

**Town of Bolton
PLANNING BOARD
MINUTES
Thursday October 22, 2009**

SEQR = State Environmental Quality Review
PB = (Town of Bolton) Planning Board
WCPB = Warren County Planning Board
APA = Adirondack Park Agency
LGPC = Lake George Park Commission
DEC = Department of Environmental Conservation

Present: Chairman Herb Koster, Henry Caldwell, Sue Wilson, Sandi Aldrich, John Gaddy, Donald Roessler, Chauncey Mason, Town Counsel Michael Muller and Zoning Administrator Pamela Kenyon.

Absent: none

Herb Koster opened the meeting at 6:08 PM

Herb Koster asked if there were any changes or corrections to the September 17, 2009 meeting.

RESOLUTION:

Motion by Donald Roessler to accept the September 17, 2009 minutes as written. **Seconded by** Sandi Aldrich. **All in Favor. Motion Carried.**

1) SPR09-28 WOLITARSKY, JIM. Represented by Greg Bonath. To construct a second story dormer on an existing garage, seeks Type II Site Plan Review for a new land use within 250' of the Lake George shoreline. Section 141.00, Block 1, Lot 23, Zone RCL3. Property Location: 5664 Lake Shore Drive. Subject to WCPB review. Subject to SEQR.

Greg Bonath stated that the applicant has a large detached garage with a bedroom and bathroom for family. The bathroom ceiling is very low and they are seeking to build a 10' x 12' dormer over the existing roof. The roof will not be raised any higher and the footprint will not change. He stated that the project site is away from the lake and the garage itself meets all of the setbacks. Greg Bonath stated that this addition will not be visible from anywhere but the side door of the house.

RESOLUTION:

Motion by Donald Roessler to accept application SPR09-28 as complete, waive a public hearing and grant final approval. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented with the following condition: 1) that approval is contingent upon there being no WC impact. **Seconded by** Chauncey Mason. **All in Favor. Motion Carried.**

Pam Kenyon stated that there was no WC impact for application SPR09-28.

(NOTE: items 2, 3 and 4 were heard after item 5 on the agenda)

2) SPR09-25 MEYERS, DOUGLAS & JOY. Represented by Fine Homebuilding Company, Inc. As a condition of approval set forth by the Planning Board on Thursday, June 19, 2003 when

approving SD02-25 and in accordance with Section 125.13C1 of the stormwater regulations, seek Type II Site Plan Review for a major project to remove more than 15,000 sq. ft. of vegetation. 45,760 sq. ft. is proposed. Specifically, the condition reads as follows: Each lot, upon development, will be subject to major stormwater specifications. Section 171.14, Block 1, Lot 5.4, Zone RL3. Property Location: Lake Ridge Road and being Lot 4 of the Lake Ridge Subdivision. Subject to SEQR.

Jeff Tennent stated that the applicant's are seeking to build their single family dwelling on the lot. He stated that Tom Jarrett has responded to Chris Navitsky's concerns and has provided that information tonight.

Henry Caldwell asked if this property will connect with the applicant's other property on Mohican Heights. Jeff Tennent replied yes. Henry Caldwell asked if it will be connected with a road. Jeff Tennent replied no.

Jeff Tennent explained where the site location would be for the house. He stated that this property used to have gravel pits all over the property and the will be using one of the pits for infiltration on the property.

John Gaddy asked that any exterior lighting be downward facing and shielded. Jeff Tennent agreed and stated that the colors will be dark.

RESOLUTION:

Motion by John Gaddy to accept application SPR09-25 as complete, waive a public hearing, and having met the criteria set forth in the code grant final approval. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented with the following condition: 1) any exterior lights will be downward facing and shielded. **Seconded by** Donald Roessler. **All in Favor. Motion Carried**

(Note: items 3 and 4 were heard together)

3) SPR09-26 MOUNTAIN AIRE MANAGEMENT. LLC. Represented by Jeffrey Tennent. As a condition of approval set forth by the Planning Board on Thursday June 19, 2003 when approving SD02-25, seeks Type II Site Plan Review for filtered view clearing. Specifically, the condition reads as follows: There will be no additional clearing, other than the common driveway for Lots 6, 7 & 8 without site plan review for each lot. Section 171.14, Block 1, Lot 5.5, Zone RL3. Property Location: Lake Ridge Road and being Lot 5 of the Lake Ridge Subdivision.

4) SPR09-27 MOUNTAIN AIRE MANAGEMENT. LLC. Represented by Jeffrey Tennent. As a condition of approval set forth by the Planning Board on Thursday June 19, 2003 when approving SD02-25, seeks Type II Site Plan Review for filtered view clearing. Specifically, the condition reads as follows: There will be no additional clearing, other than the common driveway for Lots 6, 7 & 8 without site plan review for each lot. Section 171.14, Block 1, Lot 5.6, Zone RL3. Property Location: Lake Ridge Road and being Lot 6 of the Lake Ridge Subdivision.

Jeff Tennent provided photos of examples of filtered views on the Diamond Ridge project. He stated that this is the same thing that he is proposing to do with these sites as well. He stated that the

house locations on the plan are the best house locations. He stated that when a filtered view is done properly it provides the desired view but not at the expense of the environment or view shed. He stated that even in the winter these houses will be blended quite well.

Jeff Tennent stated that tree removal will be done without heavy machinery. He stated that the trees would be cut and trimmed and pulled off the site. Don Roessler asked who will be doing the work. Jeff Tennent replied either his crew or Barry Kincaid's crew.

John Gaddy asked how they can be assured, that once approval is granted that the house will go in the location proposed. Jeff Tennent stated that there is no other place for the house location. He stated that he has increased setbacks in the HOA declarations so that they have to keep more space between the houses. They have to be centered on the lot and their view will be centered.

Jeff Tennent stated that any further changes to the site would require SPR before the PB every time. Herb Koster stated that he knows that he will do a good job. However, the little paragraph that he provided to them is not as intense as what they have received before for selective clearing. He is concerned with someone ripping them off. He feels that they are setting precedence lower than what they received before. He stated that Barry Kincaid previously brought in computer simulated projections of the site before and after.

John Gaddy stated that the applicant has demonstrated that they can develop a house on a particular site and keep it concealed. He asked how they can let them set the tone for any other applicants. Jeff Tennent stated that if they don't develop the site properly than it will only reflect in any future applications. Counsel asked if there were specific clearing limits. Jeff Tennent replied yes. Jeff Tennent stated that the properties currently have no lake view, yet he is being taxed for lake view. He stated that people that he has shown the lots to have a hard time visualizing the view without having one there currently. He stated that he is trying to improve the marketability of the property while controlling what is going on there.

Jeff Tennent stated that he has provided photos to show that it can be done properly. He stated that he feels that they need to have some trust in his ability. John Gaddy stated that he has demonstrated that he deserves their trust. However, he does feel that it could be more specific in the intent and purpose of this project. He stated that the applicant has and will apply the 7 laws of camouflage; i.e. keep trees at the edge, break up the bulk of the structure, keep the canopy in their project. However, they are looking for more language to back it.

Counsel asked if the declarations and covenants mention height restrictions. Jeff Tennent replied no, but it does say that they have to meet the PB conditions. Counsel stated that John Gaddy's point is well taken. Jeff Tennent stated that no cutting can be done on any of those lots without coming back before this Board. Herb Koster stated that he is concerned that they are alleviating him of that condition. Don Roessler asked if the approval for the cutting today get rid of the original condition of no further cutting without review of the PB. Counsel stated that they need to establish a baseline and verbalize it. Jeff Tennent stated that his understanding is that the original condition would remain and that if the homeowner would want to cut further they would need to come back for review.

Counsel stated that he understands the intent and knows what the developer plans. However, he does recommend this being put into a deed covenant or having something concrete to back it. Jeff

Tennent stated that all conditions of approval are on the subdivision map as well as in the HOA covenants and declarations. Counsel stated that if they are in the declarations than any perspective buyer will be aware of the conditions and will be held to them.

John Gaddy asked the applicant what 4 essential elements would he apply to this type of clearing. Jeff Tennent replied that the cutting is done on a limited and selective basis. He stated that it takes time to walk the property and determine each and every tree. He stated that they determine where they want the most visual impact to look at the lake. They keep a canopy of trees to provide the view without exposing the house. He stated that they also like to keep a mix of trees so that even in the winter the house is buffered. John Gaddy asked if they have an 80' house how he would handle the placement of trees. Jeff Tennent replied he would like to keep some bigger ones closer to the house. John Gaddy asked what other elements he would use. Jeff Tennent replied that they will not be using heavy equipment and they are not removing the stumps which will not trigger any environmental or SW concerns.

Herb Koster stated that he would like to see something similar to what was presented before for the Diamond Ridge subdivision with the computer renderings. He feels that with that they would have some sort of backing of what was proposed. He is concerned that what he is presenting is an open book at his discretion. Jeff Tennent stated that a mistake like that would only hurt him in the long run. Counsel suggested that if they are considering approval that they could require additional things of the applicant in the conditions such as setting a time limit in which this work can be done. Jeff Tennent also suggested that he could provide photography of the final product to put in the file.

John Gaddy stated that property owners are allowed the ability to remove dead and dying trees. He asked if there was any way to get some wording to encourage the replacement of any dead trees that go down to maintain the vegetative coverage as demonstrated in the photographic record. Counsel replied yes. However, some believe that if an area is left alone it will grow back on its own. John Gaddy stated that also brings up the discussion of when is a tree a tree. Counsel stated that in order to pin something done he likes Jeff Tennent's suggestion of taking a photograph of the final project. Herb Koster stated that they will not be able to enforce the replacement of trees that go naturally. He stated that property owners have the right to take down dead and dying trees and cannot be forced to replace them. He stated that he is concerned that they are getting into the discussion over-regulating people.

Jeff Tennent stated that development has come a long way especially in the last 10 years. He stated development has become much more responsible. He stated that getting everyone on board to a different way of thinking is the most important thing because then they believe it and want to do it instead of being forced to do it.

RESOLUTION:

Motion by Donald Roessler to accept applications SPR09-26 and SPR09-27 as complete, waive a public hearing and grant approval. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented with the following conditions:

1. Any future trimming or clearing needs to be reviewed by the Planning Board.
2. This project is to be completed by June 1, 2010.

3. Upon completion of the project final photographs of each site are to be taken from the house location and from the lake to establish existing conditions. These photographs are to be submitted to the Zoning office for filing with this application.
4. The applicant will keep a mix of deciduous trees and evergreens when possible.
5. The applicant will keep some of the larger trees close to the home if possible.
6. All clearing and trimming will be done without the use of any heavy equipment.
7. There is to be no removal of any stumps.

Seconded by Sue Wilson. All in Favor. Motion Carried.

5) V09-33 SIMONSON, RICHARD & VIVIAN. Represented by McPhillips, Fitzgerald & Cullum, LLP. For the construction of a proposed single family dwelling, seek area variance for 1) a deficient front yard setback. 30' is required, 25' is proposed, and 2) In accordance with Section 125-10B(2)(d), 100' is required between infiltration devices and a wetland, 82.10' is proposed. Section 186.18, Block 1, Lot 31, Zones RCH5000 & LC45. Property Location: Shallow Beach Road. Subject to WCPB review. The ZBA is seeking a recommendation from the PB.

Dennis Phillips stated that he wanted to clarify the reason as to why they were present before the PB tonight. He stated that they went before the ZBA on this application for stormwater and a setback deficiency from a ROW on their own land. He stated that it was his impression that the referral to the PB related to the drainage assistance that they would be giving to the Gatehouse Association property as part of their project. He stated that it was his understanding that it was a limited referral to deal with that specific issue as opposed to the whole project. He stated that when he read the minutes of the ZBA it did not reflect his clarification on the matter but it was something specifically that he did. He stated that they only prepared to discuss assisting the Gatehouse Association. They do not have any application before the PB at this time, nor do they have the authority to get before this Board for SPR until the variances are approved.

Dennis Phillips stated that they were just provided a copy of a letter from the APA to the ZBA and PB which requested party status pursuant to the B jurisdiction that the APA for a project that is before this PB. He stated that their position is that the letter is incorrect, improper and untimely because they do not have a SPR application before the PB. He feels that the letter could be in contempt of court because it violates a Court Order that is in their favor due to previous litigation. Dennis Phillips requested that the PB disregard the APA letter

There was further discussion on the clarification of the referral to the PB. Counsel read the ZBA resolutions with regard to this application. Dennis Phillips stated that the clarification that he requested was not added to the minutes. He felt as though the clarification narrowed the issue of the drainage plan that they would be willing to enter into with the Gatehouse. He stated that was important to them so that they could prepare for this meeting. He stated that they do not have an application for SPR here before the PB. Counsel stated that he had no disagreement with that. He also stated that the APA letter is wrong and should be completely disregarded. He stated that the APA does not have jurisdiction and was surprised to see them step back into this application.

Pam Kenyon stated that she had the recording secretary review the tape and Jeff Anthony's resolution is verbatim. She stated that the resolution stood as is. Counsel stated that the point of the referral was to get some recommendations from the PB because there are aspects of granting the variance that will bear upon the eventual SPR. He stated that Kam Hoopes tried to approve this

application but he could not get a second because there were too many open issues. Counsel stated that the people who spoke against the project at the ZBA were not 100% antagonistic to the project as a whole, but there were serious issues with drainage.

Herb Koster asked if they are to be dealing with what is on the agenda or just the drainage. Counsel replied that it would be the items that were listed on the agenda because that is what the variances are for and what the ZBA is looking to have recommendations on.

Dennis Phillips re-read the resolution from Jeff Anthony. Again he stated that his impression was that they were supposed to only discuss working with the neighbors on the drainage. He stated that he asked for clarification so that he could narrow the issue in order to prepare for tonight's meeting. Herb Koster stated that the motion also stated to address "controversial issues that were brought up tonight" and asked if the setbacks were brought up as well. Counsel stated that the setbacks were brought up. Dennis Phillips stated that his engineer has developed a SW plan and Tom Nace has reviewed and approved of the plan. He stated that he does not recall there being an issue with anything relative to the SW setback. However, there was controversy with the setback from the ROW. He stated that they made a special submission for tonight based on the clarification that he requested at the ZBA meeting.

Counsel stated that the ZBA has an expectation that the PB will provide comments and recommendations for both items on the agenda. She stated Dennis Phillips requested that his clarification be added to the ZBA minutes and provided to him.

Dennis Phillips stated that one of the issues raised at the ZBA meeting was an allegation relative to how the road on their property was affecting the road on the property owned by the Gatehouse Association. He provided a photo that shows the area prior to regulation of the wetlands and subdivision of the Gatehouse. Subdivision of the Gatehouse property took place in 1983 before any SW regulations were in effect. He gave some history as to the roadway surface, a tunnel under Huddle Brook and violations of sewage discharge from Melody Manor all of which have affected the drainage on this property. Dennis Phillips stated that there has been a history of discharge affecting the Gatehouse property but not the applicant's property.

Dennis Phillips stated that recently the Gatehouse Association has done some dredging of sediments in Huddle Bay. They removed the sediment from the bay and have put it in their common area which has created a mound system. He stated that they feel that this has acted as a back up for their drainage. Dennis Phillips stated that since the Gatehouse property has had so many problems with drainage they decided to assist them with the problem. He stated that they are offering to do whatever they can on the Gatehouse property to assist with the drainage. He stated that they have gone out there with the engineers and Mike Elliot, who has been involved in maintaining and repairing the Shallow Beach Road, and looked at what they could do to alleviate the drainage problem on the Gatehouse property and still keep it within their roadway. Shortly thereafter they received a letter from the President of the Gatehouse Association, who asked if they could install a culvert that previous was on the property so that they could provide some immediate alleviation. Dennis Phillips stated that they have re-installed a culvert that takes some of the drainage off the Gatehouse property and disperses it as ordinary run-off onto their property. He stated that they are also proposing to create a drainage ditch where a culvert once was. He stated that if they can obtain a variance from the ZBA, they are prepared to enter into an agreement with the Gatehouse Association relative to the drainage plan.

Dennis Phillips stated that D.L. Dickinson has provided a major stormwater plan that has been signed off by Tom Nace. He stated that they feel that the science has been satisfied with regard to stormwater.

With regard to the setback from the ROW to the beach, Dennis Phillips stated Shallow Beach Road is a private ROW used by 10 other people other than the applicants. It has limited use and it is entirely on their property. He stated that the construction of this home will not impede the use of this ROW.

Dennis Phillips stated that the upland area where they propose to place the house is .54 acres and the entire property is 53.7 acres. He stated that only 1% of open space will be consumed. With regard to affecting any view sheds, Dennis Phillips stated that they will only potentially affect one neighbor, the Golhoffers. He stated that they took some pictures of the Golhoffer property from the shore of Lake George, which shows that they will not be affecting their lake view at all. With regard to their view of the wetlands on the applicants' property, the Golhoffer's have not asked if they could have a scenic easement over the property. He stated that the Golhoffers were concerned with being able to see the house. Dennis Phillips stated that the applicants do not want to see them either and they are not looking to cut down any trees that would open up a view of their house.

Dennis Phillips stated that they applicants are seeking the only economic use of this property. They want to build a house on 1% of the total land. All of the land used for construction is upland and no wetlands will be used in any way.

Herb Koster addressed the PB stating that although the PB has a history with this property that they need to set all of that, aside and look clearly at what is before the Board right now.

Don Roessler asked how much of the 53.7 acres was wetlands. Dennis Phillips replied that 50.73 acres are wetlands and 2.97 acres are uplands, including the roads. He stated that the house will sit on .54 acres. Don Roessler asked where the rest of the 2.97 acres of upland is located. Dennis Phillips stated that some of it is Shallow Beach Road up to Route 9N and a portion in the southern part of the property which is east of the cemetery. Don Roessler asked how large that area was. Dennis Phillips replied approximately another half acre. Henry Caldwell stated that the half acre is big enough for the septic system and house. Dennis Phillips replied that the septic system is going in this area. He stated that if they were to put a house there they would need variances there as well. He stated that they also only have the APA non-jurisdictional letter for the proposed site and this site could be APA jurisdictional. He stated that they have wetlands and a slope to deal with by the cemetery. Sandi Aldrich asked if they have explored putting the house in this location. Dennis Phillips replied that Dennis Dickinson looked at that and did some slope measurements and found that house placement would be difficult with the average slope of 24% and the proximity of the wetlands. The current site is flat and they feel it is a better site for building. He also stated that his clients would rather not be near the cemetery.

Henry Caldwell stated that the whole development in this area is pre-existing non-conforming. He is concerned with putting a new house down there especially since the fire/emergency access is not very good. He asked if they should be looking at these details at this point. Counsel replied that they should look at different aspects because it is helpful in determining if there are other feasible alternatives.

Dennis Phillips stated that the calculated area of upland of the proposed house site is 23,522 sq. ft. The proposed footprint occupies 2,070 sq. ft. which is less than 8% of that particular area. Herb Koster stated that they would need to add all of the other impervious surfaces there in order to have a more accurate picture of the area used.

Sue Wilson asked if the variances on this application are standing the test of the RCH 5000. Pam Kenyon replied yes for the setbacks of the house from the road. Sue Wilson stated that the bulk of the property is in the LC45. Pam Kenyon agreed.

Sandi Aldrich stated that she does not feel comfortable giving the ZBA a favorable recommendation without seeing any engineering on the other possible upland building site. She is not sure if this is the best place to put and she does not have the information to support it. She stated that part of the variance process is to see if there are any other feasible alternatives. Counsel agreed. He stated that the applicants' representation has indicated that the other site also needs variances and it also has a possibility of being APA jurisdictional. Sandi Aldrich stated that she is not sure if the other variances might be less egregious.

Don Roessler stated that the ZBA is only looking at recommendations for the variances being sought and feels like they should only be dealing with that at this time. Counsel stated that neighbors brought up issues such as road maintenance, requiring a bond by the applicant to be sure that this road will be passable during construction and will be completed. Don Roessler stated that he understands their concerns because he has those concerns too. However, this will come back to them in SPR and this Board can deal with that at that time. Counsel agreed and stated that they can let the ZBA that they share that concern and will deal with it at their level. Herb Koster stated that there are a hundred other issues that they will be dealing with on SPR and that is why he encouraged the PB to just narrow the review to the variances being sought.

Herb Koster stated that in the re-organization of their ordinances he asked if they have had discussion regarding the 100' setback between wetlands and infiltration devices and that there was no setback. Pam Kenyon replied no, that was for a setback from a dwelling.

Don Roessler stated that even if the applicants received the variance the applicants will still need to come before them with SPR. Counsel agreed and stated that it will be for both the project and SW. Sue Wilson asked if they could give their recommendation to the ZBA with the assurance that the PB will review any concerns that they have at SPR and request that they indicate in their motion, should they try to approve, any particular concerns. Counsel replied yes.

Lynn Golhoffer asked if she could make a comment with regard to the application. Herb Koster replied not at this time. He stated that it is not a public hearing that they would have plenty of time to speak because there will be another public hearing at the ZBA meeting and if it does get back here for SPR there will also be a public hearing.

Sandi Aldrich stated that she is not comfortable with giving her recommendation without seeing more information on the other possible building site. Counsel stated that although he understands they do have to look at the fact that applicants have to make a decision on their chosen site and present an application. They spend a lot of money on engineering and representation to get to this point and asking them to spend a lot of money on another site so that the PB can tell them which the

better site is might not be financially feasible. Dennis Phillips stated that aside from the setback issue, the Town Engineer has signed off on the SW plan. This means that there is a plan that will work under the facts and circumstances. One of the functions of a wetland is SW management. He stated that their plan is to do SW before it gets into the wetland. Dennis Phillips stated that in terms of the request these variances requests are 20% which are relatively not substantial.

Herb Koster stated that he feels the 100' setback is an arbitrary number, there is no definite engineering to show that anything less than 100' is going to contaminate Lake George. He stated that they have a Town Engineer that they rely on and he is saying that the way that this is designed will not affect the lake.

Don Roessler stated that he would like to recommend approval of the variances but would like to see other feasible alternatives explored for the house site or a smaller house. He stated that all other issues regarding SW and road maintenance would be handled at SPR. Herb Koster stated that he is concerned with a motion to that effect because it is sitting on both sides of the fence. Counsel agreed. John Gaddy stated that he and Don Roessler have been discussing that these are not substantial requests for the setbacks and don't want this to hold up further discussions for the project. However, this doesn't mean that they are going to sign off on any other environmental concerns that they have. Don Roessler stated that he could live with those setbacks but he does not like the house location or septic plan but they are not looking at that those issues right now. Sue Wilson stated that Don Roessler is telling the applicant that he has no problem with the variance requests but take your chances coming before the PB not having explored other alternatives. Don Roessler agreed. Herb Koster asked him to verbalize it differently. Sue Wilson stated that she would like to give the ZBA their recommendation but also let the applicant know their feelings.

Dennis Phillips stated that it is the ZBA's job to determine whether or not there are other feasible alternatives. He stated that the PB will not be giving up any power by granting their recommendation. He stated that they will have input on the project at SPR.

RESOLUTION:

Motion by Donald Roessler to recommend that what is being proposed by the applicant is the minimum relief necessary to achieve what the applicant presently proposes on this project. However, a hard look should be given to what is being asked for by the ZBA because there could be other feasible alternatives, such as a smaller house in the same location which may lessen the setbacks or not require them at all. **Seconded by**, Henry Caldwell. **All in Favor. Motion Carried.**

Dennis Phillips asked for clarification of the motion. Counsel stated that the PB has recommended that the variances sought are the minimum relief necessary to achieve what is being proposed. He continued that any and all other issues (i.e. bonding for the road, road maintenance and road integrity during construction) will be properly handled during the SPR process at the PB level.

6) SPR09-20 BELL POINT SHORES HOMEOWNERS ASSOCIATION. Represented by Atty. Michael O'Connor and Jarrett Engineers. Seeks 1) to modify stormwater damage on lake access road from cul-de-sac to beach lot, 2) modify stormwater management on beach lot, 3) modify conditions of approval for the subdivision, specifically to eliminate the toilet in the support building at the lake and eliminate the requirement that the Old Bell Point Road be maintained as passable.

See SD93-04 approved by the PB on May 26, 1994. Section 156.16, Block 1, Lots 1.1 & 3, Zone RCM1.3. Property Location: Bell Point Shores. Default approval by the WCPB. Subject to SEQR.

SPR09-20 was tabled at the applicant's request.

The meeting was adjourned at 8:19 p.m.