garage & site improvements to his property on East Lake Road, Tax Map ID #002-03-1-22 (LDR).

This application was reviewed on March 28th by the Yates County Planning Board and determination was conditional on listed items in a letter dated March 25th by Mr. James M. Balyszak, District Manager of Yates County Soil and Water. Mr. Rauscher of Larsen Engineers submitted a letter of resolve to Mr. Balyszak dated April 2, 2013 and this letter was noted into the minutes.

The Board revisited the Type II action on the applications' SEQRA Negative Declaration, as required for submission to the County Planning Board for review, and upon final determination, voted to accept it as originally declared without change. A motion was made by Board Member Gilbert and seconded by Board Member Mincer. The motion carried with all Board Members present voting in favor.

After a short discussion the Board Chairman, Mr. DeVinney made a motion to conditionally approve the Application. Board Member Gilbert provided a second and the motion carried with all Board Members present voting in favor. The following criteria must be resolved through the Office of Code Enforcement prior to permitting:

- a. CEO will schedule a Site Visit to acquire confirmation that emergency vehicle access is possible to and from the site.
- b. Site Plan identification and notation of the Item Code for medium stone used for fill.
- c. Submit site map revisions on Drawing PL-1 #2 to note size and type of stone rubble on 1:1 slope.
- d. Advise Yates County Highway Department when construction sequence is timed to begin due to the project being located on a county road.

New Business for Site Plan Reviews:

4. Application #03113-SPR/Mr. Rick Agnello of 940 South Lake Rd., (LR), represented by agent Mr. Don Miller, requests Site Plan Approval to construct an addition to an existing dwelling.

This application was withdrawn from the agenda and will be rescheduled.

5. Ms. Kane, CEO brought a project for Planning Board advisement. Mr. Thomas V. Northrop of 5450 Sunnyside Rd., (LR) requesting to construct modifications to a pre-existing boat structure between the Sunnyside ROW and the shoreline. After a brief review, the Board advised Mr. Northrop that he would need area variances from zoning setbacks for the property, but the site plan, as presented, would not need further Site Plan Review by the Planning Board.
6. Application #031513-SPR/Mr. John Mulligan, of 1129 So. Lake Rd. (LR), represented by agent, Mr. James Ghostlaw of Brooks Construction, seeking Site Plan Approval to construct an addition to an existing dwelling.

After a short review, and several options were discussed with Mr. Ghostlaw, the Board moved to conditionally approve the Application upon resolve of the following conditions, prior to permitting, and by submitting a revised Site Map to the Office of Code Enforcement:

- a. Based on Sect. 302.2 of the Zoning Law, any alteration of a non-conforming building is denied unless the alteration reduces and does not enlarge the degree of non-conformance; then requiring a variance if the Applicant chooses to build outside the existing footprint.
- b. Inconsistencies in the coursework measurements shown on the Site Map must be corrected with notation of how the concrete block will be anchored between the foundation and the existing structure.

Board Member St. Lawrence motioned to approve with conditions as presented and Board Member Gilbert provided a second. Motion carried with all Board Members present voting in favor.

7. Application #030213-SPR/Dr. Eberhard Muechler of 6351 Glenn Avenue (LR), represented by agent, Ms. Shanna Williams, Architect, requests Site Plan Approval to construct an addition to an existing dwelling.

Ms. Kane offered to the Board that the property had been granted two side setback area variances by the Zoning Board of Appeals for the proposed modifications to the footprint of the dwelling.

These variances were for the overhangs of the A-frame style modification on all four sides and a front yard variance for the front porch. It was also noted that all surrounding neighbors to this parcel had written letters of approval to the ZBA in agreement of the proposed modifications.

After a short discussion, Board Member St. Lawrence made a motion to approve the application's Site Plan as presented, which was seconded by Board Member Mincer. The motion carried with all Board Members present voting in favor.

8. Application #030413-SPR/Ms. Lorin Frye of 6362 Robeson Rd., (LR) represented by agent, Mr. Dan Hackett of Ted Collins Associates requests Site Plan Approval for shoreline landscaping improvements.

Mr. Hackett presented the proposed landscaping plans which would include removing existing stairs to be replaced by a combination of natural stone boulders, plantings and a set of three above grade tiered wall around a set of stairs. This combination would combine an aesthetic pleasing product that would stabilize the shoreline property, and also provide a low maintenance product for the owners.

The Board's concern was some type of temporary ground stabilization during high volume traffic periods when heavy truck deliveries of stone were made to the site.

A conditional approval was decided on by the Board for the proposed lakeshore landscaping improvements and remediation of the site after completion. The following conditions were placed on the approval:

- a. Resubmit site plans to add notation of temporary ground stabilization by placing plywood boards on ground for all construction vehicle and equipment traffic.

Determination as motioned was made by Board Member St. Lawrence and seconded by Board Member Gilbert. The motion carried with all Board Members present in favor.

9. Application #030313-SPR/Mr. Burnell Rieff of 217 Bare Hill Road, (AR) requests Site Plan Approval for new construction of a single family residence with attached garage to an existing building.

Mr. Rieff presented his submitted Site Plan along with pictures of the proposed house modifications. Plans were to demolish the existing structure and to construct a new building with attached garage. A proposed swale from the house to the pond would divert all water runoff and setbacks on the 126 acres met current zoning requirements.

Requested by the Board for Site Plan Approval was a letter stating re-siting of the house footprint be added to the original file. Also a copy of the approved septic design, drafted by Mr. George Barden, Canandaigua Watershed Inspector and placement of the 500 gallon tank to be supplied to the Code Enforcement Office once updated.

A motion to approve the Application with above submitted documentation was made by Board Member Gilbert and seconded by Board Member St. Lawrence. The motion carried with all Board Members present voting in favor.

Other Business:

Ms. Kane updated the Planning Board that due to heavy development time with the warmer weather, all Applications submitted to the Planning Board to be placed on the next month's agenda would need to comply with strict deadline requirements and would not be accepted unless complete.

Next meeting: Work Session, April 17th, 7pm. Discussion on Master Plan Update options

A motion to adjourn was made by Board Member Mincer and seconded by Board Member Gilbert.
The motion carried with all Board Members present voting in favor.

The meeting adjourned at 10:15pm

Minutes submitted by L. Lersch/Revisions to lsammy5@frontiernet.net

Minutes approved on April 17, 2013