

TOWN OF MIDDLESEX
PLANNING BOARD
Minutes – August 7, 2013 7pm

Board Members Present: Marty DeVinney, Chair; Lynn Lersch; Robert Mincer; Bruce St. Lawrence; Dawn Kane, CEO; Alaine Espenscheid, Town Attorney

Others Present: Mr. Travis Grover, Mrs. Amanda Grover, Mr. & Mrs. Keith and Nancy Gilliland, Mr. Dan O'Brien

Agenda:

Approval of Planning Board Draft Minutes for June 5th, June 19th and July 3rd.

Site Plan Reviews for Application #071613-SPR/ Mr. & Mrs. Travis & Amanda Grover requests a Minor Subdivision for Parcel #3.02-1-6 at 87 State Route #245, in the Town of Middlesex (HR), and Application # 020213-SPR/ Mr. Neal Elli represented by Agent/Lawyer Mr. Dan O'Brien requesting Board approval and final determination of gulley retaining wall built without a permit.

Meeting came to order at 7:02 pm

A motion was made by Board Member Mincer to approve all Draft Planning Board Minutes from June 5, 19th and July 3rd as written. Board Member St. Lawrence provided a second. The motion carried with all Board Members present voting in favor.

Site Plan Review of New Business:

Chairman DeVinney opened the floor to Code Enforcement Officer who summarized to the Board the Applications' compliance with current Area Requirements. The 7.8 acre parcel is pre-existing and non-conforming with a barn and (3) rental homes. One of these (3) existing structures currently has (3) rental apartments within. This property falls within the Hamlet Residential Zoning District and is currently within all minimum area requirements. The Grover Family would like to subdivide this parcel so that the existing Barn and shed remains on 6.288 acres and the existing rentals remain on 1.5 acres. Eventually the family's intent is to build a single family residence on the property. We have family close by and our real estate business is located across the street within the Rushville Motors building.

After a brief discussion, Board Member Mincer moved to approve by resolution, the application for a Minor Subdivision as presented and Board Member St. Lawrence seconded the motion. Chairman Devine inquired of any further discussion. There being none, the motion carried with all Board Members present voting in favor. Board Member Lersch inquired on the Board's review of the Application's SEQR.

Chairman DeVinney asked for a motion to amend the motion to include a review of the submitted SEQR. After a short review a motion was made by Board Member Lersch that because it was a Type II action. it needed no further action by the Board.

Ms. Kane added that the Mylar and 2 paper prints needed for filing with the County Clerk's office would be submitted at a later time for signing by the Chairman.

Site Plan Review: Old Business

Application #020213/Mr. Neal Elli/ of 1091 South Lake Road, Middlesex (LR) and represented by agent/lawyer Mr. Dan O'Brien requesting Board determination to resolve an retaining wall structure built within an existing gulley without a permit. This structure impacted the south side of the gulley which is currently owned by Mr. & Mrs. Keith Gilliland.

Chairman DeVinney opened the floor to the Gillilands for a summary of the structure's impact to their property to the south, adding new information to the review.

Mr. Gilliland listed some grievances and sympathies to their neighbors' plight but stated that the following concerns had caused them negative impact:

1. History of the storm events that created the problem and moved the flow line of the gulley, was not Mr. Elli's fault, as it affected everyone's property, but the Town of Middlesex did nothing about it.
2. What we are left with is a problem on our south side, after the Elli's proceeded to redesign the gulley with blatant disregard for neighboring properties.
3. A cluster of (3) oak trees with significant root system were cut out, (1) on my property and the remaining brush was stored on my property which I removed without comment.
4. When clearing the debris from the gulley prior to building the wall, they dug the hard shale down approximately (4) ft., which was way too deep, for the purpose of placing a pipe in. They also straightened the gulley significantly which had been a meandering stream in order to build the new retaining wall the way they wanted. The current path funnels straight to the road and has moved a foot to 12 ½ inches my way to the south. The last post of the retaining wall is currently 2.5 inches on my property line.
5. Contractors seemed to be working without any supervision from Scott Hartar, although I feel Mr. Sterling did a better job than the first contractor.
6. They didn't get all of the old retaining wall out when they took the culvert pipe that clogged out. They placed the new steel retaining wall in front of the old wall.
7. Town Engineers Lu Engineers, Inc. have been onsite and reviewed the work and now recommend cutting further into my side of the gulley by 8 ft. to reshape the gulley to its' original shape. I feel there has been little ground collapse on my side of the gulley and I believe it will refill naturally in time.
8. It is my opinion that Mr. Elli intentionally moved the retaining wall and gulley's path in order to gain more driveway space between the gulley and his house.
9. My septic is bound to the south by the stream. To comply with Town setbacks, I will now lose 10 ft. in the septic area due to the reshaping of the stream's path.

Agent/Lawyer Mr. Dan O'Brien, representing owner Mr. Elli, offered the following information for Board review:

1. The Town offered his client the choice to accept the estimate from Lu Engineers' site visit review or withdrawal of the application which needed Site Plan Review by the Board to proceed, so we chose to pay for the review and now have (5) recommendations to accept, proceed and pay for, but need approval to do so from the Gillilands prior to proceeding.

2. After two devastating storm events and neither town nor neighbors willing to help, Mr. Elli decided to hire a contractor to clean out the gulley without a permit and placed a culvert in to protect further erosion to the embankment, already only 2 ft. space from the house foundation.
3. The first contractor removed old railroad tie retaining wall and a conduit pipe that was not working. The gulley had filled in with shale, so he removed debris before another storm event occurred.
4. The Town placed a Stop Work Order on the Site and required a Site Plan Review prior to permitting which was a lengthy process, so we decided to proceed without a permit. After legal advisement, we did file a Site Plan Application.
5. Mr. O'Brien stated his client Mr. Elli's complaint in the Planning Board's process in receiving a Lu Engineer Review dated 5/22 on the previous Sunday.

After a lengthy Board review of the new information offered and further legal advisement from Town Attorney Ms. Alaine Espenscheid, the Board offered the following options for Mr. and Mrs. Neal Elli:

1. Submit a new Site Plan alternative which complies with Lu Engineer's recommendations as submitted on June 19th review letter.
2. Submit an alternative Site Plan that Lu Engineer will endorse that will not negatively impact Mr. Gilliland's property to the south.

The Board's concerns which were also supported by the Code Officer, Ms. Kane is the narrowing of the gulley at the end nearest the road and lake. This narrowing in a major storm event such as this property has seen twice in the past could become a threat to the Town's road and lake.

Chairman DeVinney stated he would like to offer some resolve by allowing Mr. Elli and Engineer Scott Hartar to come up with an alternative plan to include the least impact to Mr. Gilliland's property and alleviate his concerns without the need for further civil action. The Planning Board would expedite an agenda placement for Site Plan Review as soon as it was reviewed by Lu Engineer.

The Planning Board with counsel agreed to accept an alternate plan once submitted, to send it to Lu Engineer for review and to expedite a review between Mr. Elli and Mr. Gilliland to resolve this application's gulley situation.

Code Enforcement – Applications for advisement on Site Plan Review Process:

1. Parcel with an existing Barn structure that owner requests installation of a self-contained personal Solar Panel System to be installed by NYS Electric Underwriters. Stamped Engineering Plans were submitted on the structure. The system has a grounding rod and tie back and the utility used would be NYSEG. Ms. Kane cited Sec. #402, Sched. ID, #8/ Utility & Miscellaneous Uses from our Zoning Ordinance as the restricting regulation.
After a short discussion, Town Attorney Alaine Espenscheid informed the Board that this section was written with the intent for commercial, not personal uses so therefore this regulation did not apply; therefore the project would not need site plan review.
2. Engineer's stamped plans for a project on Mr. Ronald Papa's property was given to Board Members St. Lawrence, Mincer and Chairman DeVinney prior to the Site Plan Application's submittal and will be placed on the agenda at the time of receipt.
3. An application for a stone retaining wall by Mr. Bob Fladd was determined needing Site Plan Review due to the wall's height and length details.

4. An application for a new single family residence at 556 East Lake Road, on Lot 1 will be submitted for future Board review once plans and application are received by the Code Office.

Chairman's Report:

The 2013-2014 Budget Proposal for the Planning Board is due on August 16th. The Board discussed the following areas to consider: Audio Taping System – digital; Training Work Shop & Presentation Costs, Board Members Stipends and Clerk's hourly expenses.

Next meeting agenda: August 21: Identify areas in Master Plan that needed Board review prior to opening resource work to the community. Re: Questionnaires etc.

Chairman DeVinney offered a motion to adjourn. A second was provided by Board Member Mincer and all present voted in favor. The motion carried. The meeting adjourned at 8:45pm

Draft Minutes submitted by L. Lersch/revisions to: Lsammy5@frontiernet.net
Minutes approved on September 4, 2013