

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, January 12, 2011 at 7:00 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

BOARD MEMBERS

Willard (Skip) Wilson, Chairman	Dan Loeb	Derek Wilson
Willard Schadt		Theresa Santiago
Hunter (alternate member)		Mike

OTHERS

Mr. David Bavoso, Town Attorney	Mr. Alfred A. Fusco, Jr., Town Engineer
Mr. John Fuller, P.E.	Mr. Timothy Gottlieb, Gottlieb Engineering
Mr. John Furst, Esq.	Mr. Damian Brady, Esq./ Deerpark Village

THE PLEDGE OF ALLEGIANCE

TRIPLET LLC - PUBLIC HEARING - #10-1101

Represented by John Fuller, Civil Engineer 856-1536
Owner/ Applicant Arthur Trovei is seeking a special use permit to operate a vehicle/ equipment sales yard at property located on property at 161 Route 6, Town of Deerpark, Orange County, N.Y. It is an HMU Zone. Section – Block – Lot = 57 – 1 – 96
Special Use Permit is required by this Planning Board, for this application.
Application received November 12, 2010

SEE ATTACHED PUBLIC HEARING RECORD

Derek Wilson told the audience that the Board will still accept written comments concerning this application.

Skip Wilson said that all comments will be reviewed by the Board and the town engineer and town attorney.

MARTEL HOLDINGS LLC - #03-0501

Applicant is asking for extension of Preliminary Approval granted in January 2010
Represented by Tim Gottlieb, Gottlieb Engineering
Owner/ Applicant Martel Holdings LLC wishes a 15 lot subdivision on property located off of Wilson Rd., and Hawk Mountain Dr., Sparrowbush, N.Y. It is in the RRC Zone. Section – Block – Lot = 21 – 1 – 62.32
Application submitted October 11, 2007

Mr. Gottlieb said that his client needs another extension, because they didn't finish their soils test with the Orange County Health Department, before the onset of winter.

Al Fusco said that in speaking with Mr. Gottlieb earlier, he had supplied him with updated maps, because he had been working on them concerning the SPDES permit for the Orange County Department of Health with the sewage. He said that in addition to that, Mr. Gottlieb had indicated that

they were working on the soils. He said that basically the Board is waiting for the Health Departments' comments and approval, and also for the SPDES approval. He said that the applicant is reducing one of the lots, that is, lots 2-6 and 2-7 are being combined, so that this will become a 15 lot subdivision (rather than a 16 lot subdivision). He stated that he has no problem with granting an extension to this applicant.

MOTION

Theresa Santiago made a motion to grant a six month extension to the Martel Subdivision application.. Willard Schadt second. Roll call vote: Santiago, aye; Schadt, aye; Hunter, aye; Loeb, aye; D. Wilson, aye; W. Wilson, aye. Motion carried.

Derek Wilson asked if there was a limit to the amount of extensions that the Board can grant?

Al Fusco answered that the town attorney should check out new legislation that the governor of New York had signed recently, that would allow for conditional final approval on preliminaries, to be extended longer than they were before, due to the severe economic conditions.

The town attorney said that his firm will research that.

CAMP DEERPARK, INC. – #08-0802

Represented by Timothy Gottlieb, Gottlieb Engineering

Owner/ Applicant Camp Deerpark proposes to expand their camp located on Brandt Rd., Cuddebackville, N.Y.

It is an RR zone.

Section – Block – Lot = 7-1-38

Application submitted March 4, 2010

Mr. Gottlieb said that he did present Mr. Fusco with new plans that did address his comments from his last review.

Al Fusco said that in reviewing the new maps, most of his comments have been addressed. He said that the SPDES permit is still pending, and Mr. Gottlieb cannot proceed with the Orange County Department of Health, until he receives preliminary approval from this Board. He said that Mr. Gottlieb is not allowed to submit the application until he has that approval. He said that the Stormwater Prevention Pollution Plan (SWPPP) is still needed. He said that phasing is still needed on the plan.

Mr. Gottlieb answered that he had prepared a table on the plans to address the phasing issue.

Al Fusco said that he will review that. He said that if any Board members still have comments, those also will have to be addressed.

MOTION

Dan Loeb made a motion to grant conditional preliminary approval for the Camp Deerpark application based on the town engineers' comments.. Theresa Santiago second. Roll call vote: Santiago, aye; Schadt, aye; Hunter, aye; Loeb, aye; D. Wilson, aye; W. Wilson, aye. Motion carried.

CINGULAR WIRELESS CELLULAR TOWER, AT&T

Represented by John W. Furst, Esq., Cuddy & Feder, LLP 845-896-2229

Owner/ Burnett Enterprises, Inc.

Applicant/ New Cingular Wireless PCS (AT&T) wishes to erect a 125' cell tower on property located at 19 Route 211, Cuddebackville, N.Y.

It is an HMU Zone

Section – Block – Lot = 22 – 1 – 90

Application received September 30, 2010

This application was not on the agenda, as the town attorney had requested that it be added, after the agenda was set.

Skip Wilson read a letter that the town attorney had sent the Board concerning this application: “It appears that the Planning Board has the authority to review the application, including possible addition of expansion of non-conforming use with the consideration of certain factors in the Law.”

Al Fusco reviewed his technical memo on this application. He said that an inspection needs to be made by the Building Inspector and himself at this property, and he will contact the owner of the property, to do so. He said that in addition to that, it will probably be the annual inspection for the facility, that the Building Inspection does on a regular basis, on behalf of the Town. He said that when the inspection and examination of the area where the tower will be located is done, the Building Inspector and himself need to determine what will happen with the relocated material. He said that the approximately forty vehicles that Brim is storing in that area right now, they will have to be put somewhere else. He speculated by asking, will be placed on the existing site, on an adjacent site, or removed completely?

Al Fusco said that the town attorney had indicated, in the letter above, that this is an expansion of a non-conforming use on the property, and being so, even though it is reducing the amount of conformity, it is an expansion of the non-conforming use.

David Bavoso said that the issue was the junkyard use, and the Boards' concern was that the junkyard use would expand, upon the placing of tower there. He said that in researching the Code itself, Section 230-38 of the Town Code, actually addresses changes and additions to non-conforming uses. He said that any potential change would be considered a special use. He said that Section 230-38 also states that any alterations, changes to use, or additions to the use, can be granted by a special use permit, as long as special use criteria are met. He said that the criteria basically is, that there is no expansion of the amount of land area outside of the non-conforming facility used for storage of materials. He said that it may be necessary for the Planning Board to consider a denser screening of the property, i.e. fencing. He said that the change cannot further violate setback or height regulations. He said that there can be no increase in stormwater runoff, and it cannot increase the traffic to the area. He said that the change, addition or expansion cannot extend to adjacent lots, unless such lots are already being used for that use. He said that the health, safety and welfare concerns must be properly addressed. He said that the health, safety and welfare concerns seem to be the biggest issue, in his opinion, having done this research. He said that however, it is his understanding from the applicant, that no expansion of the actual non-conforming use, of the junkyard itself, is actually foreseen. He said that it is just a matter of this change to the use. He said that if the Planning Board is satisfied that this criteria has been met, and there are no substantial changes to the increase in stormwater runoff, or the expansion of the non-conforming use occur, then the Planning Board can grant a special use permit.

John Furst said that he's confused, because this section of the Code talks about a change or addition to a non-conforming use, because his client is not changing or adding to the junkyard. He said that his

client is actually taking away from the junkyard. He said that his clients' use is actually separate and independent and unrelated to the junkyard. He said that no buildings that will be working with the junkyard will be added, and no new buildings or additions to buildings will be built, or any machinery to the junkyard will be added. He said that his client is not a junkyard use.

Derek Wilson said that even though the proposal by the applicant is not on a separate piece of property, is he going to delineate the part of the property that he is going to use, with a fence?

John Furst answered that there will be a fence around the equipment there.

Derek Wilson said that the part they will be using is 5,500 feet?

John Furst answered yes, which includes the driveway.

Derek Wilson asked, will that be delineated by a fence?

John Furst answered no. He said that the point is, that his clients' project is independent from the junkyard, and its' use is permitted by a special use permit.

Willard Schadt asked, is this a lease?

John Furst answered yes.

Willard Schadt agreed that it has no effect on the use, but does it effect the lot? Is it a non-conforming lot now, when this lease is carved out, that is, does it effect the existing use of setbacks and things like that? He said that it doesn't effect the use, but does it effect the lot? He said, in other words, if the client initiates this lease, and now there was a building that was existing in the junkyard, that now would violate setback requirements against its' lease?

John Furst repeated that his client is not creating a new lot, so there's no impact to the setbacks.

Al Fusco agreed that he does not believe that it is affecting the lot/

Willard Schadt said that he personally does not believe that it is affecting the use, unless you're taking the position that by shrinking the use , you're making it more concentrated.

John Furst said, concerning the relocation of the approximately forty vehicles, that the real issue is, that as long as the vehicles are not going outside their area where they were approved,, because otherwise it would be a violation of their previous site plan, and their renewal that they obtain from the Town Board every year. He said that the Building Inspector goes on site every year, and has a couple of comments here and there, which are rectified, and then he issues a renewal. He said that if there are any violations, with respect to the junkyard, that's for the Building Inspector.

Dan Loeb asked, what will be the size of the area that you will be using?

John Furst answered that the fenced in compound will be approximately 2,000 or 2,500 square feet.

Dan Loeb said that applying the Towns' regulations, with respect to wireless installations, the vehicles

that are there now will have to be removed.

John Furst agreed, and said that the amount of vehicles there now are outlined on the site plan. He indicated that on the map. He said that according to this site plan, there are approximately ½ dozen cars there now.

Dan Loeb said that his concern with respect to regulations that applies to monopoles, wireless communications, is the setback requirements. He read from the Town Code: "... 350' from the nearest property line of a school, daycare center, and public park, playground and public roads." He said that the road that they are using to access the facility, it has a right-of-way through the Brim property.

John Furst answered that the parcel is setback over 350' and added that there is a note and the bulk requirements on the table. He also answered that the right-of-way is the same entrance that is used for the recycling facility, and his client has a right to use that as access. He said that the existing access will be used, all the way up to the site, except for a little "U" or "parking area". He said that only a little disturbance is proposed, as far as the creation of a new driveway. He said to access the fenced in area, his client will be given either a code or a key to get in.

Dan Loeb said concerning emission levels, the proposal is in an isolated area, but there is recycling activity that takes place, immediately around that area, and asked, do you meet the requirements for specified minimum distances?

John Furst answered, by referring to "Exhibit D" of his original submission, The "FCC Compliance and Assessment and Report" that was prepared to scientists. He said that this project is 0.2082 % of the FCC's MPE limit, which is the maximum exposure limit. He said that the project engineer had measured distances, referring to the table on page 10 , and said that the engineer had measured distances from 0' to 500', and at 160', that was the highest amount, which was 0.2082%. He explained by saying that if you consider 100% to be the limit, then this project is at 0.2082% which is 480 times below the limit.

Dan Loeb asked about icicles forming on the tower, and consideration with respect to them falling down and hurting somebody?

John Furst answered that the tower is set back a substantial distance, in order to meet the Towns' setback requirements. He said that the monopole is set back 172', which is the closest setback. He said that it's almost 540' from Route 211.

Dan Loeb read from the Town Code: "...Wireless communications towers shall be located with a minimum setback from any property, equal to the height of the tower, in any zoning district."

John Furst agreed, and said that the tower is 125', and it is more than that distance from any property line. He said that from the visual report that his client had submitted, the actual physical tower is

only visible in the immediate area, and that the historic and natural resources that are close by, will not be impacted.

Dan Loeb asked that if for some reason in the future, the tower needs to be dismantled, is that property allowed to revert back to a non-conforming use? He answered by stating his opinion, that no, it would not convert back to a non-conforming use.

Derek Wilson agreed and said that the rationale is that they are reducing the amount of the site that is non-conforming.

Willard Schadt said that that issue arises, if and when the tower needs to be dismantled.

BOARD MEMBERS QUESTION

Theresa Santiago asked, would Art Trovei be allowed to place a cell tower in his junkyard in Sparrowbush? She said that she is asking because this Board did deny him that request a couple of years ago, because the cell tower would be adding to a non-conforming use.

Theresa Santiago also asked about the old Scully's property located at Route 42 and Main Street, Sparrowbush, and John's Mower Shop located on Route 42/97, why either one of these properties have not come before this Board, because they both have experienced a change in use in the past couple of months?

The secretary answered that the Quality Bus Co. property on Main St., Sparrowbush is tentatively scheduled for a pre-application conference.

Theresa Santiago elaborated on John's Mower Shop by saying that the business owner has expanded his business into the building next door.

Skip Wilson said that he will notify the Building Inspector, and find the answer.

DEERPARK VILLAGE - DISCUSSION

Represented by Mr. Damian Brady, Esq.

Mr. Brady said that he has spoken with the town attorney before this meeting, and that what was agreed to, is that they are going to try to arrange a meeting between the attorneys and engineers for the applicant and the Planning Board, to work out the issues that were discussed at the last Planning Board meeting. He said that if that meeting cannot be arranged, or they think it will not be fruitful, or if that meeting does not turn out the way that either side thinks it'll be helpful, then the matter will go directly back to the Westchester County Supreme Court. He said that there are numerous issues, that is, whatever was not agreed to, will have to be discussed again.

Al Fusco said that basically at the last meeting, Mr. Plotsky and himself had reviewed all of the open issues with the Board, and most of the issues were agreed upon by all parties. He said that the open issues are the Wilson Road issue, and the language and the alternates. He said that they all hope to meet again, and bring solutions back before this Board.

Mr. Brady said that Mr. Plotsky will provide the Board members and himself a "red-lined" copy of the December 3, 2010 memo.

Willard Schadt asked, when you come back before us Mr. Brady, it is with the provisions that your client has proposed, and is the final wording of what your client wants?

Mr. Brady answered yes.

Both Mr. Brady and Al Fusco said that they will try to have the next proposal to the Board members by next week.

Derek Wilson spoke for the record that he recuses himself from this application.

Dan Loeb said that this is the third time that he has asked Mr. Fusco for information on the amount of proposed traffic that lines up at the end of Wilson Road, at Route 42.

Al Fusco answered that he will get that information to the Board.

RE-ORGANIZATION MEETING

Derek Wilson made a motion to nominate Willard Wilson as Chairman for another year. Theresa Santiago second. Roll call vote: Santiago, aye; Schadt, aye; Hunter, aye; Loeb, aye; D. Wilson, aye; W. Wilson, aye. Motion carried.

ADJOURNMENT

Derek Wilson made a motion to adjourn. Theresa Santiago second. Roll call vote: Santiago, aye; Schadt, aye; Hunter, aye; Loeb, aye; D. Wilson, aye; W. Wilson, abstain. Motion carried.

Meeting adjourned at 8:40 p.m.

Respectfully submitted,

Barbara Brollier, Secretary