

**DEERPARK PLANNING BOARD - MARCH 28, 2012 - PAGE #**

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, March 28, 2012 at 7:00 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

**BOARD MEMBERS**

Al Schock, Chairman	Theresa Santiago	Mike Hunter	Craig Wagner
Bob Vicaretti	Derek Wilson		

**OTHERS**

Mr. David W. Bavoso, Town Attorney	Mr. Alfred A. Fusco, Jr., Town Engineer	Mr. David Dean, Town Board Liaison	Mr.
John Fuller, Civil Engineer			

**THE PLEDGE OF ALLEGIANCE****NANCY GIBSON SITE PLAN- PRE-APPLICATION CONFERENCE - #11-0301**

Represented by John Fuller, Civil Engineer 856-1536

Owner/ Applicant Nancy Gibson wishes a site plan to create an animal sanctuary on 76 acres located at 200 Peenpack Trail, Huguenot, N.Y. It is an RR Zone. Section – Block – Lot = 37 – 1 – 14.11

Mr. Fuller had site plans for the Board members and said that a little over a year ago, the applicant had come before this Board for a subdivision, which she was granted. He said that the property was divided into two lots, one sixteen acre lot for her residence, and then the balance for the second lot, which is in a trust, which the applicant wishes to use for the future, an animal related use. He said that the lower lot, which would have the driveway entrance off of Peenpack Trail, and that is where the Columbia Gas pipeline crosses the creek, that that would be the access for that point, and then any future access for the larger lot, would be depended upon the applicant coming back before this Board for a site plan approval. He said that the house is under construction, and the driveway has been installed. He said that an issue that came up during construction is, that there was a little bit of a dispute when construction began, with Columbia Gas, concerning the entrance. He said that even though the entrance, coming off of Peenpack Trail, was existing, Columbia Gas did take some issue with the shaping of the driveway there. He said that Ms. Gibson actually bought an additional, small triangular piece of property of three acres, ( he indicated on the map), in order to shift the driveway onto that lot, so that it satisfied the Gas Company. He said, indicating on the lower part of the survey, the new driveway that actually crosses that new, triangular lot, which she had purchased from the adjoining property owner.

He said that now, the project is dealing with three individual lots. He said that the applicant would like to have a little bit more area to put things around the house, mainly a pool, and so she is requesting of this Board to re-adjust the lot lines, in order to accommodate her personal needs, in and around the house that in under construction. He said that this new application would involve that lot line change, and a possible lot consolidation, combining the lot that the house will be on, plus the small triangular lot.

John Fuller said that in order for the applicant to move to this location, she has animals at her home, which she would re-located with, and which would be unrelated to the future animal sanctuary, and she has goats and ducks and domestic animals such as that. He said that the applicant would like to build a barn for these animals, on the adjoining parcel, which he had delineated on the subdivision map, as “no future development, until the applicant came back before this Board, and/ or obtained a stream crossing permit.” He said that what the applicant would like to do, is to build the barn, only to be used for personal use, not for commercial use, and, and be allowed to build it, under the agricultural use, on the larger parcel, which she will have access to that parcel, until such time that the development will lead to a commercial establishment, which will be an animal sanctuary.

Derek Wilson said that these are two separate parcels, and if she builds a barn on the larger parcel, then what, if in the future, she sells one of the lots, then there might be a problem.

He said that if there is a certificate of occupancy on the barn, that makes the two parcels tied together, and then if she sells one of the lots, then the town may have a problem with the stream crossing there.

John Fuller answered that he understands.

David Dean said that a number of years ago the Planning Board did discuss a situation that could be similar to this, in that one lot that a citizen has, to grow corn, and he has another lot to store his equipment in a barn, and there’s no residential support structure, then he can have a remote lot, from the primary residence, that it would still support, in an agricultural use, the necessary buildings to support that use. He said that he remembers that the Planning Board did reach consensus on that, and that it does allow in the zoning, for a citizen to do that. He used the example, that if a citizen has ten acres separate from the rest of his property, and has a shed on it, then it would be an allowed use. He said that if the barn is allowed, then any future development on this parcel, would have to be tied to the stream crossing. He said to disallow an agricultural use on a separate parcel, from the parent parcel, without a residential structure has no bearing on this at all. He said that the stream crossing is paramount to this situation, in order to make it work.

Derek Wilson explained that he was just saying that if someone else comes in, and tries to develop the larger parcel residentially, and then trying to gain access through the smaller parcel, can then claim hardship, and then the stream crossing never gets built.

Al Fusco said that it should be spelled out on the final map, because the applicant is changing some lot lines. He said that if the Planning Board requires it, have the Town Attorney review the wording, and put a deed restriction in it, that is, that it cannot turn into a residence, without Town and Planning Board approval.

Derek Wilson said that looking ahead, assuming that there may be a problem with the trust, and if the owner passes away, or decides she doesn’t want to have anything to do with it anymore, and the barn has been built, and the new owners are trying to use it over there, and now they’re not allowed access through to it, so now they’re using it for an agricultural use, and they have no stream crossing, and they have no money to build a stream crossing, but yet the buildings exist already, and then the next thing you know, there is equipment traveling through the bed of the stream.

Al Fusco said that a note can be put on the map, stating that there will be no stream access, without specific Planning Board approval, or some wording to that effect. He then asked

John Fuller is there is a written easement between the two lots, to allow access?

John Fuller answered no, and said that originally, the subdivision, the Planning Board had restricted that, there was no easement granted through that first parcel, and that any future development would involve a stream crossing. He said that in this new application now, the applicant would still do the stream crossing. He said that it is not an issue of pursuing it, it's an issue of the time line. He said that if the applicant is able to make her official move into the home, she would like to do it, with the barn in place, in this calendar year. He said that he is not sure if she can get a stream crossing permit approved, and a bridge built, in time for her to do that.

Derek Wilson said that as long as she's moving toward that, then the Board can give the applicant several years, in order to build the bridge. He said that as long as there is temporary deeded access to it, then no matter who owns the two lots in the future, the problem is taken care of.

Al Fusco said that the applicant can also bond the crossing

John Fuller agreed. He said that the applicant is not saying that she doesn't want to do the stream crossing, she actually does, but it's just from a timing perspective, in order for the applicant to make her official move this calendar year, he's not sure that they can get stream crossing approval and get the bridge built, to allow her to build her barn.

Al Fusco asked about the "cat enclosure."

David Dean asked, how many cats does the applicant have?

John Fuller answered that they are not exotic, but just domestic cats, approximately fifteen of them, and she wants to build a structure just for the cats.

Al Fusco said that there is a dog regulation, but not a cat regulation in the Agricultural Law for New York State.

John Fuller said that he can find out the exact number of cats. He said that he is not sure if she has a horse, but she does have a couple of goats and ducks.

Derek Wilson asked about the animal sanctuary that the applicant wishes to create, is it only for domestic animals, or exotic animals, or both?

John Fuller answered that there will be no lions, tigers, and exotic animals like that. He said that the applicant is more into llamas, goats, etc.

Bob Vicaretti asked, if there are more than three dogs on the site, will the applicant have to apply for a kennel license? He said, if the Planning Board approves the animal sanctuary, what will keep the applicant from having say, ten dogs on the property?

John Fuller answered that the pursuit of this application will not be for the actual sanctuary, but it will be just for her farm animals, goats, ducks, etc.

Derek Wilson said that when the subdivision was approved, it was with the stipulation that anything else she wants to do, she must come back to this Board.

John Fuller answered that he understands that. He said that the Board makes this a special use permit, and can even cap the amount of time for the applicant to get the stream crossing, for say two years, and that will nullify the temporary easement for access through her lot. He said that she is definitely going to pursue this. He said that when he was before this Board a year ago, he did not realize that the barn was going to be such a necessity, for her to make a move here.

Bob Vicaretti asked, why doesn't she just build the barn on the same lot as her house?

John Fuller answered that ultimately her intention for any type of structure like that, is for the use by the sanctuary operation. He said that that way, the residential lot will always be a residential lot, and then the investment in the barn will be for the long term use of that lot. He said that the barn will be approximately 60' X 30'

David Bavoso said that as long as the applicant is willing to go by some sort of restriction, either with the special use permit, or even a note on the map, that if she transfers the property, she either has to build the stream crossing, or take down the buildings, he said that he does not see a big issue here. He said that the lot line change will not be a problem.

The Board agreed, that procedurally the applicant has to go through the lot line change, lot consolidation, subdivision process.

John Fuller said that he has already met with representatives from Contec, out at the site, which is a big bridge and pipe company, so the applicant is genuine about pursuing this project.

Al Fusco said that the Board would probably want some hydraulic information on the stream at the crossing, and Contec will probably also want it too.

David Dean asked for the sake of public information, that the ultimate sanctuary part of the project, how many total animals will there be?

John Fuller answered that there will probably be no traditional farm animals, such as cows, but there will be dogs and cats involved. He said that his client is not prepared right now to do a site plan approval for that animal sanctuary section right now, so he cannot give an exact future number. He said that he thinks the count of the animals she already has in her possession is approximately six goats, six ducks, cats, and dogs. He said that right now, the applicant is not asking permission for the public to come in and access her property, to view the animals.

Al Fusco said that if she has more than four dogs, the applicant must apply for a kennel license.

Al Fusco asked if facilities will be put into the barn?

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John Fuller answered no.

Dave Dean asked if the applicant is going to see an agricultural exemption on the larger parcel?

John Fuller answered, not in the short term, no. He added, that he didn't know if she could anyway. He said that if she eventually does an animal sanctuary, it would almost have to be a commercial use and be taxable property.

Bob Vicaretti asked about the applicant crossing the Columbia Gas transmission lines?

David Bavoso answered that Mr. Fuller would have to work with Columbia Gas, but he said that he doesn't see any reason why she can't cross it, because she is now basically doing it with her driveway now.

John Fuller said that Columbia Gas was not concerned that his client was digging, and if it's just a straight crossing, where she's putting in a driveway, there's no cut and fill in their easement.

Bob Vicaretti asked about the agricultural law, is there a stipulation that she has to have so much land for the amount of animals?

David Bavoso answered that he will check on that.

Al Fusco answered that the applicant is not doing that site plan right now, but when she comes back for that project, then she should come back with a general permit request as well.

John Fuller requested of the Board, if his client could do a two year easement, as a criteria, then the applicant will pursue and get approval for a stream crossing, in that time frame.

Al Fusco had quickly looked up the regulations on horses, and said that a citizen can have one unit of livestock for each acre of land. He said that a unit is one cow, or two horses, two calves, two ponies, two pigs, two goats, two sheep, 100 fowl, or fifty rabbits. He said that that is in the Town of Deepark Ordinance. He said that other animals unspecified, is determined by the Planning Board on a case by case basis.

Al Fusco told Mr. Fuller that \$1,500.00 will be needed for the Town Engineer escrow account, and \$750.00 for the Town Attorney escrow account, which will be handed into the Town Supervisors' office.

DEERPARK VILLAGE - PROCEDURAL DISCUSSION ONLY - # D-0012

Owner/ Applicant Deepark Village Associates wishes to create Planned Residential Housing Units on property located on Wilson Road, Sparrowbush, N.Y.

It is a Planned Rural Residential Development (PRRD) Zone.

Section – Block – Lot = 23 – 2 – 32.2 & 38.8

Al Fusco said that he had gotten a request today from the applicants' engineer, Nat Parish to supply them with the citizens' comments, as the Board receives them. He re-affirmed to the secretary to do that. He also told her to date each letter, when it is received. He said that the comment period ends, at 5:00 p.m. on April 4, 2012. He said that the applicant should be placed on the April 11 2012 agenda, so the Board can start to formulate the findings statement.

Al Fusco reviewed the procedure by saying that after April 4th, the Board will have all of the comments, which they should review, along with the FEIS. He said that at the next meeting, there will be an open discussion about the comments, which can be read aloud, if the Board wants to, or the secretary, or one Board member can read them. He said that the Board members can ask questions of Al Fusco, or anybody about those questions. He said that the Board can digest the information from Orange County Planning, and/ or ask questions of Al Fusco about that. He told the Board members to feel free to contact him at anytime, if they have questions. He said that at one point, the Board will create a findings statement, and that statement is going to say, that the Board looked at everything that they felt was appropriate, i.e., the sewer, water, roads, drainage, habitat, etc. And also the Board looked at alternatives for traffic, etc. He said that the Board will put a list together of everything that was done on this project. He said that towards that end, it would be appropriate to comment on some of the comments, particularly the County comments should be commented on by the Board. He said that "whereas, the County feels this, the Board agrees with them, or the Board does not agree with the County." He said that then there is a paragraph at the end, which pretty much pulls it all together, which states what the Board feels should happen at this point. He said it could be that the County is right, and this is not ready; or that the Board does not agree with anything; or the Board agrees with everything; or somewhere in the middle. He said that this is going to be something that the Board needs to move forward on. He said that at this point, that because the County is being quite insistent on this, the Board would have to have a super majority, which would be a majority of the Board, plus one vote. He said, in other words, a 4 (for) 3 (against) would not work, but the Board would have to vote a 5 (for) 2 (against) at least. He said that the Board decides if they want a super majority or not. He gave the example that say the Board agrees with one of the Countys' requests, but not with the other one, that doesn't matter. He said that when the Board votes, they have to vote by a majority plus one. He said that when the Board calls roll call, if it's 4 to 3, and it's to pass it, without the Countys' recommendation then it's not a valid vote. He said that if it's 5 to 2, then it is a valid vote, that's super majority, that's State Law.

Derek Wilson said that he is not planning on voting.

Dave Dean said that that will be a dilemma, because there will only be 6 voting members.

David Bavoso said that New York State defines a super majority as two thirds, rather than a simple majority. He said that the Board will then have to vote at least 4 (for) 2 (against). He said that his understanding is that the Board just needs a majority of the members eligible to vote that are at the meeting. He said that he will double check on that rule.

Dave Dean said that it behooves all of the members to attend the meeting, when they will be voting, because the alternate Board members are really not up to speed on this application. He said that he believes that if an alternate or the alternates vote on this project, it may ultimately lead to litigation down the road.

David Bavoso said that the alternates would be entitled to fully vote, but the question is, if there vote is informed, then the person challenging them, would have to prove that there vote is not informed. He said that he can see Mr. Dean's point, but he cannot see how something based upon the ultimate voting, could be sustainable though.

Dave Dean said that he would agree with Mr. Bavoso in most cases, however, in this case, given this applicants' long history with the Board he would not agree.

Al Fusco said that the Board must vote on this on a timely basis also, which means, the Board members reading all of the comments, asking questions to form their opinions, and then forming their opinions. He said that the Board can also ask Al Fusco for more information, on say, the Countys' position. He said that he believes the Board needs to get the process done within 45 or 60 days, which would be appropriate.

Al Schock asked about the residents of this proposed project?

Dave Dean answered that it is zoned for an age restricted community. He said that what the County fails to recognize in their correspondence, is just that fact, that this has been ejudicated, and it has been specific to just that place, that this is an age restricted community.

Al Fusco said that his point was that in relationship to the Countys' comments, that it is not in the priority area that they are looking for, they are just saying that even it is not an age restricted project, that they feel that because of the size, it should be in the corridor of an interstate highway. He said that Mr. Dean is absolutely right, because there is a court order saying that this piece of land can have 1,500 or 1,800 units of age restricted housing. Period. The Town can have that. He said that the Countys' comments really are not relevant, because the Court has ordered that that many units are acceptable. He said that for a safety issue, it's so far from the hospital, it's so far from the firehouse, etc., and that is why letters are required from the hospital and the ambulance service saying that they have no problem with the distance. He said well, what if it snows? He answered that if it snows, then an ambulance coming from just a mile away, can just be as tough as an ambulance coming from five miles away. He said that the Board has already handled this by getting letters from the appropriate emergency services. He said that the County then says, "well, we really don't believe that."

Al Schock stated his opinion, that if a person is concerned about being close to a hospital, then he or she shouldn't decide to live up there in the first place.

Al Fusco said, concerning the shuttle bus, that the applicant will decide whether to provide one or not, because if they want it, they will pay for it, and it will be a group charge.

#### COMMUNICATION FROM THE TOWN BOARD LIAISON

Dave Dean asked if any Board member had signed up for the training in Goshen, New York, because the Town will pay for it.

Some Board members said that they were interested.

#### ADJOURNMENT

Wilson made a motion to adjourn. Schock second. Roll call vote: Santiago, aye; Wagner, aye; Hunter, aye; Vicaretti, aye; Wilson, aye; Schock, aye. Motion carried.

Meeting adjourned at 7:55 p.m

Respectfully submitted,

Barbara Brollier, secretary