

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, December 15, 2015 at 7:30 p.m.

Present: Jerome Kerner, Chairman
Robert Goett
John O'Donnell
Greg La Sorsa
Ron Tetelman
Judson Siebert, Esq., Keane & Beane P.C., Planning Board Counsel
Greg Monteleone, Esq., Special Counsel
Jan Johannessen, AICP, Kellard Sessions Consulting, Town Planner/Wetland Consultant
Ciorsdan Conran, Planning Board Secretary

Also in Attendance: Janet Anderson, Conservation Advisory Council (CAC).

Mr. Kerner called the meeting to order at 7:28 p.m. and noted the exit. He also stated that Robert Goett resigned from the Planning Board and thanked him for his two years of service on the Board. Mr. Kerner also noted that Greg Monteleone, Esq., stepped down from serving as Special Counsel to the Planning Board for cell tower and wetland matters and thanked him for his service; those duties will be assumed by Jud Siebert, Esq. of Keane and Beane.

I. PUBLIC HEARING

Cal# 12-10PB

Hayes/Stein Subdivision, 124 North Salem Road, South Salem, NY, Sheet 15, Block 10533, Lots 7, 8 & 9 (Jocelyn Hayes and Janet Stein, owners of record) – Application for Preliminary and Final Subdivision Plat Approval in connection with a three-lot subdivision - Continuation of Public Hearing

Taylor Palmer, Esq., from Cuddy & Feder, Michael Sirignano, Esq. and Ed Delaney from Bibbo Associates, LLP, were present on behalf of the applicant.

In response to questions raised by attorneys on behalf of Adam Rose, 188 North Salem Road, both during and after the November 17, 2015 Planning Board meeting Mr. Palmer prepared a summary dated December 10, 2015. Mr. Palmer also noted an email dated December 15, 2015 from Jeri Barrett, RLA, which explained the use of the Levine label on a separate, adjoining lot that is not part of this application. This email was subsequently circulated among the Board members and consultants.

Mr. Tetelman stated that this subdivision meets the Town standards.

John Phelan, Esq. of Harris Beach, spoke on behalf of Adam Rose, and thanked the Board for continuing the public hearing. His firm reviewed this application through a FOIL request and concluded this is a four-lot subdivision, not three-lot, and one lot is a non-confirming lot plus there are non-confirming uses on these properties. Mr. Phelan suggested that if the Board were to approve the subdivision it would be rubber-stamping something that is non-conforming.

Mr. Siebert noted that the Building Department is responsible for enforcement; complaints concerning alleged violations should be made to that department. He stated the application before the Planning Board proposed altering lot lines among the three tax lots on this parcel and does not create a fourth lot.

Mr. Tetelman requested an opinion from Peter Barrett, Town Building Inspector, concerning whether there are any unpermitted activities on any of the three lots.

There were no other comments from the public.

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, The Board closed the public hearing at 7:45 pm.

In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell and Mr. Tetelman.

II. PROJECT REVIEW

Cal# 12-13PB and Cal# 13-14SW

Guillermo Arias, 411 Smith Ridge Road, South Salem, Sheet 0050, Block 09834, Lot 28, & Lexus Holding Company, LTD, Smith Ridge Road, South Salem, Sheet 0050, Block 09834, Lot 162 – Request to amend approving Resolution

Allan Rothman, Lexus Holding, the owner was present.

Mr. Johannessen summarized the previously approved Resolution and stated that Condition #24 should be eliminated as it required the construction of a septic system on Lot 1 (owned by Arias) prior to the issuance of the Certificate of Occupancy for Lot 2 (owned by Lexus Holding).

On a motion made by Mr. O'Donnell, seconded by Mr. Goett, the Board agreed to amend the existing Resolution to eliminate Condition #24.

In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell and Mr. Tetelman.

III. SKETCH PLAN REVIEW

Cal #10-15 PB

Wilder Balter Partners, NY State Route 22, Goldens Bridge, NY 10526, Sheet 5, Block 10776, Lots 19, 20 & 21 (Wilder Balter Partners, Inc., owner of record) – Application for a 46 unit MF development on a ±35.4 acre parcel.

John Bainlardi, Wilder Balter Partners and Jeff Contelmo, P.E., Insite Engineering were present on behalf of the owner.

Site Walk Report

Mr. O'Donnell recapped the December 5, 2015 site visit on which Mr. Kerner, Mr. Goett, Mr. O'Donnell and Mr. Tetelman were accompanied by Mr. Bainlardi, Mr. Contelmo, Joseph Tansey (CAC) and Greg Monteleone (OSPAC).

Mr. O'Donnell noted the group walked up the steep driveway to the plateau and after viewing certain steep slopes and a ravine, the applicant proposed moving the north building more to the east which would allow its parking to be closer to Route 22. There was discussion of visual impact along Route 22 and highway noise levels. The applicant also proposed moving the east building further east to avoid a ravine and steel slopes behind some of the buildings. Septic and water placement were also discussed.

Statement by Mr. O'Donnell

Mr. O'Donnell advised that at the conclusion of the site walk he and Mr. Bainlardi discussed their possible attendance at the Pace Law Use Training Institute and likely participation at a visit to the Bridleside in 2013 – prior to any discussion concerning the current application.

New Plan Proposed

Mr. Contelmo outlined adjustments shown on the plan dated December 14, 2015: the driveway moved to the north, the building in the ravine moved to the east and the roadway was shifted to the east.

Mr. Bainlardi noted that the proposed development was now five buildings with 46 units. Building 5 has been eliminated and the traffic circle has been moved.

Mr. LaSorsa asked the cost per building or unit. Although this site will have higher infrastructure costs, Mr. Bainlardi responded that he could supply the Board with Bridleside costs which has similar buildings.

Mr. Kerner asked if applicant had done additional community outreach. Mr. Bainlardi responded that he would be walking the site with Janelle Robbins, Executive Director of the Bedford Audubon Society (BAS), with an eye to a connecting trail to the BAS site on Todd Road, and attending a second meeting of the Goldens Bridge Hamlet Association to be held January 20, 2015. He also noted that when plans are more formalized they will be sent to the Goldens Bridge Fire Department for review.

Mr. O'Donnell asked about distance to area public transportation. Mr. Bainlardi responded that at Bridleside they own a van and have a driver to take residents to transportation hubs as well as doctors' offices and retail shops; the schedule is determined by the residents' needs. Mr. O'Donnell asked if there could be a sidewalk along Route 22. Mr. Bainlardi responded that that would be up to the Department of Transportation.

Mr. O'Donnell asked if there could be a preference for senior citizens. Mr. Bainlardi did not know. He noted that at Bridleside there are a number of retired seniors who had downsized.

Mr. LaSorsa asked if the applicant could supply the Board with a breakout of the Bridleside residents. He also asked if these units were AFFH rentals under the HUD Settlement and if so, what is the ceiling on the income of a resident. Mr. Bainlardi responded that it was 50% of the median household income for Westchester County.

Mr. LaSorsa asked about the process for obtaining this housing. Mr. Bainlardi responded that potential residents apply to a not-for-profit like the Housing Action Council. The units are marketed for 120 days within the nine counties: the five boroughs of NYC, Nassau, Suffolk, Westchester, Putnam, Dutchess and Rockland.

Mr. LaSorsa asked on the timeline of the project. Mr. Bainlardi responded that the financing sunsets on December 31, 2016.

Mr. O'Donnell asked if the mortgage recording tax and/or sales tax were waived for a project of this type. Mr. Bainlardi responded there would be sales tax on building materials and any waiver is decided by NYS. He did not know about mortgage recording tax.

Mr. LaSorsa asked for the breakout of 1-, 2- and 3-bedroom units. Mr. Bainlardi responded that there would be 4 to 5 3-bedroom units and twice as many 1- and 2- bedroom units. He also noted that the 1- bedroom units would be 800 sf and rent between \$800-900 per month while the larger units would be over 1,000 sf and rent between \$1,100 – 1,200. Mr. Bainlardi noted this site is not project based so there are no units specifically allocated to Section 8 only. He noted that in Westchester County a landlord cannot refuse an applicant with a Section 8 voucher.

Mr. Kerner noted that the Board had received the EAF long form, Part I.

Mr. Bainlardi stated he had received the Kellard Sessions memo and had no issues with it. He also invited the Board and its consultants to visit any of the Wilder Balter sites.

Mr. LaSorsa asked the applicant to supply the Board with data on Bridleside's residents' age demographics and local services responding to the Bridleside's residents' needs.

Mr. Siebert outlined what it meant to be lead agency. He stated that the Board would be armed with enough information from the applicant and consultants to make the determination as to what type of project this is and decide what level of SEQRA review would be required. Mr. Siebert defined a negative declaration or "neg dec," as a determination by the lead agency that an action will not result in a significant adverse environmental impact and a positive declaration or "pos dec," which would require an EIS to be prepared.

A motion was made by Mr. Tetelman, seconded by Mr. Kerner, that the Board be named lead agency on this applicant's SEQRA Review.

In favor: Mr. Kerner and Mr. Tetelman.

Abstained: Mr. Goett, Mr. La Sorsa and Mr. O'Donnell.

Cal#11-15PB

Elegant Banquets, 1410 Route 35, South Salem, NY 10590, Sheet 39, Block 10549, Lot 17 (South Salem Owners, LLC, owner of record) - Application for Sketch Plan Review in connection with an addition to the existing building and modification to the existing site

Michael Sirignano, Esq.; Russell Davidson, FAIA, KG&D Architects; Wesley Stout, ASLA, and Jan Goldfluss, Wesley Stout Associates; Timothy Cronin, P.E., Cronin Engineering were present on behalf of the potential owner, Simon Curtis, Elegant Banquets.

Mr. Sirignano stated that Elegant Banquets is under contract to purchase the 24-acre Le Chateau property. He noted that the purchase is contingent on site plan approval of the proposed one-story, 8,000 sf addition. Mr. Sirignano stated that the site is a legally non-confirming, restaurant/banquet hall, and that non-conformity would continue with this proposal.

Mr. Davidson presented aerial and 3D views of the 8,000 sf addition and described how the alterations and additions would highlight the existing building. He noted that the main entrance would remain as the main entrance but that a cottage and garage at the rear are to be demolished.

Mr. Stout outlined the landscape plan beginning with the forecourt. He noted that the plan is respectful of the existing building, screens off service areas and includes the restoration of the ceremonial garden. Mr. Stout said the addition isn't meant to take away from the manor house.

Mr. Kerner requested that all area residences (in CT and NY) be shown on the next set of plans.

Mr. Cronin outlined the existing septic which received Department of Health approval in 1975 for 14 seepage pits and a flow of 4,300 gallons per day. He noted that in 1985 or 1986 an expansion added 44 seepage pits and these pits are in good condition.

Mr. Kerner stated that because the escrow was not received by the submission deadline the Town Planner did not review the sketch plan.

Mr. Johannessen noted that the architectural and landscape plan would also need to be submitted.

Mr. Tetelman asked Mr. Cronin to locate the wells.

Mr. Curtis stated that the site would have one event at a time and between 120 and 150 cars are expected per event plus cars for the 20 employees. He noted that the primary market is brides and grooms and possibly proms and business meetings/parties.

Mr. Cronin noted that usage/parking would be limited by the capacity of the septic system.

Mr. Sirignano invited the Board for a site walk and noted that all uses are to be inside with the exception of outdoor wedding ceremonies.

Mr. Curtis stated that Le Chateau closed on February 15, 2015.

Ms. Anderson asked if there was any intention to develop the back lawn or pond area. Mr. Curtis reiterated that he wanted the uses to be inside.

IV. WETLAND VIOLATIONS

Cal #2-11 WV

Todd Farm, LLC, 47 Todd Road, Katonah, New York, 10936, Sheet 6, Block 10777, Lot 44 (Todd Farm, LLC, owner of record) Consideration of draft Resolution

No owner was present.

Greg Monteleone, Esq., recounted that a summons was issued April 7, 2011 by the Wetland Inspector for unpermitted tree removal and land disturbance within a regulated wetland buffer area. A Wetland Activity permit 20-10 WP was issued pursuant to the Planning Board's resolution dated August 11, 2009 under Cal. #5-08 W.V. and the Wetland Inspector determined that the restored vegetative cover would prevent any additional soil erosion.

Mr. O'Donnell asked if the owner was notified to attend tonight's meeting. Mr. Monteleone did not believe they were.

On a motion made by Mr. Tetelman, seconded by Mr. LaSorsa, the Board adopted the Resolution.

In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, and Mr. Tetelman.

Abstained: Mr. O'Donnell

V. DISCUSSION

Cal #4-14 W.V. and Cal #69-14 W.P.

James Sandler, 28 Lake Street, Goldens Bridge, NY 10526, Sheet 7F, Block 12663, Lot 5 (James Sandler – owner of record) – Request to demolish remains of the existing residence

Thomas Stalzer, Stalzer Architect, was present on behalf of the owner and proposed demolition of the fire-damaged house. The applicant received approval from the Westchester County Health Department and is in the process of obtaining a demolition permit.

Mr. Kerner asked if there would be further disturbance within the wetland buffer.

Mr. Johannessen noted that the house is within the wetland buffer, has an open violation and that an erosion control plan must be submitted prior to demolition. He stated that demolition is required to investigate the foundation and prior to the submission of the subsequent site plan. The applicant will have to reappear before the Board for design of the new house.

Mr. O'Donnell asked if any materials were submitted to the Board prior to this meeting.

Mr. Johannessen said no. The Town Planner asked the applicant to appear at tonight's meeting.

On a motion made by Mr. Tetelman, seconded by Mr. LaSorsa, the Board allowed demolition of the fire-damaged house.

In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, and Mr. Tetelman.

Abstained: Mr. O'Donnell

Cal# 8-14PB, Cal# 95-14WP, Cal# 20-14SW

Goldens Bridge Village Center, NYS Route 22, Goldens Bridge, NY 10526, Sheet 4, Block 11126, Lot 07 (Stephen Cipes, owner of record) Request to waive tree survey

Robert Lauria, property manager of North County Shopping Center; Beth Evans, Evans Associates; and Peter Helmes, AIA, The Helmes Group were present on behalf of the owner.

Ms. Evans asked that in lieu of performing a tree survey the applicant be approved to do mitigation to save the healthy trees on the perimeter of the proposed daycare play yard and then submit a landscape plan.

Mr. Johannessen agreed that it was more beneficial to develop a tree preservation plan than document trees that would be removed due to construction.

Mr. Lauria noted that the entire plaza is to be renovated.

Mr. LaSorsa asked what is planned.

Mr. Helmes asked for a referral to ACARC and described Phase I – development of the northern end of the parking lot and Phase II – the façade renovation of the existing storefronts and plaza area.

Mr. LaSorsa asked if the buffer between Route 138 is to be maintained.

Mr. Siebert noted that the waiver request must be in writing.

The Board referred the project to ACARC.

Mr. LaSorsa asked the size of the new building and proposed daycare center. Mr. Helmes stated that the two-story building would be 16,000 sf of which the daycare is 6,000 sf.

Ms. Anderson asked about a potential path to Route 138. Mr. Helmes stated that there would be one cross walk to the train station.

VI. REQUEST FOR EXTENSION OF TIME

Cal #5-12 PB, #85-13 WP

New Cingular – 117 Waccabuc Road, Goldens Bridge, NY 10526, Sheet 0011, Block 11137, Lots 35 and 39 (Francis Coyle, owner of record) and Sheet 0011, Block 11137, Lot 52 (Ash Tree Development, owner of record) Extension of time to resolution granting Special Use Permit and Wetland Activity Permit dated December 11, 2012

Mannie Vicente, Homeland Towers, was present on behalf of the owner and stated that Verizon's equipment was installed and operational and AT&T was nearing completion and could be live by the end of the year.

Mr. Johannessen stated that Kellard Sessions had done the wetland inspection and items owed are the as-builts.

Mr. Vicente stated they were preparing the as-builts and have sent the electrical inspection report to the Building Department. He expects to be issued a CO within the next month.

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, the Board granted a 90-day extension to the applicant's Special Use Permit and Wetland Activity Permit expiring December 11, 2015.

In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell and Mr. Tetelman.

Cal #1-13 PB, #23-14 WP

New York SMSA Limited Partnership d/b/a Verizon Wireless – 117 Waccabuc Road, Goldens Bridge, NY 10526, Sheet 0011, Block 11137, Lots 35 and 39 (Francis Coyle, owner of record) and Sheet 0011, Block 11137, Lot 52 (Ash Tree Development, owner of record) - Extension of time to resolution granting Special Use Permit and Wetland Activity Permit dated August 13, 2013

Michael Sheridan, Esq., Snyder & Snyder, was present on behalf of the owner.

Mr. Johannessen stated that the Building Department must first issue the CO on the tower to New Cingular, then to Verizon.

On a motion made by Mr. Tetelman, seconded by Mr. Goett, the Board granted a 180-day extension of the applicant's Special Use Permit and Wetland Activity Permit expiring December 15, 2015.

In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell and Mr. Tetelman.

VII. REQUEST CONCERNING TOWN ANTENNA ADVISORY BOARD

Mr. O'Donnell asked the Town Supervisor for an update from the Town's Antenna Advisory Board.

VIII. REFERRALS FROM THE TOWN BOARD

A. Local Law Amendments of Town Code to Chapter 220, Section 220-10, entitled "Building Lots."

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, the Board adopted the resolution recommending amendments to the Town Code's Chapter 220, Section 220-10, entitled "Building Lots," which clarifies the definition of new building lots for the contiguous building area requirement and makes recommendations concerning adjoining properties and properties across the street for possible accessory uses.

In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell and Mr. Tetelman.

Mr. Johannessen recommended that there be a defined list of accessory structures and uses on the secondary lot be limited, for example, a shed or garage would be allowed but a pool or septic system would not.

Mr. Siebert noted that the report can be amended and that the Planning consultants develop the full text limiting specific types of structures and uses.

Mr. O'Donnell suggested that Mr. Johannessen speak directly to the Town Board as to the limited uses and accessory structures allowed under this amendment as mentioned in the resolution.

B. Recommendation concerning Assumed Rate of Return on Property of Middle Income Housing Applicants

Peter Parsons, Town Supervisor, stated that the Housing Committee unanimously recommended that applicants for middle-income housing have cash holdings assessed at an assumed return of 2% instead of the current rate of 8%.

Jud Siebert, Esq., researched how area towns addressed this and he found that many are silent or defer decisions to local housing committees.

On a motion made by Mr. Tetelman, seconded by Mr. Goett, the Board instructed Mr. Siebert to prepare a letter supporting the Housing Committee's recommendation to lower the rate of assumed return from 8% to 2% on cash assets held by applicants for middle-income housing.

In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, and Mr. Tetelman.

Abstained: Mr. O'Donnell

C. Proposed Zoning Amendment – Visnor Property, LLC, 469 & 471 Smith Ridge Road, Sheet 0053, Block 09834, Lots 32-33 and 34

Mr. Kerner noted that the Board received a letter from Michael Sirignano, Esq., dated November 16, 2015 requesting a change in zoning from Retail Business (RB) to General Business (GB) for the Visnor property and that the Board continues to find the additional activities permitted in a GB area objectionable for the site.

On a motion made by Mr. Tetelman, seconded by Mr. LaSorsa, the Board agreed to send a letter noting its continued objection to the proposed change in zoning to the Town Board.

In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell and Mr. Tetelman.

IX. MINUTES OF November 17, 2015

On a motion made by Mr. Tetelman, seconded by Mr. LaSorsa, the minutes of November 17, 2015 were adopted.

In favor: Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell and Mr. Tetelman.

Abstained: Mr. Goett

X. 2016 MEETING DATES

The Board discussed the proposed meeting dates for 2016. In order to achieve a quorum, the Board decided to move the January meeting to January 26th.

XI. EXECUTIVE SESSION

On a motion made by Mr. Tetelman, seconded by Mr. Goett, and in order to preserve attorney client privilege, the Board entered into executive session at 10:09 pm.

On a motion made by Mr. Tetelman seconded by Mr. Goett, the Board adjourned the executive session at 10:27 pm.

XII. ADJOURNMENT

On a motion made by Mr. Tetelman, seconded by Mr. Goett, the meeting was adjourned at 10:30 p.m.

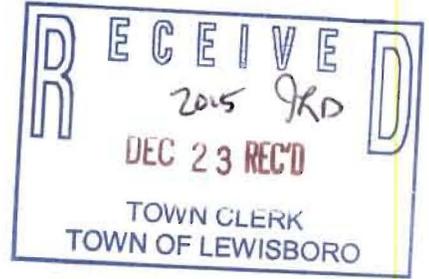
In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell and Mr. Tetelman.

Respectfully Submitted,



Ciorsdan Conran
Planning Board Secretary

**RESOLUTION
LEWISBORO PLANNING BOARD
AMENDMENT TO APPROVING RESOLUTION**



ARIAS/LEXUS HOLDING COMPANY, LLC SUBDIVISION

Sheet 50, Block 9834, Lots 28 & 162
Cal. # 12-13 P.B.

December 15, 2015

WHEREAS, Guillermo Arias and Lexus Holding Company, LLC (“the applicants”) are proposing a 2-lot subdivision (“the proposed action”) on ± 17.7 acres of land, located on Smith Ridge Road (NYS Route 123) and within the R-2A Zoning District (“the subject property”); and

WHEREAS, the two (2) existing tax lots were created by deed and were never formally subdivided, as required by Chapter 195, Subdivision of Land, of the Town Code; and

WHEREAS, the applicants are proposing to legalize the formation of the two (2) lots and have reapplied to the Planning Board for subdivision approval; and

WHEREAS, more specifically, the proposed action will result in the following:

- Lot 1, owned by Guillermo Arias, is proposed to consist of ± 5.001 acres of land and will contain an existing single-family residence, asphalt driveway, detached garage, barn, other detached accessory structures, and a potable water well; a new septic system and expansion area is proposed on Lot 1; and
- Lot 2, owned by Lexus Holding Company, LLC is proposed to consist of ± 12.7 acres of land, a proposed single-family residence, paved driveway, septic system and expansion area, potable water well and stormwater improvements; and

WHEREAS, on May 19, 2015, the Planning Board granted Final Subdivision Plat Approval and a Town Stormwater Permit, subject to conditions; and

WHEREAS, on November 17, 2015, the Planning Board granted a 90-day extension, requiring all conditions of approval to be satisfied on or before February 15, 2016, unless further extended by the Planning Board; and

WHEREAS, Condition #24 of said approving resolution states: “Prior to the issuance of a Certificate of Occupancy for Lot 2, the septic system proposed on Lot 1 shall be installed to the satisfaction of the WCDH. The applicants shall provide all necessary permits issued by the Health Department in connection with the septic system proposed on Lot 1”; and

WHEREAS, the Planning Board and its consultants were under the impression that the above-referenced condition was a requirement of the WCDH; and

WHEREAS, the WCDH has since clarified this issue and has informed the applicants that it will not tie the issuance of a Certificate of Occupancy for Lot 2 to the installation of the septic system on Lot 1; and

WHEREAS, the applicant has requested that the Planning Board amend its May 19, 2015 resolution to eliminate Condition #24.

NOW THEREFORE BE IT RESOLVED THAT, the Planning Board finds that the elimination of Condition #24 will not represent a significant change to the overall project and the Planning Board only included this condition in its approving resolution because the WCDH had previously required same; and

BE IT FURTHER RESOLVED THAT, Condition #24 is hereby eliminated from the Planning Board's May 19, 2015 resolution; and

BE IT FURTHER RESOLVED THAT, all other statements, requirements, conditions, and timeframes specified within the May 19, 2015 Resolution shall remain in full force.

ADOPTION OF RESOLUTION

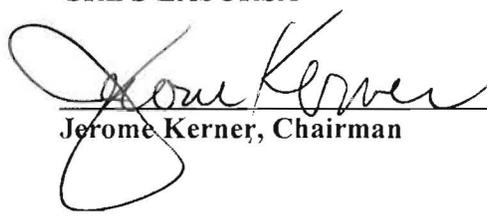
WHEREUPON, the Resolution herein was declared adopted by the Planning Board of the Town of Lewisboro as follows:

The motion was moved by: John O'Donnell

The motion was seconded by: Robert Goett

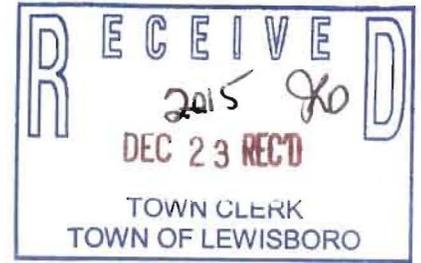
The vote was as follows:

JEROME KERNER	<u>Aye</u>
JOHN O'DONNELL	<u>Aye</u>
RON TETELMAN	<u>Aye</u>
ROBERT GOETT	<u>Aye</u>
GREG LASORSA	<u>Aye</u>



Jerome Kerner, Chairman December 15, 2015

**RESOLUTION
TOWN OF LEWISBORO PLANNING BOARD
DECEMBER 15, 2015**



VIOLATION OF WETLAND AND WATERCOURSE LAW
TODD FARM, LLC
Calendar #2-11 W.V.

TODD FARM, LLC, the record owner of 47 Todd Road, Katonah, New York, for violations of Town of Lewisboro Freshwater Wetland and Watercourse Law, on Sheet 6, Block 10777, Lot 44

WHEREAS, on April 7, 2011, a Wetland Activity Violation was issued by the Wetland Inspector for the following offenses:

A violation of section 217-5(D)(1)(a and b), and Section 217-2 “Regulated Activity or Use” (14) of the Town’s Wetlands and Watercourse Regulations, specifically the unauthorized tree removal and land disturbance within a regulated wetland buffer without a Permit.

WHEREAS, a Planning Board Summons was issued on April 7, 2011 for these violations of the Town Wetland and Watercourse Law; and

WHEREAS, the owner of record was notified by Planning Board Summons to appear before the Board on April 26, 2011; and

WHEREAS, the Planning Board noticed this appearance on the wetland violation for April 26, 2011; and

WHEREAS, on April 26, 2011, the attorney for the owner of record, Mark Borteck, Esq., appeared at the meeting and was informed of his client’s rights in regard to the violations to proceed to hearing at a subsequent meeting of the Planning Board and his client’s right to examine and cross-examine witnesses at that time; and

WHEREAS, the attorney for the owner of record requested an adjournment rather than enter a plea and discuss the matter further with the Wetland Inspector; Further the Planning Board agreed to visit the site on April 30, 2011 at 9:00 AM; and

WHEREAS, the matter was placed on the June 28, 2011 Planning Board Calendar and Mark Borteck, Esq., the attorney for the owner of record was present and sought an adjournment in order to further address the violations with the Wetland Inspector; and

WHEREAS, the Planning Board, at the meeting held on August 9, 2011 adjourned the matter for control purposes with a date uncertain; and

WHEREAS, the Planning Board, at the meeting held on September 27, 2011 approved an application for the Wetland Activity Permit which included a \$4,000.00 escrow deposit; and

WHEREAS, on October 7, 2011, a Wetland Implementation Permit was issued to remove approximately 80 dead Ash trees within wetland and/or wetland buffer; specifically all mitigation work shall be performed in accordance with a plan entitled "Proposed Planting remediation Plan", prepared by Paul J. Jaehnig dated June 4, 2011; all plantings shall be installed by November 1, 2011 or before April 1 and June 1, 2012 and all proposed wetland mitigation work shall be completed by June 1, 2012; and

WHEREAS, the Planning Board, at the meeting held on November 15, 2011, approved a request by the record owner's attorney, to reduce the escrow deposit to \$2,000.00; and

WHEREAS, based on the report of the Wetland Inspector detailing his findings during site visits, including May 1, 2013 and July 3, 2013, it appears the vegetative cover has been restored and that any removal of the felled trees would cause soil and vegetative disturbance, which should be avoided to minimize the potential for soil erosion and watercourse turbidity. Additionally, the most appropriate future course for this site is to allow the felled trees to continue to decompose naturally. This will permit the wetland to best support plants, shrubs, and trees. There is no need for further activity or for further supervision of the site.

THEREFORE, there being no further need for the pendency of this matter, the matter is discontinued and can now be closed.

WHEREUPON, the Resolution herein was declared adopted by the Planning Board of the Town of Lewisboro as follows:

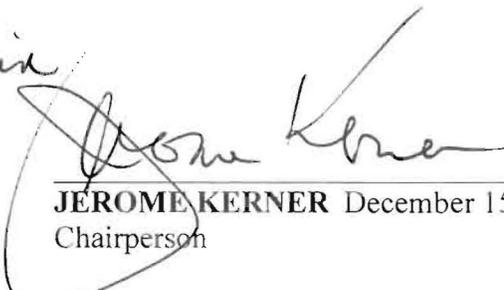
The motion was moved by: Ron Tetelman

The motion was seconded by: Neg La Sorsa

The vote was as follows:

JEROME KERNER
JOHN O'DONNELL
RON TETELMAN
ROBERT GOETT
GREG LASORSA

Aye
Abstain
Aye
Aye
Aye



JEROME KERNER December 15, 2015
Chairperson

**RESOLUTION
LEWISBORO PLANNING BOARD**

**AUTHORIZING SUBMISSION OF A REPORT AND RECOMMENDATION
TO THE TOWN BOARD OF THE TOWN OF LEWISBORO REGARDING
PROPOSED LOCAL LAW AMENDING §§220-10(A) AND 220-10(E)(2)(b)
OF CHAPTER 220, ZONING, OF THE TOWN CODE OF
THE TOWN OF LEWISBORO**

WHEREAS, a proposed Local Law amending Chapter 220, Zoning, of the Town Code of the Town of Lewisboro (the “Zoning Code”) has been referred to the Planning Board by the Town Board of the Town of Lewisboro for a Report and Recommendation pursuant to §220-80 of the Zoning Code; and

WHEREAS, the proposed Local Law will amend §220-10(A) of the Zoning Code to permit, on an “as-of-right” basis, the placement of accessory buildings, structures and/or uses on parcels other than those on which an accompanying principal building, structure or use is situated; and

WHEREAS, the proposed Local Law will amend §220-10(E)(2)(b) of the Zoning Code to include the qualifying phrase “of any new lot created by subdivision” in its definition of “buildable area;” and

WHEREAS, the Planning Board has duly considered the proposed Local Law in accordance with the provisions of §220-80 of the Zoning Code, and is prepared to issue a Report and Recommendation as required thereunder;

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board adopts the attached Report and Recommendation to the Town Board with regard to the proposed Local Law amending §§220-10(A) and 220-10(E)(2)(b) of the Zoning Code; and

BE IT FURTHER RESOLVED that, as set forth in this Report and Recommendation, the Planning Board supports the enactment of the proposed Local Law, insofar as it seeks to amend §220-10(E)(2)(b) of the Zoning Code; and

BE IT FURTHER RESOLVED that, as set forth in this Report and Recommendation, the Planning Board objects to the proposed amendment to §220-10(A) of the Zoning Code in its current form, and recommends a revised legislative approach to obtain the objective of this amendment, namely, to regulate the placement of accessory buildings, structures and/or uses on parcels other than those on which a principal building, structure or use is located through a special permit, as opposed to on an “as-of-right” basis; and

BE IT FURTHER RESOLVED that, the Planning Board Chairman is authorized to sign this Report and Recommendation; and

BE IT FURTHER RESOLVED that, the Planning Board Secretary is directed to forward a copy of the Report and Recommendation, in executed form, to the Town Board and Town Clerk forthwith; and

ADOPTION OF RESOLUTION

WHEREUPON, the Resolution herein was declared adopted by the Planning Board of the Town of Lewisboro as follows:

The motion was moved by: John O'Donnell

The motion was seconded by: Ron Tetelman

The vote was as follows: _____

JEROME KERNER Aye

JOHN O'DONNELL Aye

RON TETELMAN Aye

ROBERT GOETT Aye

GREG LASORSA Aye

Jerome Kerner, Chairman December 15, 2015

**PLANNING BOARD OF THE TOWN OF LEWISBORO REPORT
AND RECOMMENDATION TO THE TOWN BOARD OF
THE TOWN OF LEWISBORO ON PROPOSED LOCAL LAW
AMENDING §§220-10(A) AND 220-10(E)(2)(b) OF CHAPTER 220, ZONING, OF
THE TOWN CODE OF THE OF TOWN OF LEWISBORO**

PROPOSED AMENDMENT

The Town Board of the Town of Lewisboro (the “Town Board”) has referred a proposed Local Law, a copy of which is attached, to the Planning Board for a report and recommendation pursuant to §220-80 of the Zoning Code. The proposed Local Law, if enacted, will implement two (2) discrete amendments to Chapter 220, Zoning, of the Town Code of the Town of Lewisboro (the “Zoning Code”).

The amendments will affect the following changes to Zoning Code:

- Under a proposed amendment to §220-10(A), accessory buildings, structures and/or uses will be permitted, as of right, on a lot adjoining or across the street from a parcel on which an accompanying principal building, structure and/or use is situated, provided both lots are under the same ownership.
- The definition of “buildable area” as contained in §220-10(E)(2) of the Zoning Code will be further refined by the insertion of the phrase “of any new lot created by subdivision” in subsection (b) thereof.

The first amendment is evidently addressed to parcels improved (or to be improved) with a principal building or structure that cannot accommodate an accessory building, structure or use due to site size and/or physical limitations, and a commonly owned adjoining parcel or parcel located directly across the street from the property on which the principal building or structure is situated can be utilized for this purpose. The proposed amendment would allow such an adjoining parcel or parcel located across the street to serve as the site of an accessory building, structure or use. The amendment, if adopted, would allow the placement of accessory buildings, structure or uses in this fashion through standard permitting processes administered by the Building Department, thus dispensing with any review of the proposed placement of the accessory building, structure or use on a separate parcel by the Planning Board or Zoning Board of Appeals. The amendment, if adopted, will also allow this occur with no protection that the two parcels utilized for principal and accessory purposes will remain linked in common ownership.

The second amendment is intended to address an ambiguity that exists in §220-10(E) of the Zoning Code. At present, this provision contains the qualifying phrase “for any new lot created by subdivision” in subsections (1) and (2)(a), but not subsection (2)(b). Its inclusion in subsection 2(b), as proposed, will address this ambiguity.

SCOPE OF REVIEW

The Planning Board entertained these amendments as a result of a referral made by the Town Board under §220-80 of the Zoning Code. Section 220-80 specifies the review to be undertaken by the Planning Board upon a referral and states:

In recommending the adoption of any such proposed amendment, the Planning Board shall state its reasons for such recommendation, describing any condition that it believes makes the amendment advisable, and specifically setting forth the manner in which, in its opinion, the amendment would be in harmony with the Comprehensive Plan of land use for the Town and would be in furtherance of the purposes set forth in § 220-1 of this chapter. In recommending the rejection or revision of any proposed amendment, the Planning Board shall similarly state its reasons.

Pursuant to this directive, the Planning Board has considered the amendments in light of the Town Master Plan, as well as the Zoning Code. Consequently, its conclusions are based solely upon the goals and objectives articulated in the Town Master Plan and those stated in the Zoning Code.

PLANNING BOARD COMMENTS

The Planning Board reviewed the proposed amendments to the Zoning Code at its November 17, 2015 meeting.

Based upon its review of the proposed legislation, the Town Master Plan, the Zoning Code and deliberations undertaken at its November 17, 2015 meeting, the Planning Board offers the following comments:

- The Planning Board endorses the proposed amendment to §220-10(E)(2)(b). This amendment corrects a drafting oversight with regard to the minimum area lot requirement provisions specified in §220-10(E). As mentioned, the qualifying phrase “any new lot created by subdivision” is employed in identifying parcels subject to §220-10(E) in subsections (1) and (2)(a), but not subsection (2)(b). This corrective change is warranted to render consistency and remove an ambiguity within this provision. The Planning Board further suggests the Town

Board consider further clarifying this provision by referencing a specific date within this phrase, so that the term “a new subdivision” is defined in a more precise fashion. This could be affected by reference to a date certain (that is, by modifying §220-10(1), (2)(a) and (b) to state “for any new lot created by subdivision filed on or after [date to be ascertained].” The date selected could coincide with that on which the provisions of §220-10(E) were amended (which appears to be November 1, 2004 upon enactment of Local Law No. 3-2004).

- The amendment to §220-10(A) regarding the placement of accessory buildings, structures and/or uses on lots separate from those on which a principal building, structure or use is located is a significant change to the Zoning Code. The amendment could undermine significant policy considerations that guide the regulation of accessory structures. The amendment is also unnecessary with regard to the use of commonly owned adjoining parcels for accessory purposes because a landowner may merge contiguous parcels under the Town Code, thereby creating a single lot on which principal and accessory buildings, structures and/or uses can be placed.
- Traditional zoning principles dictate that accessory buildings, structures and uses remain incidental and subordinate to a principal building, structure or use. The reasoning is that the use and character of a property should be defined by its principal improvements, and activities undertaken within accessory improvements should remain limited and within the parameters of what is permitted — for example, a garage accompanying a house remains residential in nature because it serves the principal residence, thus the parcel maintains residential in terms of both character and use. The Planning Board is concerned that dividing principal and accessory buildings and structures among separate parcels can unwittingly result in the presence of a “stand alone” building, structure or use that would be otherwise prohibited in a particular zone. This may also lead to abuses.
- As an example, if a garage is placed on a lot other than that on which the home its serves is located — even if it is on an adjoining lot or on property across the street — are the same controls in place to insure that it is not utilized for a non-residential purpose? In addition, what occurs if the owner of the residential and accessory lot conveys one of the parcels alone? The amendment does not address these concerns or potential eventualities, but instead authorizes placement of an accessory building, structure or use on an adjoining lot or lot across the street on an “as-of-right” basis.

- Furthermore, the merger of contiguous parcels can be affected on an expedited basis under current provisions of the Town Code. For this purpose, no need exists to allow accessory buildings, structures or uses on an adjoining parcel. Instead, a property owner can avail him or herself of the merger process.
- With regard to parcels located across the street, the Planning Board submits this should not be permitted on an “as-of-right” basis. Should the Town Board wish to provide an avenue of relief for property owners who cannot improve parcels with an accessory building or structure, it should allow for the placement of an accessory structure on this basis through the issuance of a special use permit.
- This special use permit could be incorporated within Article V of the Zoning Code. A specific special permit for an accessory building or structure on property located across the street from the accompanying principal building or structure could be required, to be issued by either the Planning Board or Zoning Board of Appeals. Under this framework, the “approving agency” (again, either the Planning Board or Zoning Board of Appeals) would have to determine that the proposed placement of the accessory building or structure satisfies the general conditions and standards enumerated in §220-32(E) of the Zoning Code, which are intended to insure the orderly, harmonious and appropriate development of land in relation to surrounding properties. This type of special permit could likewise be subject to particular standards and requirements (like those governing accessory apartments [§220-40 of the Zoning Code] and accessory residence dwellings [§220-401 of the Zoning Code]).
- These specific standards could insure compatibility with neighboring properties by imposing specific conditions, including that the lot across the street can be suitably developed to complement the principal structure and is accompanied with deed restrictions so it can only be conveyed with the parcel on which the principal building, structure or use is located. It may also impose, as is the case of the Zoning Code special permit provisions pertaining to accessory apartments and residential dwellings, requirements as to access, water, septic and sewage disposal, utilities, location and parking.
- The Town Board should consider whether this type of special permit should be restricted to residential zones only. In this regard, the placement of accessory building, structures and uses of a commercial

nature on separate parcels could give rise to disruption of land use patterns envisioned by the Town Master Plan and Zoning Code.

PLANNING BOARD RECOMMENDATION

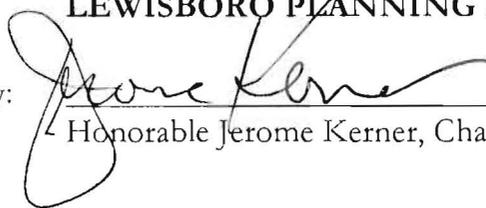
Based on the above, the Planning Board supports the amendment to §220-10(E)(2)(b) of the Zoning Code so as to include the phrase “any new lot created by subdivision.” It suggests that the Town Board consider further refining this phrase so as to include a date certain by which a “new subdivision” can be ascertained.

With regard to the proposed amendment to §220-10(A), although the Planning Board is not adverse to the concept of allowing certain property owners to place accessory structures on lots other than that on which the principal structure is located, it does not believe this should occur on an “as-of-right” basis. Moreover, it does not believe this right should be extended to adjoining lots, because this situation can currently be addressed through the process of a merger. The Planning Board suggests that in all other situations, the Town Board address this type of situation through special permit provisions with appropriate conditions, as outlined above. The Town Board should likewise engage its planning consultant to assist in the development of a special permit provision to address the situation the proposed amendment is intended to address.

Dated: Lewisboro, New York
December 15, 2015

LEWISBORO PLANNING BOARD

By:


Honorable Jerome Kerner, Chairman

State of New York
County of Westchester
Town of Lewisboro

I, Ciorsdan Conran, Secretary of the Planning Board of the Town of Lewisboro, County of Westchester, State of New York, do hereby certify that I have compared the preceding copy of a resolution adopted by the Planning Board of the Town of Lewisboro, County of Westchester, at a meeting held on the 15th day of December, 2015, and that the same is a true and correct copy of said original and of the whole thereof.


Ciorsdan Conran
Planning Board Secretary

Dated at Cross River, New York
this 15th day of December, 2015