

**NORTH CASTLE PLANNING BOARD MEETING
15 BEDFORD ROAD – COURT ROOM
7:00 P.M.
August 1, 2016**

PLANNING BOARD MEMBERS PRESENT: John Delano, Chairman
 Steve Sauro
 Christopher Carthy
 Michael Pollack

Planning Board Member Absent: Jim Jensen

ALSO PRESENT: Adam R. Kaufman, AICP
 Director of Planning

 Roland Baroni, Esq. Town Counsel
 Stephens, Baroni, Reilly & Lewis, LLP

 Joseph Cermele, PE
 Consulting Town Engineer
 Kellard Sessions PC

 Valerie B. Desimone
 Planning Board Secretary
 Recording Secretary

 Conservation Board Representative:

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The meeting was called to order at 7:00 p.m.

APPROVAL OF MINUTES:

July 11, 2016

Mr. Delano asked for a motion to approve the July 11, 2016 Planning Board minutes. Mr. Pollack made a motion to approve, it was second by Mr. Sauro and approved with four Ayes. Mr. Jensen was not present for the vote.

June 20, 2016

Mr. Delano asked for a motion to approve the June 20, 2016 Planning Board minutes. Mr. Pollack made a motion to approve, it was second by Mr. Sauro and approved with four Ayes. Mr. Jensen was not present for the vote.

PUBLIC HEARING:

SWISS RE

175 KING STREET

113.04-1-2

Solar Panels

Gerhard M. Schwalbe, PE Divney Tung Schwalbe, LLP

Discussion

Consideration of Resolution of approval

The application for the installation of an approximately 9,000 panel photovoltaic (PV) array at the Swiss Re site to supply electricity to the headquarters campus. Project activities will take place within a 9.6-acre area located on the southeast portion of the site in an open meadow and wooded area adjacent to NYS Route 120. The panels will be surrounded by a chain link fence enclosure and accessible via on-site existing access roads. Town-regulated trees around the perimeter of the array will also be removed.

Present for this application was Lucia Chioccio, Cuddy & Feder and Dennis Mosey from Swiss Re and Jerry Schwalbe, esq. Divney Tung Schwalbe.

John Delano recused himself from this application due to a business conflict. Mr. Sauro took over as acting chairman for this application.

Mr. Sauro read the affidavit of publication for the record. No noticed neighbors were present. Mrs. Desimone noted all paperwork was in order.

Ms. Chioccio stated that the Town Board had granted approval for this application and would like to discuss the draft resolution this evening.

Mr. Schwalbe gave a brief presentation to the board and noted that each panel would provide 2.2 megawatts of clean energy power for the Swiss re site. This application is outside the wetlands area and erosion and stormwater management plan has been completed. Perimeter landscaping along King Street was requested and he was not sure what the status of the trees would be with the overgrowth around the trees.

Mr. Sauro stated that this is great technology and we don't want it to be obtrusive to the area, we need to make sure the landscaping is not underdone.

Mr. Schwalbe handed out notes at this time regarding conceptual landscape plan based on comments from the draft resolution. He would like to do the clearing first and really see the site and then determine where to plant the plants in the best location.

In response to Mr. Sauro's comment Mr. Schwalbe stated that originally a 4' chain link fence was proposed, his client would like a 6' fence for safety and security and for more of a deterrent to the site.

Discussions were had at this time regarding the landscaping comment #3 in the draft resolution and other conditions in the resolution. Draft resolution Condition #2 regarding removal of solar panels if not in use for a certain amount of time was moved to prior to the CO in the final draft and draft condition #3 has now become final resolution condition #2 and was edited as follows:

- _____2. The submitted landscape plan should be revised to result in an enhanced, clean and maintained streetscape along King Street to the satisfaction of the Town Planner. The landscape plan shall be revised to include the following notes to the satisfaction of the Town Planner:
 1. All invasive vines and other invasive species that may compromise the health and vigor of existing and new planting shall be removed along the King Street buffer in the vicinity and view shed of the solar panels.
 2. All trees located in the buffer shall be evaluated for conditions of health and safety. Any dead and/or dying trees, severely leaning trees or other trees with any other dangerous conditions shall be removed.
 3. Tree stumps shall be cut and ground flush with adjacent grade and have a smooth surface.
 4. Trees to remain shall be trimmed to promote growth and vigor.
 5. Although the landscape plan shown is conceptual, all the plantings in the quantities and sizes listed shall be planted in the buffer. Prior to planting, but after the removal of vines and invasive species, the Planning Board shall be notified to review the buffer condition in the field with the Landscape Architect and the Owner so as to identify the locations for the new plantings that will provide the intended screening.
 6. In the event additional trees and/or shrubs may be required in area found to be insufficiently screened they may be added to the buffer mutually agreed upon between the Owner and the Planning Board.

7. Fencing higher than 4 feet along the King Street side of the installation shall only be permitted if approved by the Planning Board during the additional review of the landscaping plan. The location of all fencing shall be approved during the additional review of the landscaping plan.

Mr. Sauro asked for a motion to close the public hearing. Mr. Pollack made a motion to close. It was second by Mr. Carthy and approved with three ayes. Mr. Delano recused himself from this application and Mr. Jensen was not present for the vote.

Mr. Sauro asked for a motion to approve the resolution as amended. Mr. Pollack made a motion to approve as amended. It was second by Mr. Carthy and approved with three ayes. Mr. Delano recused himself from this application and Mr. Jensen was not present for the vote.

USHERENKO

9 Winkler Farm Road

95.01-2-77

Site Plan

Pete Gregory, PE Keane Coppelman Gregory Engineers, PC

Discussion

Consideration of resolution of approval

The site plan application for the construction of a new 18'x 36' in-ground swimming pool in the R-2A Zoning District. The RPRC determined that given the environmental constraints of the property and the amount of proposed disturbance, a detailed review by the Planning Board and the Conservation Board is warranted.

Present for this application was Pete Gregory, PE Keane Coppelman Gregory Engineers, PC and Ken Thompson from Poolscales.

Mr. Delano read the affidavit of publication for the record. Mrs. Desimone noted all paperwork was in order for this application. Noticed neighbor Eric Schoenfeld from 311 Bedford Banksville Road was present

Mr. Gregory stated that the wetland buffer and existing septic system were close to the property line. His client has received a variance from the ZBA regarding the setbacks and has also received approval from the Conservation Board. A mitigation plan has been proposed along the edge of the pond and screening along the property line. The Conservation Board has granted approval of the mitigation plan and planting plan. At the pond a 2:1 ratio is proposed with a no mow zone. Plantings and shrubs are proposed along the property line. He noted the original site plan showed a proposed pool location and he noted the pool size was reduced to 18x36 and asked for the resolution to be updated to reflect the smaller size.

Mr. Schoenfeld stated that he was concerned with the wetlands and dead growth on his own property which borders his neighbor's lot. Mr. Thompson noted that the majority of the growth was on Mr. Schoenfeld's property. Mr. Schoenfeld asked to have this dead growth removed from his property. Mr. Delano stated that the board can not authorize work on another person's property. Mr. Thompson noted Mr. Schoenfeld would need to go before the RPRC to have that work done.

Mr. Delano asked for a motion to close the public hearing. Mr. Carthy made a motion to close. It was second by Mr. Pollack and approved with four Ayes. Mr. Jensen was not present for the vote.

Mr. Delano asked for a motion to approve the resolution as amended. Mr. Sauro made a motion to approve as amended. It was second by Mr. Carthy and approved with four Ayes. Mr. Jensen was not present for the vote.

PATERNO DAM

17 Windmill Road

101.04-2-67 & 29, 101.04-3-50 & 51

Spillway Channel

PW Scott Engineering & Architecture, P.C.

Discussion

Consideration of resolution of approval

The application for site plan, wetlands permit and tree removal permit to eliminate the existing outlet control structure, construct a new outlet control structure, repair the earthen dam and construct a new auxiliary spillway.

Present for this application was the applicant Mr. Dobbis and his professionals P. Daniel Hollis, esq. from Shamberg, Marwell, Hollis Andreyckak & Laidlaw, P.C. and Peder Scott, PW Scott Engineering & Architecture, P.C.

Mr. Delano read the affidavit of publication for the record and the following noticed neighbors were present. Mr. Jack Szluka 19 Long Pond and Mr. Weinstein 21 Long Pond and their attorney Francis X. Dee from McElroy, Deutsch, Mulvaney & Carpenter LLP Attorneys at Law, 570 Broad Street in Newark, NJ 07102

Mr. Hollis stated that the dam has been in existence for 80 years and his client has spent tens of thousands of dollars on this application and is now before the Planning Board. The pond has been drained, if not repaired and completed timely and the pond freezes, it could cause further damage. The mitigation plan off site has not worked out with the neighbors, as noted in a prior application this evening the board can not require work to be done on another lot. A bond amount needs to be determined. Mr. Hollis referred to his letter to Mr. Kaufman and Mr. Baroni regarding the definition of a dam.

Mr. Baroni and Mr. Cermele stated that the DEC is not a practical solution. The damage was already done. Mr. Hollis noted the law is the law and if the DEC does not

do its job that is not within his control.

Mr. Scott noted the dam was constructed in the 1930's and about four years ago the DEC reviewed all the dams constructed at this time. There are no reports on file since the 1980's. The necessary improvements have been done to the channel and the water table was lowered 6'. Easement documents were provided to the neighbor and not accepted and because of this he has since returned to the Conservation Board and received amended approval for three options which does not include the neighbors.

Mr. Scott continued. The three options approved by the Conservation Board were Mitigation on the Paterno dam for the channel, a separate plan for mitigation on the Szluka property or post a bond for offsite improvements. In order to keep this application moving forward his client will accept a bond amount deemed appropriate by the Town Engineer. The dam needs to be repaired; it does not meet the code or safety requirements. . This is a Class C Dam and was grandfathered at the time because no one knew it was here. He stated that repair work needs to be done, the inlet was degraded and collapsing into the pond, it has been lowered to a stable level. He reviewed the time line of 4 weeks to finish up with the town and DEC and it will take 6-8 weeks to do the work. If approvals are granted tonight, permits can be issued by September 1 and end by the end of October, beginning of November. The DEC wants this done by winter time. He would like site plan approval this evening. He would also like draft resolution condition #3 move to prior to CO. Everyone entered into this project in good faith and the DEC has directed that this be repaired. .

Mr. Hollis stated that the DEC is not going to require any easements and also noted that the discharge pipe that presently extends eight feet into the Szluka property can be removed and cut back eight feet to the point where it only discharges onto the Dobbis property.

In response to Mr. Pollack's comments regarding the contents of the easement from the neighbors, Mr. Hollis stated that the easement dealt with repairs to the channel if they were necessitated, the right to come onto the property and do it and who would do it. The original easement and agreement was presented to the neighbors which included the contractor and he is not the contractor any more. Mr. Pollack inquired if some damage to the property occurred. Mr. Hollis noted he has not been on the neighbor's property and could not answer that question.

Discussions were had at this time. In response to Mr. Pollack's comments, Mr. Scott said that holes were drilled in the sidewalls of the outlet structure to allow the water table to drop below the failed portion of the inlet which was between 5 – 6' below the top of the spillway. You can now see the damaged part of the concrete that has collapsed on the interior. The DEC has required this as a repair or a removal. The site plan before this board is to approve the site plan to the dam and show the improvements to the Dobbis property and grant a wetland permit for work being done in the Wetlands on the Dobbis property and tree removal plan which has been approved by the DEC. All this work can be done on the Dobbis property without access to the neighbor's property. The DEC noted that if an agreement could not be reached the pipe can be cut; the pipe

will discharge to a pit lined with stone on the Dobbis property which will be used as a discharge path into the channel which is five feet away and the channel already exists. The channel is on the Szluka property. The Channel existed on that property before it was improved upon. The Administrative permit to the channel was done earlier this year.

Mr. Baroni stated that the issue for the board since that work was done pre agreement, is there an obligation or does the Planning Board wish to impose an obligation that channel be maintained by the applicant, that is the real issue for the Planning Board. They got the permit to go on Szluka property to rebuild the channel and now they are before this board to rebuild the spillway. You have not been able to decide whether or not the channel as constructed should be maintained by Dobbis since it is the water from his pond that flows through the channel and the channel goes through Mr. Weinstein and Mr. Szluka's property. That is the issue.

Mr. Hollis stated that legally you can't do that. Mr. Dobbis agreed to maintain the channel as long as the malfunction of the channel was not caused by the result of any activity or inactivity by the property owners Mr. Weinstein and Mr. Szluka or future owners of those lots.

Mr. Baroni stated that if these agreements had been put in place prior to any work being done or before Szluka and Weinstein let Mr. Dobbis's contractor on their property we would not be having this discussion. Mr. Weinstein stated that he tried to be a good neighbor and allow them on site and now there is some damage to his property as a result of that.

Continued discussions were had. It was noted that public health and safety was addressed with the administrative permit issued earlier this year.

Mr. Dee stated that he feels this easement agreement can be easily solved. His clients do not want to be responsible for the channel on their properties and do not want to be liable if anyone gets hurt. There was a small drainage devise there originally and it is now a lot wider and a lot more dangerous. He likes condition #8 on page 4 of the draft resolution. He offered to speak with Mr. Hollis on the phone and work out the easement on the phone. He wants Mr. Dobbis to maintain it and not his clients, no liability or exposure to his clients. In terms of insurance that is negotiable. Ie: access to a dock by a neighbor is something you can add to your policy, the same can be done here. The last issue is the damage that was caused to the Szluka and Weinstein properties by Mr. Dobbis's contractor. Mr. Weinstein's driveway was damaged. The list of things to be done as provided by Mr. Scott in a memo dated March 1, 2016 has not been done to date. The contractor was Dobbis's agent and is obligated to address the damage to his driveway. He understands you can't tell Dobbis to do the repairs but the board can get an easement for maintenance from Szluka and Weinstein and that it will run with the land. He will work with Mr. Hollis and get this done by the end of the week.

Mr. Baroni noted this was similar to when a resident installs stone pillars on the road or a cobblestone entrance on their driveway. A license agreement is recorded with the

Westchester County Clerk for that lot and will always follow the property as it will show up in title reports. The Town of North Castle is added as an additional insured on that homeowner's policy to guarantee if there is an occurrence that the town is not primarily responsible. He thinks this is a good solution as long as the correct amount is agreed upon.

Mr. Hollis is willing to work with Mr. Dee on that and if Mr. Weinstein will get three estimates regarding the repair to his driveway, not a new driveway, they can work that out. Continued discussions were had regarding the repair and maintenance as directed by DEC, annual maintenance and additional insurance.

Discussions were had about injuries on site as a result of the channel and the liability to the Szluka's and Weinstein's if someone on their properties were injured as a result of the channel. Mr. Dee stated that if someone walks on his client's property and breaks their leg in the ditch from the channel they should not be responsible. The board noted that they did not necessarily agree with that and noted the channel was there when the neighbors purchased the lot and it is still the Weinstein and Szluka's property.

Mr. Weinstein stated that he and Mr. Szluka were very reasonable and nice guys. He has worked in this community for 20 years and this is his home and he works with his neighbors and friends and he was trying to be neighborly. He gave Mr. Scott permission to oversee the work and it was a real inconvenience that went on for six to eight weeks and then to have damage to his property on top of that and was promised it would be taken care of and it was not. There has been a lot of hassle trying to be good neighbors.

Mr. Szluka agreed with Mr. Weinstein and has lived their nearly 20 years and was being neighborly to give them access to do the work which began after the holidays.

In response to Mr. Delano's comment, Mr. Baroni stated that a resolution is possible tonight which builds in the responsibility for maintenance as required by the DEC for Mr. Dobbis's property, adding the two neighbors to Mr. Dobbis's homeowners insurance and there be an easement agreement to allow any required maintenance and repairs to be done per DEC requirements.

Mr. Carthy inquired what happens if the tree falls down in the middle of the channel, Mr. Pollack noted that whether the channel is there or not is not relevant, and it should not change the result as to how it was treated if it fell on the property line between two neighbors. Mr. Pollack suggested a reciprocal indemnity. Continued discussion was had regarding this matter.

Discussions were had about moving some conditions around in the resolution or not. It was agreed to move condition #1 move to prior to the issuance of a CO.

Amy Weinstein – 18 Windmill Road expressed her concern regarding the paving of windmill farms as it relates to this application. She was informed that Mr. Scott will coordinate with the Highway Department regarding this matter. .

Mr. Delano asked for a motion to close the public hearing, Mr. Sauro made a motion to close. It was second by Mr. Pollack and approved with four Ayes. Mr. Jensen was not present for the vote.

Mr. Delano asked for a motion to approve the resolution as amended; Mr. Pollack made a motion to approve. It was second by Mr. Sauro and approved with four Ayes. Mr. Jensen was not present for the vote.

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GREEN DROP LLC

660 North Broadway

122.20-1-33

Site Plan

Michael Piccirillo, Architect, Michael Piccirillo Architecture PLLC

Discussion

The application is for a plan to redevelop the former 1,909 square foot gas station property (Former Getty Station) as a retail store.

Present for this application was Michael Piccirillo, architect for the applicant.

Mr. Piccirillo stated that he has received ARB approval. He reviewed the memos with his client and a one way entrance was acceptable. The detached garage and small enclosure will be removed, after some discussion it was agreed that the shed would be removed as well and the garbage would be kept inside the building. The existing pole will be kept on site which is a light pole and the pole closest to North Broadway will hold a sign labeled Green Drop. The other areas will be grass and will be identified on the plan clearer than what it is now.

The applicant requested a public hearing on September 12, 2016. The applicant will present a rendering of the canopy at the meeting as well as the landscaping which were both requests from the ARB.

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78 LAFAYETTE AVENUE

78 Lafayette Avenue

122.12- 1- 29

Site Plan

Timothy Nanni, AIA Construct Architecture Studio

Discussion

Present for this application was Tim Nanni and Pete Gregory, Keane Coppelman, Gregory.

The application for the construction of a new 10,253 square foot warehouse and office building within the IND-A Zoning District. The lower level will have indoor parking.

Per comments from Mr. Nanni, Mr. Kaufman confirmed that based on the outdoor parking count that the applicant has met the 10% landscaping requirement that is currently proposed. Mr. Nanni noted there was a rain garden proposed on the roof and a double sided fence was proposed at the top of the site all the way across the site and as much landscaping as possible. Five Pear trees are proposed.

Mr. Nanni discussed comments from the memos at this time. After discussions were had, Mr. Kaufman suggested the applicant get a referral to the ZBA regarding variances as noted in his memos for backing out of the site onto the main road and FAR. Mr. Nanni will work on addressing the comments from the professional's memos and make a submission to the ZBA.

The board was ok with the site and building as proposed at this time.

Mr. Nanni discussed solar panels at this time and noted the roof was slanted and the solar panels proposed were canopy or an overhang style solar panel. A meeting will be set up with the Director of Planning, Mr. Nanni and Assistant Building Inspector Mike Cromwell regarding the proposed solar panels. They will need to determine if this will be part of the referral to the ZBA and how the coverage is affected or not with the canopy or overhang style solar panels.

Mr. Nanni has been in contact with the neighbor (80 Lafayette Avenue) regarding the easement for the loading dock.

Mr. Carthy made a motion to make a referral to the ZBA after a meeting with staff. Mr. Sauro second the motion and it was approved with four Ayes. Mr. Jensen was not present for the vote.

CRINITI

2 Barnard Road

108.03 - 3 - 60

Special Use Permit - Accessory Apartment

Roy Fredriksen, PE Rayex Design Group

Discussion

The application is for the construction of a new 1,038 square foot accessory apartment adjacent to the existing 3,242 square foot home on a 1.1 acre lot located within the R-1A Zoning District. In addition, the plans depict a new 307 square foot second floor addition.

Present for this application was William Besharat.

Mr. Besharat stated that he had read the memos from both professionals and is able to accommodate those comments and can resubmit by the close of business on Wednesday afternoon and would like the board to consider a public hearing and resolution for this applicant.

A public hearing was scheduled for September 12, 2016.

SEDRISH

22 Smith Farm Road

Section 102.02, Block 1, Lot 39

Swimming Pool

Edward Figura, RLA, CPESC Benedek & Ticehurst Landscape Architects and Site Planners, P.C.

Discussion of field change

The site plan application is for the construction of an 18'x38' pool with associated decking, walkways, patios, drainage and landscaping on a 1.156 acre lot located within the R-2A Zoning District.

Mr. Hildebrand stated that this was a field change, the pool would be slightly reduced in size and the patio would remain the same size.

The board was in agreement of this filed change. Mr. Delano asked for a motion to approve the field change as noted above, Mr. Carthy made a motion to approve. It was second by Mr. Sauro and approved with four Ayes.

GJONAJ
7 Pine Ridge Road
102.01-02-7
3 Lot Subdivision
Establish Construction Performance Bond for Shared Improvements
Recommendation to Town Board

Mr. Delano asked for a motion to make a positive recommendation to the Town Board regarding the Gjonaj bond. Mr. Pollack made a motion to approve, it was second by Mr. Sauro and approved with four Ayes. Mr. Jenson was not present for the vote.

CONTINUING BUSINESS:

NORTH BROADWAY TOWNHOUSE DINER
720 NORTH BROADWAY
122.16-3-31
Joel Greenberg, Architectural Visions
Discussion of Memos

The application for the amendment of the previously approved site plan for the property to eliminate defined curb cuts, circulation improvements, site lighting and landscaping. The applicant is operating on a TCO at this time.

No one was present for this application.

Mr. Delano noted that comments were received by traffic consultant FP Clark, Highway Department and Police Department. The board agreed that they were not in favor of the concept plan. All three reports/letters stated that the previously approved plan should remain in effect. The board agreed.

Mr. Baroni noted that Mr. John Collins Traffic Engineers was on site a week ago while he was on site.

The board agreed to communicate the outcome of this meeting to the applicant and the Building Inspector.

Ms. Gretto inquired how many Temporary CO's (TCO) were issued for this site? TCO's last six months and this has been going on for two years. Mr. Kaufman stated that sounds about right.

Mr. Loberman inquired what date the TCO expired. Mr. Kaufman noted very shortly or it may have expired. Mr. Loberman asked what residents could do to stop the TCO's being issued or close down the restaurant. Mr. Kaufman noted that the Building Department would address that matter and to his understanding no more TCO's would be issued for this site. Mr. Loberman stated that it was never the applicant's intent to comply with the resolution; he heard that from a very reliable source. He feels the town

needs to address this.

Ms. Gretto inquired how many TCO's can be granted and what was the criterion for granting a TCO? There is no Teeth and no enforcement, people can continue to get TCO's, there should be criteria on TCO's

Mr. Kaufman noted that internal discussions have been had regarding this matter and this should be bonded instead. Your points are very well taken.

Mr. Loberman stated that the building dept. keeps issuing the TCO's and C.O's and there is no input from the Planning Department. Mr. Delano agreed.

Mr. Pollack made a motion to adjourn the meeting. It was second by Mr. Carthy and approved with four Ayes. Mr. Jensen was not present for the vote.

Meeting was adjourned at 9:23 p.m.