

**TOWN OF CHESTER
PLANNING BOARD MINUTES
April 2, 2014**

Minutes of the April 2, 2014 Planning Board Meeting

Members present: Don Serotta, Chairman, Robert Conklin, Carl D'Antonio, John Gargano,
Barry Sloan

Also present: David Donovan, Attorney
Alfred Fusco, Engineer

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

A motion was made by John Gargano and seconded by Bob Conklin to adopt the minutes from the March 5, 2014 meeting. The motion passed with a 5-0 vote.

GREENS AT CHESTER SUBDIVISION – A request was made by Rick Golden, attorney for the Greens at Chester, for a 90-day extension for conditional final approval. A motion was made by Bob Conklin and seconded by Carl D'Antonio to grant the 90-day extension. The motion passed with 5-0 vote.

RICHARD LOGOTHETIS ARCHITECTURAL REVIEW - Richard Logothetis appeared before the Board to request architectural approval for a sign he designed for his annual summer concert series. He stated the signage itself measures 4' x 8' and will be located off of Kings Highway. The frame will be permanent and is essentially 6"x 6" held together by galvanized plates.

Al Fusco submitted the following letter:

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Al Fusco reviewed his letter. He asked what materials will be used. Richard Logothetis said it will be steel connected plates and the frame is wood. Al Fusco asked if there will be any illumination on the sign. Richard Logothetis said yes. There is a cupola on top which will house a junction box and there will be two 24" arms with small florescent lights pointing down. Al Fusco asked about the dimensions from the road. Richard Logothetis said it will be about 12' from the white line at the edge of the road. Al Fusco asked the applicant if he knows where that is in relationship to your property line. Richard Logothetis said my property line is actually the double yellow line.

Barry Sloan asked if the sign is two sided. Richard Logothetis said yes. Barry Sloan asked if it is going to be lighted all night. Richard Logothetis said until 11:00 p.m. Barry Sloan said my concern is that Sugar Loaf does not have an adequate signage ordinance that is enforced. We have so many paper signs and temporary signs in Sugar Loaf, now we are adding one more sign. He asked what happens to the sign after the season. Richard Logothetis said the frame stays permanently and the sign with the information will be removed. Barry Sloan said the size is overwhelming.

John Gargano said I would like something that says it is going to have lighting. Al Fusco suggested showing it on the plan. Chairman Serotta said we could grant architectural review based on you giving the Board another plan that shows the lighting.

Bob Conklin asked if a sign that size, in that location would cause a problem for neighbors getting out of their driveways. Richard Logothetis said my neighbor is a train. Bob Conklin said I know your neighbor is a train, but what about the neighbors on the other side of the tracks. Richard Logothetis said it should be far enough away if they pull up to the white line and stop. Bob Conklin said that area is congested with driveways and you have neighbors that share a driveway. Richard Logothetis said no, there is a sign that separates the two. Bob Conklin said is that sign going to cause a site issue for either of those neighbors because of the size that it is. Richard Logothetis said I don't believe it does but I would have to go look at it.

A motion was made by John Gargano and seconded by Bob Conklin to grant architectural review based on the applicant putting the electrical and dimensional specifications on the plan and submitting it to the Planning Board. The motion passed with 4-1 vote. Barry Sloan voted against the sign.

DEER TRAIL SUBDIVISION – Chairman Serotta stated that this application consists of a two lot subdivision located at 47 Deer Trail Road. He stated he is going to recuse himself from this application due to a conflict. Barry Sloan will be acting chairman.

Barry Sloan stated that before the Board is Benjamin Oster, attorney for the applicant James Theodoreu. The applicant has a two lot subdivision on Deer Trail Road, a private road off of Pine Hill Road in the AR-.3 district. He stated that the applicant appeared before the ZBA to

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request a 280 –a variance, which he received. Barry Sloan asked Ben Oster what exactly he received from the ZBA. Ben Oster stated we applied for an interpretation or a variance. It was our belief that based upon 280-a, since Mr. Theodoreu owned more than the minimum 15 feet out to Pine Hill Road, that he did not require a 280-a variance. Since the other portion of his lot, the additional acreage came from the Neaverth parcel, by virtue of that, he also acquired rights over Mr. Neaverth's 15 feet out to the road. We asked for an interpretation that we did not need a 280-a variance. Barry Sloan asked Ben Oster to demonstrate to the Board which is the Neaverth parcel. Ben Oster said lot # 2 is the Neaverth lot. This land you see where it says property line to be removed that was formally part of the lot that was originally subdivided and sold to Neaverth. There is a stone wall and a tree line that is shown on the map and Mr. Neaverth did not want to own anything that was beyond his property line and it was added to the Theodoreu lot. You'll note that there is a 15-foot strip that goes all the way back to Mr. Russiyan's property in the rear. There is also a 15-foot strip that comes from Theodoreu's parcel and a 15-foot strip that runs the length of the former piece of Neaverth, through the Neaverth lot and out to the street. He said each of the parcels that did not front on Pine Hill Road all owned 15-feet in fee out to Pine Hill Road. Barry Sloan said you have five 15-foot lots. Ben Oster said there were four 15-footers, because lot #1 had frontage on Pine Hill Road. These two lots had frontage on Pine Hill Road. So lot #2, the former lot #3 and Russiyan each had 15 feet out to the road. There is a common driveway agreement because the paved Deer Trail traverses over everybody's 15-feet. We had presented to the ZBA that we did not think we needed a 280-a variance, but if the Board felt we needed it then we wanted one and they granted one. The dissenting votes were not because they did not want to grant the variance, but from speaking to Julie Bell after the ZBA meeting, the reason she voted no was because she did not think the variance was required. The other nay vote was Feigelson and I did not check with him, but Julie Bell reported to me that that was his thinking also. Barry Sloan said it is my understanding that the variance was for access to Pine Hill Road. Ben Oster said yes, it is a 280-a variance to Pine Hill Road because Deer Trail is a private road.

Al Fusco submitted the following letter:

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- 233 East Main Street
Middletown, NY 10940
Phone: (845) 344-5863
Fax: (845) 956-5865
- 19 Waywayup Lane
Port Jervis, NY 12771
Phone: (845) 956-5866

March 31, 2014

Barry Sloan, Chairman
Town of Chester Planning Board
1786 Kings Highway
Chester, NY, 10918

Re: Subdivision of Property for Theodoreu
Pine Hill Road & Deer Trail Rd (private road)

Dear Mr. Sloan and Planning Board Members,

We have reviewed the file offer the following:

Project: Theodoreu Subdivision
Zone: AR-.3 District
Acres: 6.69 acres
SBL: 16-1-79.21 & 80.2

Project Description: This project is a subdivision (lot line change) of two existing residential lots; both lots currently have existing dwellings, septic disposal systems. The property is being subdivided so that both lots will conform to zoning. The Zoning Board of Appeals has granted a variance for lots fronting on a private road.

The following items are listed to assist the applicant in completing your submission to the Planning Board. Please note that this is only a guide, as the plan progresses other items may be listed in future meetings. If you need further assistance please contact this office.

Comments: We have reviewed the subdivision plan and offer the following comments for planning board review.

1. The applicant's surveyor should apply a hatching to the existing driveways so that the driveways will be easier to identify from the adjoiner's property lines.
2. We would ask that a different line type is applied to the adjoiner's property lines so that they can be distinguished from other lines.
3. Show monuments to be set at property corners on both lots.

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4. The applicant is proposing a new well for Lot 3A; please provide separation distance and the elevation of proposed well and septic disposal area.
5. Provide a detail for the proposed well.
6. Provide a note for call before you dig.
7. Show all existing houses, accessory structures, wells and septic systems on and within 200 feet of the parcel.
8. Provide a legend.
10. Provide reputed owners and tax map designation for all adjoining lots.
11. Provide a note pertaining to the owner's review and concurrence with plat along with owner's signature.
12. Provide an updated survey; the date on the subdivision map is shown as February 14, 2013. Show all existing improvements, including the house addition.
13. Date of variance should be shown on the subdivision plan.
14. Board to determine lot frontage on Deer Trail or Pine Hill Road.
15. An engineer is to verify and certify sufficient sewage disposal capacity for both dwellings.

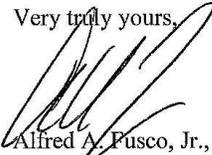
This concludes our review at this time.

Action:

1. Pleasure of the Board.

Please advise if you have any questions.

Very truly yours,



Alfred A. Fusco, Jr., P.E.
Fusco Engineering & Land Surveying, P.C
AAF/cam

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Al Fusco reviewed his letter. Item 13 from his letter was discussed in length. Al Fusco said we are looking at where the frontage is. The frontage is on Pine Hill or Deer Trail. The frontage that goes out to the property is obviously on Pine Hill Road, the houses may face Deer Trail. Barry Sloan said the houses physically face Pine Hill. Al Fusco said we would determine then that the frontage would be Deer Trail and that would affect the bulk area requirements. The engineer for the applicant needs to verify that by showing the setback lines on each of the parcels so we can better determine that. One of the things that it looks like is that the cottage may be non-conforming. Ben Oster asked why is it non-conforming. Al Fusco said in the front it requires 100-foot setback. Ben Oster said but the front is Deer Trail. Barry Sloan said no the front is Pine Hill. Ben Oster said no the front is Deer Trail. In fact the variance says that the front is Deer Trail. The last sentence of the variance says existing easement over Deer Trail, a private road and that this easement accesses from the property frontage on Deer Trail. So it is saying that the property fronts on Deer Trail. That is the ZBA's conclusion. Dave Donovan said he looked at the definitions and I don't know how conclusive they are. If you talk about lot line front, it's the street line at the front of a lot. So the street line is a dividing line between a lot and the right-of-way of a street. A street is a publicly dedicated right-of-way or a private right-of-way improved to meet town street specifications. Ben Oster said Deer Trail is a paved road. Dave Donovan said I assume it does not meet town specifications, but I don't know if we have private road specifications. Ben Oster said it exceeds the open area development road specification. Ben Oster said if I need to go back to the ZBA, because that is what this Board wants, because I don't have a sufficient front yard on that 87 feet then tell me now and I will go back to the ZBA. Clearly, that is not what the ZBA intended when they sent us back to this Board and it was what this Board asked this applicant to do. Barry Sloan said I also have a problem with lot 3-B because you have a setback of only 81.8 feet and the rear setback requirement is 100. Ben Oster said that would become a side yard not a rear yard if our frontage is on Deer Trail. Barry Sloan said I'm taking it as facing Pine Hill. Ben Oster said we've shown those to be our side yards, if it is your interruption that the front yard is Pine Hill Road rather than Deer Trail, make that conclusion right now and we will go back to the ZBA because I don't intend months debating that issue. Barry Sloan said this is my interruption from the beginning. We had many discussions on prior subdivisions where a frontage should face on a flag lot, we have had countless hours on the Board over the years and we have debated this many times where a house faces versus a driveway. Ben Oster said we are not going by where the house faces, we are saying if we front on Deer Trail, that's the improved private road that the lots front on. That is our position.

Al Fusco continued with the review of his letter. Ben Oster said we can comply with all of Al Fusco's comments. With respect to comment #13 we are proposing that we would front on Deer Trail and that would make us compliant in terms of the bulk table.

Barry Sloan said this lot is situated in AR-.3. This building is a residence. Ben Oster said no it is the garage for the dwelling and we propose to connect it to the dwelling. Barry Sloan said it is already connected. Ben Oster said the breezeway has to be shown and I point out that the ZBA granted a variance to a property off of Bull Mill Road saying that they didn't need to build a breezeway because it would be an unnecessary exercise in granting a variance to allow

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somebody to have living space in a separate building. Barry Sloan said but this is already built. Ben Oster said he has a building permit for this. His neighbors house a breezeway. Barry Sloan said does he have a building permit for the breezeway. Ben Oster said yes. Barry Sloan asked does he have a building permit for the building. Ben Oster said yes. Barry Sloan asked if the property is used as two family. Ben Oster said no. It is not two family unless it is totally separate. That is why the breezeway was put up to solve that problem. So it is part of the single residence.

Ben Oster said Mr. Russiyan's house is just to the rear of our house and it has the same configuration. Barry Sloan said but he is not before the Board. Ben Oster said the ZBA, on the application of Allison Pifko and Kristin Walsh, ruled that whereas the applicant is seeking a variance allowing an accessory building as a home office and the installation of a bathroom. The property is located at 212 Sugar Loaf Mountain Road. The premises consist of a residential home and a detached garage. A technical application of the code would require the construction of a 200-foot long breezeway between the house and the garage, which would be very unattractive. The granting of the variance would be in harmony with the general purpose and intent of the zoning ordinance and will not be injurious to the neighborhood, will not change the character of the neighborhood, where as the variance is not substantial. The ZBA when chaired by Mr. Serotta, and populated by Mr. Feigelson, Mr. Montarro, Linda Ranni, and Dorian Rossi found that a variance could be issued so that you don't even have to build a breezeway. How is it ok to have the apartment with the house, the bathroom and you don't even need to build a breezeway? You grant variances with no breezeway but Mr. Theodoreu's breezeway becomes a problem. Barry Sloan said it is not a problem but it has to be shown on the map. Barry Sloan said I'm questioning if it was built illegally. You're saying that it has a building permit. Ben Oster said there are no violations on my client's property presently. The building department has not issued any violations. On what do you rely to say it was built illegally? Barry Sloan said I'm asking you. Ben Oster said as far as I'm concerned it is a non-issue. How is it an issue if there is no violation from the building department? Barry Sloan said it seems funny he builds the breezeway and then he gets the permit. Ben Oster said he filed for a building permit for the breezeway. Mr. Serotta then pitched a bitch, went to the building inspector, went to the town board, went to Mr. Bonacic and they told the building inspector to rescind the building permit. He wanted to build a breezeway, he got a building permit for a breezeway, than a letter was written to Mr. Farr predecessor to Mr. Fusco, that there was some problem with the building permit that was issued. The breezeway was constructed; Jim needs to show it on the map. The neighbor has a breezeway and other people who wanted to use a breezeway the same way Mr. Theodoreu wanted to use a breezeway obtained a variance from our ZBA saying don't bother. But now it is a stumbling block for Jim.

Dave Donovan said I thought the issue before the Board was whether or not this met the rear yard setback. If the determination is it has to be measured from Pine Hill Road or the determination is our code is not clear, than it is a referral to the ZBA for an interruption and or a variance. I will say that it is not uncommon that other codes and other municipalities look to the nearest public road. In the Town of Newburgh, I have represented the Town of Newburgh ZBA for eight years now; they consistently would call all these corner lots because there is a road here and a road here. They would want front yard on both.

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Barry Sloan said I have another issue with the frontage. In the code it specifically says that you cannot have a secondary building in the front of a house. Ben Oster said it will be part of the house once the breezeway is recognized. Dave Donovan said if it is connected at that time, then it is part of the house. Ben Oster said the breezeway resolves the issue regarding a building in the front yard. It's no longer a building in the front yard; it is part of the building.

John Gargano said we have it on the resolution from the ZBA as you said 20 minutes ago, easement access property frontage on Deer Trail. If it is written here why are going back to the ZBA. Ben Oster said I believe the ZBA's variance conforms with I'm representing to you, that Deer Trail is our front yard. Dave Donovan said if you think it is clear what the ZBA said, than you can move forward. If you think it is not clear, than go back to the ZBA either for clarification or for further ruling by the ZBA.

Barry Sloan said I think this resolution was for the flag lot and the access to Pine Hill and it had nothing to do with the frontage. John Gargano asked then why was it part of the resolve at the end. There must have been some issue of it. Why would somebody bring it up, type it up, sign it, date it and issue it. How many times should we read it? Private road, Deer Trail the word frontage is there. Barry Sloan said we have to rely on our attorney for interruption. Dave Donovan said if you are satisfied that this resolution provides that the frontage and the front yard should be measured from Deer Trail then you can proceed, but if you are not satisfied, than the matter should go back to the ZBA either for a letter of clarification or further proceedings. Dave Donovan said I will tell you, from my point of view, that the definitions of front yard, street line, lot line front, call this into question.

Ben Oster said we do have a number of changes to make to the map for Mr. Fusco to review. We can communicate with the attorney for the ZBA and see if they need a further application or further clarification, but since we did apply for an interruption and a variance, I believe it would be within the compass of our prior appearance and I believe the variance that was granted to us assumed frontage on Deer Trail. It is really the pleasure of the Board. Dave Donovan said the other reality you have is there are only four members of the Board here. In terms of, if you wanted to poll the Board to see if you should go back to the ZBA, if one person says I think you should, I don't know where you are going. Ben Oster said based on the acting chair's questions, I think it makes sense for us to go to the ZBA.

Barry Sloan asked if there were any other issues that have to be addressed by the ZBA. Al Fusco said they need clarification or a variance from the ZBA. Ben Oster said I think it would be an interruption as to where are front yard is. Dave Donovan said if for some reason they said Pine Hill then you need a variance.

Barry Sloan said one other thing that should be on the map, is 911 numbers. Ben Oster said each of the properties have numbers on Deer Trail. Barry Sloan said they need to be shown on the plan.

Barry Sloan polled the Board for further comments.

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John Gargano had no further comments.

Carl D'Antonio said he wants clarification of the frontage from the ZBA.

Bob Conklin said this property has progressed, developed and been built up through the years without any approvals. The problems that exist on this property were created by Mr. Theodoreu. That is why there are so many hurdles to get over because it was not done property in the first place. My suggestion is have the engineer build these lots out exactly as they are because there is a lot information out there and people know what is on this lot. Before you go back to the ZBA make sure everything is spelled out so that when you come back to us more hurdles are not thrown in your way because I don't want to see you be a ping-pong ball either. Ben Oster said the problems we need to solve with the ZBA we can solve but in terms of the comments that Mr. Fusco has raised, those are engineering and detail comments that we will take care of. Bob Conklin said if you come back and there are items that are missing and information crops up and you become the ping-pong ball don't get upset with the Board.

Barry Sloan asked if we need a resolution. Dave Donovan asked Ben Oster if he wants a resolution from the Planning Board. Ben Oster said no, he does not think it requires a resolution.

Chairman Serotta returned to finish the meeting. He stated the next meeting will be May 7, 2014.

A motion was made by Barry Sloan and seconded by Carl D'Antonio to adjourn the meeting. The motion passed with a 5-0 vote. The meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Roxanne Serotta
Planning Board Secretary