

DEERPARK PLANNING BOARD - FEBRUARY 23, 2011 - PAGE # 1

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, February 23, 2011 at 7:00 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

BOARD MEMBERS

Skip Wilson, Chairman Willard Schadt
Mike Breitenfeld Alan Schock Theresa Santiago

OTHERS

Mr. Glen Plotsky, Town Attorney
Mr. Alfred A. Fusco, Jr., Town Engineer
Mr. Karl Brabenc, Town Supervisor
Mr. David Dean, Town Board Liaison
Mr. John Furst, Esq., Cingular
Mr. John Fuller, Civil Engineer
Mr. Timothy Gottlieb, Gottlieb Engineering
Mr. James Stack, Applicant
Mr. John Thibodeau, Applicant

THE PLEDGE OF ALLEGIANCE

CINGULAR WIRELESS CELL TOWER - EXTENDED PUBLIC HEARING FOR WRITTEN COMMENTS - #10-100

Represented by John Furst, 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

THE BOARD HAD LEFT THE PUBLIC HEARING OPEN FOR WRITTEN COMMENTS

Skip Wilson asked Al Fusco if he had any comments on this application.

Al Fusco said that he has no written comments, and he had supplied some at the last meeting and that they were basically that the Building Inspector and himself had done an on site inspection and reviewed the file, and had brought to the Boards' attention, just so that everybody knew, that there is another use on the property besides the junkyard, the proposed applicant for the cell tower and the post office, not that it has any impact, but it is already a mixed use parcel. He said that there was a response from the Orange County Department of Planning on this application, and the applicant has to submit additional information, in response to the Orange County Planning letter.

Skip Wilson asked the secretary if there was any other written submissions?

The secretary answered that two members of the public, Mr. Wayne Decker and Mr. Warren Cuddeback both had submitted letters.

Skip Wilson asked that that information be placed on the record.

MOTION

Skip Wilson made a motion to close the public hearing. Santiago second. Roll call vote: Santiago, aye; Schadt, aye; Schock, aye; Breitenfeld, aye; W. Wilson, aye. Motion carried.

Al Fusco read the correspondence from the Orange County Department of Planning dated January 18, 2011: "The Department has received the above referenced site plan and has determined that the proposed action has the potential to cause intermunicipal or country wide impacts. We therefore, recommend that the local referring board address the binding comments outlined below. The local referring board may not act contrary to such recommendations except by a vote of a majority plus one of all the members thereof or by disapproving the action. 1) Typically communication tower applicants perform a balloon test and take photos from strategic vantage points to demonstrate visual impacts. We recommend that the Town require the applicant to conduct a balloon test to ensure the visual impact will be minimized from the D&H Canal Park, as well as the proposed rail trail on the abandoned O&W railbed. 2) We recommend that the Town require the applicant update the visual impact statement because it fails to recognize key resources located near this site, including the rail trail on the abandoned O&W railbed and the D&H Canal Trail. Both trails have potential for inter-county connection, as referenced in Appendix B (SEQR Visual EAF), number 1. The visual impact statement also fails to recognize the County owned D&H Canal Park. Additionally, this Department offers the following advisory comments for your consideration. 3) Our office is aware that there are unremediated existing violations involving the owner of the above mentioned property who has encroached on property owned by Orange County and the Orange County Land Trust (Bashakill Preserve) by storing vehicles on this abutting property. Site visits by County staff have demonstrated direct drainage from these vehicles being actively pumped off the applicants property onto abutting Orange County and Orange County Land Trust parcels. Photos document wetland contamination on these properties. Thus, we recommend that no permits be issued for the proposed use until the existing violations have been addressed, as required by Section 8.2.14 of the Town of Deerpark Zoning Law. Additionally, we recommend that the applicant: a) construct a centralized drainage area to capture all leaching fluids to retain on site; b) perform a survey along the

common border of Orange County property, Orange County Land Trust property and the applicants' property; c) correct the current encroachment. The applicant would demonstrate a good faith effort to mitigate future encroachment by erecting a fence on survey findings. It is our concern that additional uses on this property could result in further encroachment of our property due to redistribution of stored vehicles.”

Al Fusco said that he did receive, just now, is a part of the SEQR, 617.2 Appendix B State Environmental Quality Review Visual EAF amended form. He said that he has not reviewed it, but can review it now. He said that he also received correspondence, which was addressed to the Chairman and members of the Board basically describing the visual impact assessment record and other information regarding this.

John Furst said that he would summarize the above two letters that Al Fusco was talking about. He said that essentially there were two comments from the County. He said that his client did do a balloon test, and had sought the Boards' input, as far as the location of the vantage points and D&H Canal Park was included as one of the viewpoints and it is not visible and it shows the location that is closest to the proposed tower and the most open area. He said that that balloon test results are already included in the report. He said that the proposed rail trail, the engineer could not find anything on record until she received a copy of the Orange County Department of Planning letter. He said that she then did a little more research and did a supplemental report taking into consideration this rail trail which is going to be located next to the recycling facility. He said that essentially yes, the proposed tower will be visible in the immediate area around the recycling facility, and the rail trail will be going in, right next to the property line. He said, in that same view, where you see the proposed tower, you're going to see the recycling facility and their scrap metal, cars, etc. He said therefore, the cell tower will not cause much of an impact in that immediate area. He said that the letter also states that as you go farther north and south, away from the recycling facility, the tower will not be visible. He said that it's only in the immediate area, right next to the junkyard, will this tower be visible. He said, referring to the second letter that Al Fusco had mentioned, his client did submit a revised addendum to the EAF, because the County Plannings' second comment had asked the applicant to include the rail trail and to check off the box, as far as a resource. He said that now he is advised of the rail trail, his client did check off the box, because the cell tower is visible, but it is mitigated, because of the existing conditions. He said that his client did not check off the box for the D&H Canal, because that form states "...only where it's visible." He said that because it will not be visible, it does not need to be checked off on that agenda.

Al Fusco said that on his site visit with the Building Inspector, there was a stake in the ground on a knoll, in the middle of the junkyard, where there were approximately 25' or 30' pine trees and in the back, that is, if you're standing on Route 211, and you see the pines, this'll be in back of the pines. He said that the applicant had already removed all but two pieces of a trailer, and another piece of equipment that was within the area. He said that they have been moved off site. He said that the Building Inspector and himself did ride down in the area where the County right-of-way was, and did not see any vehicles on that rail bed, but there were some vehicles parked along an access road that went down there. He said that there were 2' of snow on the ground at the time, so he could not see if there was any leakage. He said that he did not see any photographs that the County submitted, so it cannot attest to that.

Skip Wilson asked if the Building Inspector had any concerns?

Al Fusco answered that he did not have any problems, and they agreed that they will re look at the junkyard when it comes up for its' annual permit process in April, of every year.

MOTION

Skip Wilson made a motion to declare lead agency. Santiago second. Roll call vote: Santiago, aye; Schadt, aye; Schock, aye; Breitenfeld, aye; W. Wilson, aye. Motion carried.

Willard Schadt asked, that if the use is ever terminated, would the applicant remove the tower?

John Furst answered that under the Town of Deerpark Zoning Code there is a provision which states that if it is not used for six months or a year, then the Town can request the owner to remove it, and if it is not removed, the Town can come in and remove it, and charge the owner the fee for removing it.

Glen Plotsky asked if the monopole is a pole or it is a tree designed pole?

John Furst answered that concerning the monopines, you have to be careful, because the surrounding pine trees are only 30', and if you put in a 125' tree pole, it will look out of character.

Several board members expressed their distaste for the monopine structure.

Glen Plotsky said that he just mentioned it, because there is a written comment that the Board consider requiring it, and this way at least the Board has discussed it, and can recommend which they prefer. He asked that the applicant put a note on the plan, about dismantling, in case that happens in the future.

John Furst said that he will do that.

Al Fusco had written up a negative declaration and read it: "This notice is pursuant to 6NYCRR of the implementing regulations pertaining to Article 8 (State Environment Quality review Act) of the Environmental Conservation Law. The Town of Deerpark Planning Board, as lead agency, has determined that the proposed action described below will not have a significant effect on the environment and a Draft Environmental Impact Statement will not be prepared. Name of action: AT&T Cingular Wireless. SEQR status: Type 1. Negative declaration, yes. Application for site plan approval for a wireless tower to be located on site. The

development is 12.70 plus or minus acres as per last revised plans. The project is located on New York State Route 211 in the Town of Deerpark, Orange County, New York designated as Town of Deerpark Section 22, Block 1, Lot 90. Facts and reasons supporting this determination. Based on a careful review of the application, the plans and revisions thereto submitted by the applicant, Environmental Assessment Form, Part I, Part II, Part III with supporting information and public comment, the Planning Board has identified the following areas of environmental concern in connection with the proposed project impact of erosion and soil to the site, all of which are more fully set forth below. Other potential project impacts were also examined by the Planning Board, but considered not to be significant. There will be no substantial adverse change in existing air quality, ground or surface water quality or quantity, or noise levels; nor any substantial increase in solid waste production. As a result of the design measures incorporated into the proposed site plan, there will be no substantial increase in potential for erosion, flooding, leaching or drainage problem. As per attached soil and erosion control plan and storm water management plan. There will be no removal or destruction of large quantities of vegetation or fauna. There will be no impairment of the environmental characteristics of a Critical Environmental Area as designed pursuant to subdivision 617.14g of this Part. The proposed action in conformance with the Town's current zoning and master plan as officially approved and adopted. There will be no impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character. There will be no major change in the use of either the quality or type of energy. There will be no creation of a hazard to human health. There will be no creation of a material demand or other actions that would result in either a change in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment, of two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this project. Water impacts: there will be no impacts to water. Other impacts: No other areas of environmental concern have been identified by the Planning Board. Having considered the EAF and having considered the preceding written facts and conclusions relied on to meet the requirements of 6NYCRR Part 617.11, the Planning Board found and hereby certifies that the requirements of 6NYCRR Part 617 have been met and consistent with social, economic and other essential considerations form among the reasonable alternatives available, the action is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and the adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative that were identified as practicable. Consistent with the applicable policies of Article 42 of the Executive Law, as implemented by 19NYCRR Part 600.5, this action will achieve a balance between the protecting of the environment and the need to accommodate social and economic considerations. Based on the Planning Boards review and consideration of the project application, Full Environmental Assessment Form, supplementary technical information, public comments and consideration of the criteria for determining significance set forth in 6NYCRR 617.7c, the project as designed together with the applicants completion of the public improvements set forth herein will not result in any significant impact to the environment.”

MOTION

Santiago made a motion to accept the negative declaration statement. Schock second. Roll call vote: Santiago, aye; Schadt, aye; Schock, aye; Breitenfeld, aye; W. Wilson, aye. Motion carried.

MOTION

Santiago made a motion to approve the AT&T cellular tower, subject to the placing of a note on the plans about removal of the tower in case of future non-use, and payment of all fees. W. Wilson second. Roll call vote: Santiago, aye; Schadt, aye; Schock, aye; Breitenfeld, aye; W. Wilson, aye. Motion carried.

JOHN KIMBERLIN – PRE-APPLICATION CONFERENCE

Represented by himself 754-7651

Owner/ John Kimberlin wishes a subdivision on property located at 650 Route 209, Godeffroy, N.Y.

It is an HMU zone.

Section – Block – Lot = 28 – 1 – 17 & 18

Applicant did not appear.

DA TANG DEVELOPMENT, LLC - #11-0202

Represented by Timothy Gottlieb, Gottlieb Engineering

Owner/ Applicant Da Tang Development, LLC wishes a lot line change and a site plan approval for a proposed Bed & Breakfast on the newly created lot (22-1-5.21).

It is in the Residential Settlement (RS) Zone

Section-Block-Lots = 22 - 1 -5.21 & 5 .222

Application received February 8, 2011

Tim Gottlieb said that this application is both a lot line change and a site plan/ special use permit for a bed & breakfast. He said, concerning the lot line, it will address lot 5.222, that runs on both sides of Galley Hill Road. He said that the intent is to keep the piece that is on the west side of the road, as a single lot, and to combine the balance of that lot and lot 5.21 as the lot for the bed & breakfast. He said that his client wants to take lot 5.222 and take off what is on the east side of Galley Hill Road, and combine that with lot 5.21.

Willard Schadt clarified by saying that there will be a lot on each side of Galley Hill Road.

Al Fusco said that he did not do a thorough review, as he thought that he would be getting new plans.

Tim Gottlieb said that the site plan cannot be accomplished without the lot line.

Mr. Plotsky said that if the Boards' preference is to look it, they can do so with the understanding that one will not occur without the other. He said that concerning the lot line change, if there are no setback issues, it appears that they both become conforming lots.

Tim Gottlieb said that there is a setback issue on the existing barn, when it converts to a bed & breakfast, there is an existing setback. He said that it would most likely need a variance. He referred to the site plan, saying that right now the front yard is 39.3', and the Town Zoning requires 50'.

Mr. Plotsky said that to do the two subdivision/ lot line change, he cannot create a non-conforming lot. He said that he basically needs the variance, a setback that will result if the subdivision is approved. He said that it would also give him time to confer with his client, and find out if they want a subdivision regardless of the site plan/ special use permit, if it's granted.

Willard Schadt said that the issue is, if the line is run down the center of the road, creating two lots, then that will create a setback between the barn and the new line, thus the variance for a setback.

Mr. Gottlieb thanked the Board.

JAMES STACK - #11-0101

Represented by himself 386-9999

Owner/ Applicant James Stack wishes to create self storage units on property located on S. Maple Ave., Town of Deerpark, Orange County, NY

It is an Interchange Business (IB) Zone

Section – Block – Lot = 57 – 3 - 3.1

Application submitted January 19, 2011

James Stack said that he had submitted a site plan, but the secretary said that this preliminary site plan is all that was submitted to her office. He indicated on the plan the lot where he wishes to build storage units.

Mr. Plotsky told Mr. Stack that he will have to bring in a deed or an easement to show that he has access to the property where he wants to put the storage units. He said that if Mr. Stack does not own the property, that is, if he sold it or transferred it to his wife, then either his wife has to be the applicant, or he has to have her sign an "owners endorsement", which is a document that is attached to the Planning Board application. He said that that must be signed by her, saying that Mr. Stack has permission to make this application, on her behalf.

The secretary gave an "owners endorsement" to Mr. Stack.

Mr. Plotsky told Mr. Stack that he needs to have new site plans prepared, and submit those, along with the owners endorsement and a deed and/ or an easement, before coming back before this Board.

Skip Wilson told Mr. Stack that he will have to set up two escrow accounts with the Town Supervisors' office. He asked Mr. Fusco, who answered \$1,000. for town engineering fees, and Mr. Plotsky said that \$650. will be needed for town legal fees.

CUDDEBACKVILLE SERVICE CENTER - #11-0201

Represented by John E. Thibodeau 754-8640

Owner/ Applicant John E. Thibodeau wishes a special use permit to create a used car sales and service lot on property located at 989 Route 209, Cuddebackville, NY

It is an HMU Zone.

Section – Block – Lot = 22 – 1 – 38. 1

Application submitted February 8, 2011.

Mr. Thibodeau said that he would like to phase out the auto body repair shop within the next year. He said that it will not totally be phased out, but will become a very small operation, and he would like to open a use car lot. He said that basically he will be doing the same thing at the property that he's been doing for years, that is, fixing cars, but only on a much smaller scale; and also get a license from the State of New York to sell used cars. He said that he would like to retire, and a used car business would be less taxing; and also the economy has changed, and he said that he has to keep abreast of it. He referred to the site plan, pointing out the part of the property where he now parks cars. He said that along Route 209, he wants to move the dirt and put a wall in, along the roadway on the proper line, and that way approximately six cars can be parked there, with comfortable spaces between them. He said that there is a 40' trailer in the back, and a containment area, where all of the waste products are kept, until they are hauled away; and he said that these all have variances, which are attached to the site plan. He said that he will have the site plan re-done by a professional with the changes he is proposing, one of which will be ten car spots, where he can place the cars that will be for sale. He said that he may not always have ten cars, he may have less. He said that he will not have more cars there, because he just wants to replace the revenue from the auto body shop, and still be a part of the business. He said that basically nothing is changing in the space that he presently occupies, the only change will be what will be done on the property, that is, selling cars legally. He presented a water analysis to the Board, a recent phase one study, and gave it to Mr. Fusco.

Mr. Plotsky said for record, that he has a close friend relationship with John Thibodeau.

Willard Schadt asked Al Fusco, if he sees anything that needs to be addressed this evening?

Al Fusco answered that the only thing that he spots is that there appears to be parking on the septic.

John Thibodeau answered that it looks like it, but indicating on the site plan where the septic and the leech field is, he said that there are only cars over the leech field.

Al Fusco said that there should not be any parking on the leech field either. He also said that he will need three updated site plans, to send to the County agencies for their comments. He said that they should be obtained as soon as possible, as they have thirty days to

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comment before the public hearing.

Skip Wilson told Mr. Thibodeau that he will have to set up two escrow accounts with the Town Supervisors' office. He asked Mr. Fusco, who answered \$750. for town engineering fees, and Mr. Plotsky said that \$350. will be needed for town legal fees.

The Board instructed Mr. Thibodeau that when he sets up the escrow accounts, and submits the new site plans, he can come back before this Board.

TRIPLET LLC - #10-1101

Represented by John Fuller, Civil Engineer 856-1536

Owner/ Rowley Development Corp.

Applicant/ Arthur Trovei is seeking a special use permit to operate a vehicle/ equipment sales yard at property located at 161 Route 6, Town of Deerpark, Orange County, N.Y.

It is an HMU Zone.

Section – Block – Lot = 57 – 1 – 96

Application received November 12, 2010.

Mr. Plotsky reviewed what happened at the last meeting by saying that when the Board voted for a negative declaration, there were five members present, and three voted in favor of a negative declaration and two voted no, and since they did not meet the four vote majority, there was no “negative declaration” pronounced. He said that there was then a discussion with Mr. Fuller about the additional type of information for mitigation that the Board was requesting in order to basically sway the two “no” votes.

Al Fusco said that he met with Mr. Fuller and the applicant, but did not walk away with any mitigation. He said that one of the things in relationship to inspections, pertaining to the building code and the fire code, the Building Department is required to conduct annual inspections at facilities. He said that towards that end, as much as possible, and as much as the budget allows, that is done in the Town on a regular basis.

Willard Schadt said that at the last meeting, he was one of the two votes against a negative declaration for this application, and now upon his discussions with the engineer concerning the application, and what has transpired subsequent to that, some of which he said he was unaware of, he said that he is prepared to change his vote tonight.

The Board reviewed SEQR form, Part I and answered “no” to all questions.

MOTION

Santiago made a motion to for a negative declaration for the Triplett application. Brietenfeld second. Roll call vote: Santiago, aye; Schadt, aye; Schock, aye; Breitenfeld, aye; W. Wilson, aye. Motion carried.

MOTION

W. Wilson made a motion to for final approval for the Triplett application, based upon payment of all fees. Santiago second. Roll call vote: Santiago, aye; Schadt, aye; Schock, aye; Breitenfeld, aye; W. Wilson, aye. Motion carried.

DEERPARK VILLAGE - # D-0012

Represented by Mr. Damian Brady, Esq.

Owner/ Applicant Deerpark 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

This application was not discussed this evening.

ADJOURNMENT

Schadt made a motion to adjourn. Breitenfeld second. Roll call vote: Santiago, aye; Schadt, aye; Schock, aye; Breitenfeld, aye; W. Wilson, aye. Motion carried.

Meeting adjourned at 8:45 p.m.

Respectfully submitted,

Barbara Brollier, Secretary