

Philipstown Planning Board
Meeting Minutes
March 24, 2011

The Philipstown Planning Board held its regular monthly meeting on Thursday, March 24, 2011 at the VFW Hall on Kemble Avenue in Cold Spring, New York. The meeting was opened at 7:30 p.m. by the Chairman.

Present: Anthony Merante, Chairman
Kim Conner
Josephine Doherty
Michael Leonard
Kerry Meehan
Pat Sexton
Stephen Gaba, Counsel
Ron Gainer, Planner
Absent: Michael Gibbons

Public Hearing

Mr. Merante presented Ms. Doherty with a card from the Planning Board and thanked her for all the years she had dedicated to the Town of Philipstown.

Minutes

- February 17, 2011

Ms. Conner made a motion to adopt the minutes as presented. Mr. Leonard seconded the motion. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor
Michael Gibbons	-	Absent
Michael Leonard	-	In favor
Kerry Meehan	-	In favor
Pat Sexton	-	In favor

William and Susan Wood – Three-lot subdivision – East Mountain Road North, Cold Spring: Discussion

Mr. Boulukos stated that they were asked to go the CAC and they did that. He said that he did not know what the end result of that was, as he hadn't heard back from them. Mr. Boulukos presented "sheet one" to the Board and said that it showed the entire tract of land. He said that the common driveway extends from East Mountain Road North through lot three into lot two and they're proposing a new house site on lot three and the existing house site on lot two. Mr. Boulukos said that they're trying to create one lot with the current house, then one lot with the old house on lot two and a vacant lot on lot three. He said that since they last met, they generated metes and bounds for easements crossing lot three in two places – one for utilities, one for ingress/egress.

Ms. Conner asked Mr. Boulukos if he had heard back from the CAC.

Mr. Boulukos said no.

Mr. Merante asked what specifically the applicant went to the CAC for.

Mr. Boulukos said that there were steep slopes on lot three. He said that they labeled all the steep slopes.

Mr. Gainer said that he had no new comments.

Mr. Meehan asked if the house was going to be left back there.

Mr. Gainer said that the intention obviously is to offer the property for sale, which would utilize that house (inaudible). He said that was the desire of the Board

Mr. Boulukos said that it was built in 1962. He said that it needs work.

Mr. Merante said that he remembered when they were up there, they discussed that the house was there and someone told them that the kitchen had been removed so it couldn't be used again. He said that a few of them were a little skeptical back then.

Mr. Wood said that the reason they removed it was because of taxes, so that's why they're going that route.

Mr. Merante said that that was then, but in the near future or a little further down the road, it could be reinstalled.

Mr. Wood said yes and he would have to get a building permit to do that.

Mr. Merante asked if there was anything else from the Board.

There was no further comment from the Board.

Mr. Merante asked if the audience had any comment.

Mr. Joseph Ruza asked where exactly the property was on East Mountain Road North.

Mr. Gainer said all the way up the top of the hill. He said that the Board made the required referral to the CAC and he would check with them.

Mr. Meehan made a motion to close the public hearing. Ms. Conner seconded the motion. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor

Michael Gibbons	-	Absent
Michael Leonard	-	In favor
Kerry Meehan	-	In favor
Pat Sexton	-	In favor

Ms. Doherty made a motion that Mr. Gainer prepare a Resolution contingent upon CAC comment. The motion was seconded. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor
Michael Gibbons	-	Absent
Michael Leonard	-	In favor
Kerry Meehan	-	In favor
Pat Sexton	-	In favor

**Philipstown Square - Amended site plan approval – Route 9, Cold Spring:
Discussion**

Mr. Gainer said that at the last meeting, they were reviewing the sanitary disposal system. Subsequently, they went through with some detail and they're adequate. He said that at the last meeting, the Board asked for confirmation of parking, which has been submitted. Mr. Gainer said that the parking has been documented – shown to be adequate. The Board previously identified various conditions of approval from the original site plan approval in 2009 or so that still remain outstanding and they were expecting to carry those conditions forward on any action the Board takes on the latest proposal.

Ms. Sexton asked where the Board ended up with the extra screening in the back for the people who attended the public hearing.

Mr. Gainer said that the applicant was directed, as a condition of the Board's approval, to provide a staggered row of trees that had spacing. He said that it was in the minutes, and otherwise there were no new conditions to address.

Mr. Merante asked Mr. Gainer if he had a copy of the amended parking.

Mr. Gainer said that he saw it, but didn't know if it got submitted elsewhere.

Ms. Doherty asked if that was the only outstanding issue.

Mr. Gainer said that it was the latest issue the Board had requested other than acknowledging the enhancements of landscaping in the rear, which the Board had been seeking and public comment had also requested.

Mr. Merante asked the applicant if there was any comment he wished to make.

Mr. Scanga said no. He said that they agreed last month to add the screening. It was the only thing the Board asked. Mr. Scanga said that he didn't realize he submitted parking to Ron. He said that was it.

Mr. Gainer said that the Board might wish to make a Negative SEQRA Declaration...they've all seen it, and he could just prepare a confirming Resolution for the Board's record. He said that the Board might wish to do a similar action for the amended site plan approval and follow it up with documentation for the Board's record.

Mr. Meehan made a motion to adopt a Negative SEQRA Declaration (copy attached). Ms. Sexton seconded the motion.

Ms. Conner made a motion to adopt a Resolution (copy attached). Mr. Meehan seconded the motion. The votes were as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor
Michael Gibbons	-	Absent
Michael Leonard	-	In favor
Kerry Meehan	-	In favor
Pat Sexton	-	In favor

Robert Rhodes – Lot Line Adjustment – Route 9D, Garrison: Request for return of escrow

Mr. Merante asked if the Board had any confirmation on everything that the Board requested to be done.

Mr. Gainer said that he didn't recall any outstanding conditions.

Mr. Merante said that he checked with the Supervisor's office the other day and to the best of his recollection, there was nothing outstanding – no bills outstanding.

Mr. Gainer said, and he didn't believe there were any conditions outstanding.

Ms. Doherty made a motion that a letter be written to the Town Board requesting escrow monies be returned to the applicant. Mr. Leonard seconded the motion. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor
Michael Gibbons	-	Absent
Michael Leonard	-	In favor
Kerry Meehan	-	In favor
Pat Sexton	-	In favor

The Berner Family – Two-lot subdivision – 1 Lurch Lane, Cold Spring: Request for 90-day extension

Mr. Gainer said that this was approved some time ago and the applicant's representative had identified a deed restriction, and subsequently the approving Resolution that the Board adopted. The guidance from the Planning Board attorney was to add a note – development restriction. He said that since that Resolution was adopted, Mr. Watson had identified that it was incorrectly worded and there had been discussion between his office, Mr. Watson's office and Mr. Gaba's office to understand exactly whether the Resolution needed to be re-worded.

Mr. Gaba said that the long and short of it was that the deed to the property contains a deed restriction and the deed restriction appears only in the section of the deed, which discusses the description of parcel one. He said that when they got the application in, they saw that the deeds apparently had been merged; there was a single tax lot number for them because it was all one lot, and that the deed restriction applied to the entire lot. Mr. Gaba said that the applicant had contacted the Board and said that there's one provision of the deed restriction that says the maximum number of homes is five houses and there are three houses right now on parcel one, one house on parcel two, and the new subdivided-off lot will be the fourth house on parcel one. So they are suggesting that perhaps the wording of the condition that is in the Resolution now is inappropriate and perhaps it should indicate that the number of houses that can be built on parcel two certainly isn't limited by this, and parcel one might be entitled to one more lot. Mr. Gaba said, so they looked into New York State law regarding the extent to which deed restrictions apply. He said that there are some places that say that the deed restriction is to be construed narrowly and you can't extend it beyond its terms, etc., but then there are other cases that say the wording isn't necessarily controlling. Mr. Gaba said that the bottom line on it is that it is really not an issue and they don't feel the Planning Board should address it in detail. He said that they think it's enough that the condition on the plat gives notice to any subsequent purchaser or anyone with some interest in the property, that there is this deed out there, it does contain these restrictions, so check out the deed and be guided accordingly. Mr. Gaba said that the Resolution would say, "Condition 2C.3, and reflect that the words be changed to "inclusion of the note - Use and development of the lots depicted on this plat is or may be subject to restrictions as set forth in the restrictive covenant appearing in the deed recorded in the Office of Putnam County Clerk at Liber 704, page...".

Mr. Watson said that he had no objection and he would collect the signature.

Mr. Gaba said that he could leave it the way it is.

Mr. Watson said that it's fine, and that he had no objection to it.

Mr. Gainer suggested that if the Board understood and supported what the attorney had offered, it might want to vote to adopt an amended Resolution.

Mr. Merante said that they'd do two separate motions – one for the ninety-day extension and one for the Resolution.

Mr. Leonard made a motion to approve the ninety-day extension. Ms. Conner seconded the motion.

Ms. Doherty made a motion to adopt the amended Resolution (copy attached). Mr. Meehan seconded the motion. The votes were as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor
Michael Gibbons	-	Absent
Michael Leonard	-	In favor
Kerry Meehan	-	In favor
Pat Sexton	-	In favor

Scanga (Lot 4 Amended Site Plan) – Lady Blue Devils Lane, Cold Spring: Request for 1st 90-day extension

Scanga (Lot 5 Site Plan) – Lady Blue Devils Lane, Cold Spring: Request for 1st 90-day extension

Mr. Gainer said that for the Board's understanding, the applicant is requesting a ninety-day extension. He said that the Board is certainly entitled to grant extensions for any periods it wished, but it is actually written in the context that they, upon the Board's approval, have a year in which to pull a building permit, to initiate construction of the development proposal that the Board had approved. Mr. Gainer said that if they're unable to do so, the Board is within its power, subject to receipt of sufficient justification, to consider another extension of up to a year. He said that the Board could certainly set a different period.

Mr. Merante said that he had the discussion the other day with the Code Enforcement Officer about this very point - the fact that for many years, they're given ninety-day extensions. He asked Mr. Gaba if that was setting precedence or if it really mattered.

Mr. Gaba said that the code provides for the Board to grant one-year extensions. He said that the Board could grant lesser extensions under two circumstances - one, is if you have (inaudible) for a lesser extension and two, if you have some special reason for granting a lesser extension - perhaps there is some condition in the neighborhood you're watching, your concern might change over the course of the year, etc., but absence of circumstance justifying a shorter amount of time, if you find cause exists to grant the extension, it should be for a one year period.

Ms. Conner asked if granting a ninety-day would add on to it.

Mr. Gaba said no, you can't grant more than a year. He said you could grant up to a year.

Mr. Meehan asked if there was a limit on how many extensions they could have.

Mr. Gaba said that the code does not say there is any limit.

Mr. Gainer said that they just have to provide justification in order to obtain that extension from the Board.

Mr. Paggi said that he thought that if the applicant was aware, he probably would prefer a year. He said the request for ninety-day was just to really meet a couple of administrative items.

Mr. Gainer said that he thought the applicant might have just gotten confused with the standard notation that comes out of subdivision law – it's very specific. He said that it obviously does not apply to the site plan approval.

Mr. Merante said, but the thing is that they asked for a ninety-day extension. He asked if it made any difference if the Board went ahead and granted the one-year extension.

Mr. Gaba said that the Board could grant more than the ninety-day.

Mr. Gainer said that he thought the minutes could reflect that the applicant's representative has just requested that it be modified to a one-year extension, so at least there's some paper trail for justifying the action the Board might take.

Mr. Meehan said that this could go on forever if the Board doesn't say some place that you're only allowed so many extensions.

Mr. Gainer said that the Board just heard the applicant's representative say that he has cause.

Mr. Meehan said that he was not referring to this case, but (did not finish sentence).

Mr. Gainer said that the Board might not accept the same rationale a year from now.

Mr. Gaba said that if there's been no change in circumstances, the Board really doesn't have grounds to not grant an extension.

Mr. Merante asked if the Board had any other questions.

There was no further comment.

Ms. Doherty made a motion to grant a one-year extension on Lot 4. Ms. Conner seconded the motion.

Mr. Leonard made a motion to grant a one-year extension on Lot 5. Ms. Conner seconded the motion. The votes were as follows:

Anthony Merante - In favor

Kim Conner	-	In favor
Josephine Doherty	-	In favor
Michael Gibbons	-	Absent
Michael Leonard	-	In favor
Kerry Meehan	-	In favor
Pat Sexton	-	In favor

Ventura – Site Plan application – Route 9 and Lane Gate Road, Cold Spring: New submission

Mr. Paggi said that they are really at a very preliminary sketch stage just to show the Board that there are some different conditions on site that have been in use. He said that he thought the general Statement of Use that was prepared by the applicant’s legal counsel summarizes that specific condition - the fact that the site is currently being used to store and process some earth and organic materials – topsoil, mulch, compost and some construction material in the form of asphalt and concrete recycling, which is used to produce a recycled type of an Item 4 mixture. The applicant hopes to amend the existing site plan by constructing a new access through the site. Mr. Paggi said that they recognize that they would have to obtain New York State DOT approval for this access and in conjunction with the site plan, they would also like to bring in the added use of wholesaling and retailing some wetland materials – both in planting and seed mixes. He said that they are proposing a display area that they would actually construct within the wetland buffer area around the existing pond. Mr. Paggi said that the applicant has brought this project to the CAC for preliminary discussion and it’s his understanding that the CAC is receiving the concept favorably. He said that they recognize that there are some items for discussion as it is a very preliminary plan. Mr. Paggi said that this meeting is really just to try to get everything out on the table and start to talk about things. He said that Mr. Gainer mentioned drainage issues on Lane Gate Road. Mr. Paggi said that the applicant has advised him that they are willing to work with the Town to take the drainage off of Lane Gate Road and route it through the rear of the property and into the existing pond. He said that several concerns they have relative to that is that they are going to want to try to see something in the form of some type of a sediment separator to keep the pipes clean and functioning and also to keep the pond clean. Mr. Paggi said that they’ve depicted a small unit up by the road – again, a very preliminary location, that would have to be coordinated with both the Highway Department and the Town Engineer. He said that they’d also have to evaluate the capacity there – drainage study-wise and height capacity-wise. Mr. Paggi said that the intention is to work with the Town to accommodate that and they certainly recognize that it would be a condition of any approval that the Town would grant.

Ms. Conner said that she had a housekeeping question with regard to the SEQRA Dec application (inaudible).

Mr. Paggi responded (inaudible).

Mr. Meehan asked where he was going to stockpile his leaf compost and the concrete, and if it was going to be out in front by Route 9.

Mr. Paggi said that the intention would really be just a stockpile area there. He said that they have every intention of proposing significant screening between Route 9. They plan to build a berm and plant things on top of the berm.

Mr. Meehan said that he didn't know they were going to have crushing on site and he asked where the crusher was going to be.

The applicant pointed out where it would be located.

Mr. Paggi said that the intention of the crusher would be...(did not finish sentence).

Mr. Meehan said to chop up the macadam and concrete, etc.

Mr. Paggi said yes, and then they'd also have a chipper on occasion. He said that they are talking about a couple of days a month that the machine would be brought in.

Mr. Merante said that they have had a lot of problems with crushers.

Ms. Conner asked if this was asphalt reprocessing.

Mr. Paggi said construction spoil, and concrete and asphalt can be mixed with some dirt product and actually develop a product which is a recycled Item 4.

Ms. Conner asked if the Town had a law on asphalt recycling.

Several of the Board members said that they were not sure, but one of the Board members (unidentified) suggested looking into it.

Mr. Paggi said that again, it is not something where the material would be heated and there would be fumes or anything like that. He said that it's just a crushing operation.

Mr. Merante said that in the last couple of years, he noticed two huge berms just before you get to this property and he asked when they appeared. He said that it looks like they're there to direct water off the property and keep it going down Lane Gate Road.

Mr. Gainer said that there is drainage right there at the top of the wall that has more recently been constructed and that's the issue the Highway Superintendent has with the applicant.

Mr. Paggi said that the applicant has informed him that the permission was never granted to the Town to discharge water onto the property. He said but the corollary to that, which is probably more important, is that the applicant is willing to work out the issues that are necessary to bring the water on to the property. Mr. Paggi said they just need time to be able to do it right.

Mr. Merante said that his primary concern, aside from redirecting water from wherever it's legal to wherever it's going now, is the fact that it's narrowed the width of the road/travel way from what it used to be. He said that he knew that for a fact and was just making the point.

Mr. Paggi said that he guessed that could be something they could address at this point too.

Mr. Gainer said that from the Highway Superintendent's perspective, there once was a discharge on to the property, more recently it's been interrupted, and he has significant issues with that. He said that Mr. Chirico obviously has had discussions directly with the applicant as well as Town Council. Mr. Gainer said that the Town is anxious to see that drainage re-established because of the damage it's doing on Lane Gate Road.

Mr. Paggi said again, the corollary to that is the applicant's anxious too, because he knows it's important to the Town to get that corrected, but it needs to be designed correctly. He said that the Town has currently broken through that berm and the water does entire the site, and when that happens the applicant suffers damage.

Mr. Merante said that whole area has a real water problem.

Mr. Gainer said that the Highway Superintendent is willing to assist in seeing this be resolved and whatever that might mean, but it must get resolved as soon as possible.

Mr. Paggi said that maybe the best thing to do is to arrange to sit down with the Highway Superintendent and figure things out with timing, etc.

Mr. Gainer said that the Board understands his concern, but Mr. Paggi had to understand the Town's concern.

Mr. Meehan asked Mr. Gainer with regard to the restaurant, where the water was going to go to and if it was going to go across Route 9 - on the east side of Route 9.

Mr. Gainer said that actually, it was going to enter the (inaudible) property and the Highway Superintendent has been in discussions to either pick up an easement or to assist in piping water from the edge of Lane Gate into that property to get access to that cross-culvert under Route 9.

Mr. Merante asked Mr. Paggi if he any other comment.

Mr. Paggi said no, he thought they were pretty good and he understood Mr. Gainer's comments that were given. He said that he thought the task left in front of them was to sit down, get this moving and get the design going as quickly as possible and to probably coordinate some type of meeting with the Highway Department to negotiate, coordinate, etc. Mr. Paggi said that the fact that the applicant is willing to put the pipe through the property, the Town's got to be willing to maintain it so it doesn't create a problem for the

applicant. Mr. Paggi said whatever negotiation on how that all gets built and constructed will have to be worked out.

Ms. Conner said that she thought there were a couple of things the Board would want to learn more about. She said that she thought they'd want to know more about how high the stockpiles were going to be.

Mr. Paggi said that they actually have a note on the plan that they're not to exceed fifteen feet.

Ms. Conner asked about the noise.

Mr. Meehan said that he thought he'd put the crusher as far away from Lane Gate Road as possible.

Mr. Paggi said yes, the benefit is that it's really got to be between an earth bank and soil stock piles, so that would help too.

Mr. Meehan said that he did not know if there were any houses and where they were.

Mr. Merante said that there was a residence right across the street.

Mr. Gainer said one thing to appreciate in terms of anything being proposed on the property...site plan approval illustrates the pond on the property, which is fair-sized, and the associated wetlands buffer surrounding the pond and along the frontage. He said that you're going to seek to have that exclude any development activity with the exception of this proposal to put in wetlands planning. Mr. Gainer said and that's part of the reason the applicant pursued the CAC to provide their intent and to also seek to get their understanding and support for the few items he's now proposing in the wetlands. He said that the Town has had an interest in seeing this applicant come before the Planning Board to finally resolve site plan issues. Mr. Gainer said that the Building Inspector has gone through the historical files and he tried to outline them in his technical memorandum. He said that he's also given the Chairman a copy of the 1983 approved plat and they just have to know where they were and where he wants to go and understand how it fits with respect to the code.

Mr. Meehan asked what kind of waste material the applicant had on site.

Mr. Paggi asked if he meant oils and stuff like that.

Mr. Meehan said yes.

Mr. Paggi said that they could address that.

Mr. Meehan asked if they had any wrecked cars back there.

Mr. Paggi said that they'd try to outline that for the Board. He said that one of the things that the applicant was alluding to and they should probably state for the record is that he has been doing these operations, including crushing for a bunch of years and the property was actually issued a violation back in 2007.

Mr. Meehan asked what kind of violation.

Mr. Paggi said for operating outside of site plan approval. But then the Town withdrew the violation. Mr. Paggi said that he agreed with Mr. Gainer – they are there to get everything cleaned up and make it official.

Mr. Gainer suggested the Board may wish even in the informal state, to at least conduct a site visit so that it can get some understanding as to what's going on and where in the site it's going on.

The Board agreed to meet on the site at 9:30 a.m. on Sunday, April 3, 2011.

Ms. Sexton asked how tall the 70x80 equipment building was.

Mr. Paggi said less than the standard requires. He said roughly twenty-four feet. Mr. Paggi said that the intention right now is to clean the site up and put a (inaudible).

Mr. Gainer said that also the Board is seeking architectural building materials, etc.

Mr. Paggi said that they'd give that to the Board. He said that the one point the applicant asked him to mention is that the small wetland area that's shown, it's been subsequently determined that it's isolated and not regulated.

Mr. Gainer asked if that had been documented by the Wetlands Inspector.

Mr. Paggi said yes.

Mr. Gainer said that the Board has nothing from the CAC, so if Mr. Paggi wanted to assure that gets filed with the Board, it would be helpful.

Mr. Merante stated that the next meeting would be held on Thursday, April 21, 2011.

Mr. Gaba said that the Board should declare itself to be Lead Agency.

Ms. Conner made that motion. Mr. Leonard seconded the motion. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor
Michael Gibbons	-	Absent
Michael Leonard	-	In favor
Kerry Meehan	-	In favor

Pat Sexton - In favor

Mr. Gaba said that it is an Unlisted Action and he anticipated an Uncoordinated Review.

Mr. Gainer said to Mr. Paggi to try provide more significant detail on the Statement of Use just to provide the historical basis as to what got approved in '83, what he's now doing, and what he's proposing to do as part of the application.

Mr. Paggi said that he might bring in legal counsel.

Mr. Gainer said, and then have them provide the legal basis under which any of the proposals should be permitted or authorized by code.

Thank you to Josephine Doherty

Mr. Merante said that he would like to thank Ms. Doherty for the sixteen years she dedicated to the Planning Board – four of those years as Chairman. He said that she brought a lot of knowledge with her from many years as Clerk in Nelsonville and Secretary to the Zoning and Planning Boards there. Mr. Merante said that he would be forever grateful.

Adjourn

Ms. Doherty made a motion to adjourn the meeting. Mr. Leonard seconded the motion. The meeting ended at 8:30 p.m. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor
Michael Gibbons	-	Absent
Michael Leonard	-	In favor
Kerry Meehan	-	In favor
Pat Sexton	-	In favor

Respectfully submitted,

Ann M. Gallagher

Note: These notes were prepared for the Philipstown Planning Board and are subject to review, comment, emendation and approval thereupon.

Approved: _____