

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 March 12, 2013 at 7:30 P.M.

Present: Jerome Kerner, Chairman
Ronald Tetelman
Gregory LaSorsa
Robert Goett
John O'Donnell
Jan Johannessen, Kellard Sessions Consulting, Planning/Wetland Consultant
Lawrence Praga, Esq., Planning Board Counsel
Margaret Clark, Esq., Special Counsel
Janet Andersen, CAC Chairwoman
Aimee Hodges, Planning Board Secretary

Also in Attendance: Peter Parsons, Town Supervisor

The Chairman called the meeting to order at 7:30 PM and pointed out the emergency exits.

I. PUBLIC HEARING

Leon Levy Preserve (Town of Lewisboro, owner of record), NYS Route 123, Smith Ridge Road, South Salem -Applications for Site Development Plan Approval and Wetland Activity Permit Approval to develop a gravel parking area and new driveway access via Smith Ridge Road - Cal. # 7-06 P.B.

There were no objections to the time or place of the public hearing and there were no requests to have the notice of public hearing read aloud.

Mr. Johannessen displayed the proposed site plan and reviewed the application to develop the gravel parking lot accommodating 20 vehicles and two horse trailers and the gravel driveway access off of Smith Ridge Road. He noted the presence of NYSDEC and Town regulated wetlands; the parking lot and driveway are located within the DEC 100 foot buffer and the Town's 150 foot buffer. He noted the additional improvements; a split rail fence and drainage improvements required by the NYSDOT. A wetland application had been submitted to the NYSDEC noting that he has been advised by Heather Gierloff that the permit is in process. The NYSDOT permit will be obtained by the contractor.

Mr. Tetelman noted that the CAC had requested some sort of barrier to prevent unauthorized vehicles from entering the site from Route 123. He noted that if the trails had to be serviced that a vehicle could also enter from Route 35. Mr. Tetelman advised that during a recent walk on the property they noted tracks from a Jeep. Someone had spotted a Jeep on the property. These vehicles destroy the trails and he would like to see something that could minimize this intrusion.

Mr. Johannessen advised that there are multiple points of access onto this property. He has noted ATV tracks along the trails.

Mr. Kerner noted that the access from Cross Pond Road is the problem. More police surveillance is required to prevent this type of activity.

Mr. O'Donnell advised that he would like to see one less parking space in order to provide a handicap parking space.

Mr. Johannessen advised that a handicap parking space would need to be paved. This is something that could be addressed in the field.

Ms. Andersen advised that the CAC strongly supported this application so that the preserve would be more accessible to the community. They had a minor comment, but they would like to see this approved.

There were no public comments.

On a motion made by Mr. O'Donnell, seconded by Mr. Goett, the public hearing was closed.

Vote: In Favor: Tetelman, La Sorsa, Kerner, Goett, O'Donnell

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, the State Environmental Quality Review, Negative Declaration, Notice of Determination of Non-Significance dated March 12, 2013 was adopted.

Vote: In Favor: Tetelman, La Sorsa, Kerner, Goett, O'Donnell

On a motion made by Mr. O'Donnell, seconded by Mr. Goett, the resolution Site Development Plan Approval, Wetland Activity Permit Approval, Town Stormwater Permit Approval, Leon Levy Preserve-Driveway and Parking Area, Smith Ridge Road (NYS Route 123) was adopted.

Vote: In Favor: Tetelman, La Sorsa, Kerner, Goett, O'Donnell

II. PROJECT REVIEW

Guillermo Arias & Lexus Holding Company, LTD, 411 Smith Ridge Road, Vista – Application for Preliminary Subdivision Plat Approval of a two (2) lot subdivision – Cal. #9-04 P.B.

James DeLalla, ASLA and Joseph Riina, PE were present. Mr. & Mrs. Arias were present with their son.

Mr. DeLalla displayed the subdivision plan that received preliminary subdivision plat approval in 2008. He reviewed the history of this project noting that the original parcel had been subdivided by deed by a prior owner. The Arias' were the owners of the improved lot and Lexus Holding Co. is the owner of the vacant lot. Both lots meet all zoning requirements. He advised that the Arias' have handled all of the approvals. Lexus Holding, while being the silent partner, is anxious to see the approval move forward but has not been helpful.

Mr. DeLalla described the site and noted the wetland locations totaling approximately two acres. He further noted that no improvements are being proposed within the wetland or wetland buffer.

Mr. Riina advised that his firm has been involved in three aspects: stormwater design, NYSDOT approvals and the Health Department reviews. The NYSDOT approval obtained for the driveway location on lot 2 has lapsed and is in the process of being reapproved. He noted the septic locations for each lot. The current residence utilizes a cess pool; at the request of the Health Department it will be abandoned and a septic system will be installed that meets the current regulations. The septic areas for both sites have been tested and approved by the Health Department. With respect to stormwater, they have proposed infiltrators units for the roof runoff for the proposed residence. Because of the proximity of the septic system, they have proposed a vegetated swale along the driveway on lot 2 to intercept the surface runoff before it gets down to the ditch along Smith Ridge Road. As part of the NYSDOT approval, there is a pipe crossing at the entrance, which will take any runoff from the swale, directing it under the driveway, continuing in a southerly direction.

Mr. Tetelman noted that the engineers report stated that there are no additional improvements proposed for lot 1, when in fact they are proposing a new septic system. He also noted that the new stormwater treatment was designed for 1800 SF which is basically the footprint of the building. He questioned whether they would add more for any additional impervious surfaces, i.e. patios or walkways.

Mr. Riina advised that this concern had been discussed with the Town's consultants. The additional impervious surfaces will be shown on the next submission.

Mr. Tetelman questioned the reasoning for the disparity in the size of the lots and was advised that these lots were configured this way long before any of their involvement of this project. This application is an attempt to formalize what a previous owner had created by deed. Both owners purchased the lots as they are depicted on this application.

In response to Mr. Tetelman's question as to why the previous approval had lapsed, Mr. DeLalla advised that the Arias' have been carrying the financial load of this application. The economy had played a role as there was still work that had to be done as per the conditions of the preliminary approval.

Mr. O'Donnell noted that it had been indicated that there were sufficient expansion fields for the existing residence.

Mr. Riina advised that the Health Department had asked that they just treat this as an expansion for the original system and at the time were not requiring them to design the primary and expansion system. This will be revisited. It was noted that the septic areas depicted on the DeLalla plans were more schematic and not to scale.

Mr. Johannessen reviewed the March 8, 2013 Kellard Sessions memo to the Board.

Ms. Andersen advised that it was not clear to the CAC whether this review was a formality to reapprove the 2008 subdivision approval so they chose to highlight what they believed were the

highest priority aspects. It was noted that the wetland area on lot 1 was delineated with monuments but lot 2, which has wetlands and a higher approach that you cannot get to without going through the wetlands did not. It would seem sensible to have the monuments on lot 2 as well.

Mr. DeLalla advised that this was a deal breaker with Lexus Holding. They spent six to eight years on this. This applicant does not want any restrictions on the lot. He could check to determine if they would monument the wetlands.

Mr. Kerner questioned whether Lexus Holding had thoughts of further subdividing this lot.

Mr. Tetelman questioned whether this Board could add something in the resolution restricting any further subdivision.

Mr. DeLalla advised that the previous Planning Board had asked for additional studies to determine the feasibility of future subdivision. In the end, the Board determined that it was not fair to the Arias' who are carrying the entire financial burden of this subdivision to pay for the additional studies.

Mr. Kerner noted that this applicant is being constrained by an absentee applicant and questioned whether this is something that they need to resolve.

Mr. Praga agreed, but advised that this Board is constrained as well. There are cases that state that if an application is approved at any point in time and there has been no substantial change either factually on the land or the law, a Board is constrained to approve that application again with perhaps minor variations but it is not necessarily appropriate to insist on significant changes.

Mr. O'Donnell noted that the May 13, 2008 minutes noted some drainage that flowed into the lower property. He further noted that there seemed to be a stream on this property that flowed into the reservoir and asked that the applicant provide more information regarding this. In addition, he advised that this Board may want to hear from the Norwalk watershed.

Mr. Goett noted that the runoff from lot 2 is being diverted into a trench that runs along Route 123 and questioned what occurs below that lot.

Mr. Riina advised that the stormwater facilities had been designed to maintain the existing conditions for the downstream properties. He advised that this runoff will eventually discharge into a wetland.

Mr. Tetelman advised that he would still be in favor of prohibiting further subdivision of lot 2.

Mr. Praga advised that he would need empirical evidence to support this or it could end up in litigation.

Mr. O'Donnell questioned whether with the passage of time that the wetlands should be redelineated.

Mr. Johannessen advised that he would like to go out to the site and verify the boundaries. It appears that the wetlands are defined by the topography. The site has been flagged several times. In addition, if the owner of lot 2 owns any contiguous property, this information should be provided.

III. DISCUSSION

Cross River Wine Merchant (Trilex, LLC), applicant, (June S.C. Yozzo, owner of record), 16 North Salem Road, Cross River – Request to modify resolution granting Site Development Plan Approval dated August 14, 2012 - Cal. # 4-12 P.B.

Mike Novak was present.

Mr. Novak advised that a bond was no longer necessary as he now wishes to open for business with the parking lot paved.

Mr. Kerner read the March 12, 2013 correspondence to the Planning Board from Edward J. Delaney, Jr., Project Manager from Bibbo Associates, LLP into the record.

RESOLUTION

WHEREAS, Edward J. Delaney, Jr., Project Manager of Bibbo Associates, LLP by letter dated March 12, 2013, requested on behalf of the applicant, Trilex, LLC, that the original resolution, Cal. #4-12 P.B., adopted by the Planning Board on August 14, 2012 be amended so as to eliminate the requirement of escrow or bonding of the proposed paving of the existing parking lot and further requested that all paving be completed prior to the issuance of the certificate of occupancy.

BE IT RESOLVED, that:

1. Condition #2 is deleted.
2. Addition of a new category in the condition section of the resolution entitled “Conditions to be Satisfied Prior to the Commencement of any Site Work”. Addition of a new condition under this section, as follows: “Prior to the commencement of any site work, a pre-construction meeting shall be conducted with the applicant, contractor and Town Engineer.”
3. Addition of new category in the condition section of the resolution entitled “Conditions to be Satisfied Prior to the Issuance of a Certificate of Occupancy.” Addition of two new conditions under this section, as follows: 1) “Prior to the issuance of a certificate of occupancy, the entire parking lot shall be paved to the satisfaction of the Town Engineer.” 2) “Prior to the issuance of a certificate of occupancy, a final site inspection shall be conducted with the applicant, contractor and Town Engineer. The Town Engineer shall submit a final inspection report to the Town Building Inspector identifying that the subject property conforms to the approved Site Development Plan”.

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

In Favor: Tetelman, La Sorsa, Kerner, Goett, O’Donnell

IV. REQUESTS FOR EXTENSION OF TIME

Smith Ridge Housing, LLC, 202 Oakridge Commons, South Salem, New York–Final Subdivision Plat Approval to construct a 46 unit condominium complex known as “Oakridge Gardens aka Laurel Ridge” – Cal. #6-02 P.B.

Philip Pine was present.

On a motion made by Mr. Tetelman, seconded by Mr. Goett, the Planning Board granted the February 8, 2013 request of Philip Pine for a 90-day extension of time to the resolution granting Final Subdivision Plat Approval dated June 12, 2012.

Vote: In Favor: Tetelman, La Sorsa, Kerner, Goett, O’Donnell

Rui Ferreira Oliveira, 8 Brookside Trail, South Salem – Cal. #1-10 W.V. & Cal. # 25-12 W.P.

Rui Oliveira was present.

Ms. Clark advised that Mr. Oliveira has had several extensions to complete the work. The last one, a 60-day extension, expired in October 2012..

Mr. Oliveira advised that he did some of the work, but had not done much. He has been busy and does not have the funds. The time frame given originally was not a real time frame. In response to Mr. Kerner’s inquiry as to what would be feasible, Mr. Oliveira advised that he had to wait for the ground to dry up, September 1st would be realistic.

Mr. O’Donnell noted that this matter had a long history and expressed concern that if the work was not done by the deadline that they would be getting into the winter months.

The Board agreed to a deadline of August 1, 2013, with a progress report to be provided in June that should include photos of the work in progress.

On a motion made by Mr. Tetelman, seconded by Mr. La Sorsa, the Planning Board granted an extension of time to fully comply with the terms of the resolution adopted November 15, 2011 by August 1, 2013 subject to the submission of a written progress report received on or before June 4, 2013.

Vote: In favor: Tetelman, La Sorsa, Kerner, Goett, O’Donnell

Christopher & Sandra Ramsay, 14 Benedict Road, South Salem – Cal. #9-11 W.V. & Cal. #61-12 W.P.

Ms. Clark acknowledged receipt of the February 14, 2013 request of Christopher Ramsay for additional time and noted that she had met with Mr. Ramsay on January 10th.

On a motion made by Mr. O’Donnell, seconded by Mr. La Sorsa, the Planning Board granted an extension of time to fully comply with the terms of the resolution adopted on April 24, 2012 by

August 1, 2013 subject to the submission of a written progress report received on or before June 4, 2013.

Vote: In favor: Tetelman, La Sorsa, 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. Clark advised that he has a buyer for the property. He is requesting additional time so that they may construct the residence. He advised that he would be doing the site work.

On a motion made by Mr. Tetelman, seconded by Mr. Goett, the Planning Board granted an extension the wetland activity permit to November 1, 2013.

Vote: In Favor: Tetelman, La Sorsa, Kerner, Goett, O'Donnell

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 there had been some difficulty associated with the cost of the ramp and some delays associated with the licensing process.

On a motion made by Mr. Tetelman, seconded by Mr. La Sorsa the Board granted the final 90-day extension of time to comply with the resolution dated May 8, 2012.

Vote: In Favor: Tetelman, La Sorsa, Kerner, Goett, O'Donnell

V. TOWN BOARD REFERRAL

Proposed Zoning Text Amendment – Proposed Amendments to § 220-23 Schedule of Regulations for residential districts, regarding minimum acreage and number of horses permitted and § 220-47 Waiver of Application Procedures, regarding agriculture uses on properties located within a state or county agriculture district

The discussion was tabled to the April agenda.

VI. CORRESPONDENCE & GENERAL BUSINESS

Septic Non-Compliance

Ms. Clark advised that some wetland activity permits issued included a condition that the septic systems were to be maintained on an annual basis. There have been some instances where there has been non-compliance with this condition. She suggested that prior to issuing any violations as provided for in the code, that the Board consider sending a notice to remedy with a certain time period to comply.

The Board was in agreement with the suggestion.

VII. MINUTES OF February 19, 2013

On a motion made by Mr. Goett, seconded by Mr. Tetelman, the minutes of February 19, 2013 were adopted.

Vote: In Favor: Tetelman, La Sorsa, Kerner, Goett, O'Donnell

On a motion made by Mr. Tetelman, seconded by Mr. Goett, the Board entered into an Executive Session with counsel to discuss potential adjudication and litigation at 8:40 P.M.

On a motion made by Mr. Tetelman, seconded by Mr. Goett, the Board exited the Executive Session at 9:30 P.M.

Vote: In Favor: Tetelman, La Sorsa, Kerner, Goett, O'Donnell

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, the Board adjourned the meeting at 9:31 P.M.

Respectfully submitted,

Aimee M. Hodges
Planning Board Secretary