

A regular meeting of the Town of LaGrange Planning Board was held at the LaGrange Town Hall, 120 Stringham Road on Tuesday September 15, 2009. Chairman Alan Bell called the meeting to order at 7:30 p.m. Board members Dennis Rosenfeld, Tony Brenner, John Gunn and Stacy Olyha were present. Robert Straub was absent. Also present was Wanda Livigni, Administrator of Public Works, Walter Artus from Stormwater Management Consultants and Greg Bolner from Clark Patterson Lee.

Mr. Gunn made a motion to accept the minute of July 21, 2009, seconded by Ms. Olyha and the motion carried unanimously. MINUTES APPROVED.

Mr. Brenner made a motion to accept the minutes of August 18, 2009, seconded by Ms. Olyha and the motion carried unanimously. MINUTES APPROVED

### **PUBLIC HEARINGS:**

**VALCARCEL SPECIAL USE PERMIT** – Proposed Special Use Permit located on Clover Hill Road (Grid No. 6260-02-903683)

Ms. Valcarcel and Mr. Ki Wong were present. Mr. Wong explained he wanted to put a wall up. Ms. Livigni said this requires a Special Use Grading Permit and they also have a retaining wall that is over 4 feet high, which requires a structural engineer design or certification. Mr. Bolner said if a building permit is issued that would be separate but in the building code it does require that the wall be designed. Mr. Bell said he didn't believe the applicant needed the board's approval for this. Mr. Bolner replied correct.

Ms. Valcarcel said the wall was done and somebody reported them. Ms. Livigni said the work was done without a permit and they were rectifying it. Mr. Bell said the wall required grading and that is why a permit is necessary.

Mr. Bell declared the public hearing open. There was no comment. Mr. Brenner made a motion to close the public hearing, seconded by Ms. Olyha and the motion carried unanimously. PUBLIC HEARING CLOSED.

Mr. Gunn made a motion to grant a Negative Declaration pursuant to SEQR, seconded by Ms. Olyha and the motion carried unanimously. NEGATIVE DECLARATION

Ms. Olyha made a motion to grant a Special Use Permit, seconded by Mr. Gunn and the motion carried unanimously. SPECIAL USE PERMIT.

### **OTHER BUSINESS:**

**LAGRANGE PHYSICAL THERAPY SITE PLAN** – Proposed site plan located on Freedom Plains Rd. containing 1.09 acres (Grid No. 6360-02-626880) initial presentation.

Jon Burke and Fred DeBernardo were present. Mr. Burke said this currently a residential house and they wish to move their physical therapy practice there. He said they will renovate it. Mr. Burke showed the board conceptual approval from the DOT.

Mr. Burke showed the board the plans. The issue of parking was discussed. Mr. Bell said he believed the commercial code encouraged parking in the rear of the building. Ms. Livigni asked if this was given to the Zoning Department and Eileen Mang replied yes.

Ms. Livigni said the Zoning Department needs to complete their review and there will be correspondence sent to the applicant detailing the comments. Ms. Livigni said Mr. Artus has noted that this project is in the Ridgeline. Mr. Bell asked the board if they should wait to hear back from Zoning before setting the public hearing. Ms. Livigni said this plan is going to need to be modified to be compliant with the code. She said if the board gave them a time frame and they met that, then maybe they could have the public hearing.

Mr. Artus said because this was a Type I action, it would need to be circulated and added it was also within 500' of a county or state road and would need to go to County Planning. Mr. Bell asked about circulating for Lead Agency. Mr. Bell told Mr. Burke he needed to address why the parking couldn't be in the back. Mr. Burke asked what it meant by it is encouraged that the parking be in the back. Mr. Bell said it means that it is not required, it is encouraged so the board has the ability to use judgment to allow it to be somewhere else, but the board needs a rationale to do that.

Ms. Livigni confirmed that Zoning received the submission on August 14<sup>th</sup>. The board set an escrow for \$1,000. The board discussed the possibility of having the public hearing held in October. Ms. Livigni said the board could set the public hearing contingent on the issue of comments from Zoning. Mr. Bell asked if the board did set the public hearing for October 20<sup>th</sup> when would the applicant have to bring in the revised plans. Ms. Livigni said at least the 1<sup>st</sup> week in October. The issue of the public hearing and circulating for Lead Agency was discussed. Circulation requires a 30-day response time. Mr. Artus asked if the applicant submitted an EAF and the applicant responded yes, both short and long.

Mr. Burke talked about seeking a variance for the parking. Mr. Bell told him he was far better off trying to convince the Planning Board that the parking worked better where he wanted it then he was seeking a variance, particularly if he was looking to expedite this. Mr. Bell asked the applicant for a letter outlining his rationale for the parking would be adequate. The board discussed the option of circulating for Lead Agency and holding the public hearing. They decided they could circulate and start the 30-day process in time for the public hearing if the applicant supplied documentation and it was mailed out by September 21, 2009. Mr. Bolner said this project will also require Health Department approval. The Planning Board scheduled the public hearing for October 20, 2009.

**LOT # 17 WOODS END SUBDIVISION** – Proposed Wetlands Permit located on Woods end Rd. (rid No.6460-04-891261)

Mr. Harry Wenning was present. Mr. Wenning submitted to the board a new plan reflecting the changes that were requested at the prior meeting.

Mr. Bolner stated the plans were adequate and from his perspective, all of his comments were addressed. He said he has not seen the documentation for the DEC wetlands permit. Mr. Bell said everything looked in order. Mr. Brenner made a motion to grant a Negative Declaration pursuant to SEQR, seconded by Mr. Gunn and the motion carried unanimously. **NEGATIVE DECLARATION.**

Mr. Gunn made a motion to grant a wetlands permit, seconded by Mr. Brenner and the motion carried unanimously. **WETLANDS PERMIT GRANTED.**

**IMPROTA SUBDIVISION & SPECIAL USE PERMIT** – Proposed 2-lot subdivision located on Cole Road containing 17.06 acres (Grid No. 6661-01-060804)update:

Mr. Jason Morris from M.A. Day Engineering was present. He refreshed the board by stating this was a 2-lot subdivision on Cole Road containing an existing house and the proposal is to split the property to add the 2<sup>nd</sup> lot. The project received preliminary approval last year, and they are on their 2<sup>nd</sup> extension and they are looking for final approval. Mr. Day said they have Health Department approval. Mr. Bell referred to Mr. Artus' comment letter indicating everything was satisfied and ready for final approval. Mr. Artus replied yes.

Mr. Morris requested a note be added to the map. He said there are some pine trees and the owners would like a note on the plan that those trees could never be cut by either lot owner. Ms. Valk said once they start decaying they become a hazard. She said there are separate agreements that can be done as opposed to a note on the map. She said she could probably draft some language.

Ms. Olyha suggested it could be something that could be put in a driveway agreement. Mr. Morris said this was a common driveway and there has to be a maintenance agreement and asked if there could be some language in that. Ms. Valk said that could be done.

Mr. Brenner made a motion to grant a Special Use Permit, seconded by Mr. Rosenfeld and the motion carried unanimously. **SPECIAL USE PERMIT**

Mr. Gunn made a motion to grant conditional final subdivision approval, seconded Ms. Olyha and the motion carried unanimously. **CONDITIONAL FINAL SUBDIVISION APPROVAL.**

**NEJAME SUBDIVISION** – Proposed 2-lot subdivision located on Rte. 82 containing 38.953 acres (Grid No. 6562-04-901249); update and discussion

Ms. Livigni said it looks like they received preliminary approval in 2000 and 2005. There is DOH approval from 2000 which is expired and they have a variance for the road frontage. Mr. Bell said he assumed the board wouldn't have to deal with the issue since they already have preliminary approval. Mr. Artus said he wasn't 100% sure they got preliminary approval. He said it was done in 2000 and in 2002 they submitted a new application, and there were public hearings in 2005. His last comment letter from Chazen stated there's been SEQR determination or approvals to that date.

Ms. Livigni asked if there were 2 separate projects here. Mr. Artus said 2000 pre-dates him but he saw something about a wetland permit at that time. Mr. Bell said he had a letter from the town saying they were given a Negative Declaration pursuant to SEQR and preliminary approval. Ms. Livigni said it was for the subdivision. Mr. Bell said neither of which expire unless the board revokes them.

Mr. Artus said then in 2002 there was a new subdivision application. Ms. Valk said that was Walter's point. If it was a new application, then it changes that. Mr. Artus referred to his comment letter of 2005 and Ms. Olyha said they went with the new application. Ms. Livigni said it refers to a subdivision plat last revised July 7, 2000.

Mr. Bell said the 2000 approval was for the wetland and the pond and asked why was it called subdivision. Ms. Olyha said it was for the wetlands permit and Mr. Bell asked if it was a single lot why was it call a subdivision. The Planning Board continued to discuss the issue of the variance that was granted.

Mr. Gary Beck was present and discussed the issue of the variance and said he thought that was all clarified. The board discussed the variance. It was determined that the ZBA would not look at a plan and grant a variance to a plan that doesn't adhere to the zoning.

Mr. Bell referred to the minutes from the ZBA. Ms. Livigni said she asked Susan Quigley and Susan said they had the road frontage variance but the 100 feet going into the land was not covered. Mr. Bell said which means that in 2009 they would need to get that variance. Mr. Bell asked if what he was hearing was when they were reviewing the plan, the board sent them to get half a variance in 2000? Ms. Livigni said she thought there needed to be some more extensive research in the zoning minutes and see if they could back track. Ms. Livigni said she would conduct a more extensive search of the zoning minutes.

Mr. Bell said the board should go over all of the outstanding issues. Ms. Olyha said in the minutes a plan is being referred to that the board doesn't have which means zoning has a plan so the first place they should start looking is in the zoning archives to see what the plan was that they were looking at the variance for. Mr. NeJame asked what plan were they looking for. Mr. Bell said the one from 2000 that was granted the variance which should show the frontage.

Ms. Livigni said the variance was granted in May, 2000 and the letter stated they could proceed to the Planning Board for approval so looking at the dates you go from May,

2000 to Planning Board preliminary approval in July, 2000, but the 100 foot in existed in 2000. Mr. Bell said the board granted preliminary to the plan he referred to, which would appear to not meet the 100-foot so on what basis would the board be refusing to approve the same plan with a little more frontage and the same restrictions, other than the fact that they can't approve it. Mr. Artus said the year 2000 pre-dates his time and he was going off the quick books where they submitted a new application in 2002. Mr. Bell said the bottom line is they probably should have been required to get a variance in 2000 but everybody collectively overlooked it but since they are seeking an approval in 2009 he thought they would need the variance for the 100-foot frontage.

Mr. Bell said they have to go back to the ZBA for a variance for the 100 foot frontage. Mr. Bell said he recalled other zoning issues and violations. Mr. Nejame said he believed Yogi believed he was running his business out of his house. Mr. Bell said that sounded right. Mr. Nejame said he came by with a few other people and saw a 2-yard dumpster which still sits there. Mr. Bell said he noticed that Mr. Nejame had a blue official street sign too. Mr. Nejame said it was because customers kept driving..... Mr. Nejame did not complete his sentence. Mr. Bell asked if there were any outstanding zoning violations on record. Ms. Livigni replied not that she was aware of. Mr. Bell said the next step is to go to the ZBA for a variance for the 100-foot setback and if the ZBA grants him that, then the board can proceed forward. Ms. Olyha said they need Board of Health approval. Ms. Olyha asked if SEQR was done on this plan. Mr. Bell replied no, it was not done but the public hearing was closed.

Mr. Bell said to summarize...if he gets a variance from the ZBA and a letter from the Board of Health re-approving both lots, and Mr. Nejame comes back with plans that have been granted a variance and the DOH letter, the board could proceed and grant the approval. Ms. Olyha asked if there was an EAF and said it needed to be updated to the plan that was being submitted to the ZBA, DOH. Mr. Artus said he made comments on the last EAF so he requested that the EAF be found. Mr. Bell said he would still need to fill out an updated long EAF.

**THE NURTURY SITE PLAN.** – MR. Bell refreshed the board's memory of the chain link fence the board requested they put up 12 years ago. He said it has been installed and that was the last condition that needed to be satisfied in order for them to obtain site plan approval. Mr. Bell said before he signed the site plan he wanted to make sure all bills that were owed were paid. Ms. Valk said she would take care of that. Mr. Bell said from time to time he has been asked to sign bills from VanDewater that are numerous months old. He said he wanted to ensure that we don't get a bill for Ms. Valk's time in January of next year that hasn't been paid.

**REQUEST FOR 2<sup>ND</sup> RE-APPROVAL OF FINAL SUBDIVISION APPROVAL:**

Mr. Bell refreshed the board's memory regarding the process the board went through for the re-approvals. He said they sent a memo to the Town Board asking for their comments regarding the Planning Board issuing re-approvals, which is what the statute requires. Mr. Bell said he received a memo back stating they had no concerns about all 4

projects. Ms. Livigni said all 4 projects have paid their re-approval fees and have submitted their narratives.

**ROLLING MEADOWS SUBDIVISION** – Mr. Gunn made a motion to grant a 2<sup>nd</sup> re-approval of conditional final subdivision approval, seconded by Mr. Brenner and the motion carried unanimously.

**BIXBY SUBDIVISION** – Mr. Rosenfeld made a motion to grant a 2<sup>nd</sup> re-approval of conditional final subdivision approval, seconded by Mr. Gunn and the motion carried unanimously.

Mr. Bell said a public hearing was necessary for re-approval of the Wetland Permit. The board set the public hearing for the wetlands permit for October 20, 2009.

**WHISPERING PINES SUBDIVISION** – Mr. Rosenfeld made a motion to grant a 2<sup>nd</sup> re-approval of conditional final subdivision approval, seconded by Mr. Gunn and the motion carried unanimously.

**LAKE RIDGE SUBDIVISION** - Ms. Olyha made a motion to grant a 2<sup>nd</sup> re-approval of conditional final subdivision approval, seconded by Mr. Gunn and the motion carried unanimously.

**T-MOBILE NORTHEAST LLC** – Order signed by Judge McMahon

Mr. Bell said this is the application where they wanted to put transponders on Vervalen Drive. He said they went through the ZBA and the ZBA returned their variance and they sued us in federal court and won. Mr. Bell said the board now has an order before them by Federal Court Judge McMahon directing the Planning Board to carry out the decision in the resolution.

Ms. Valk said Judge McMahon ordered that the Planning Board must give project development plan and special use permit approval this evening and that is why the board has 2 different documents, one for the special use permit, and the other for the project development plan. She said it goes into a discussion of the fact that this is the result of a court order. Mr. Bell said if any board member was interested in the details to let him know and he would forward the entire judge ruling.

Mr. Olyha made a motion to motion to issue a Special Use Permit under section 240-29, seconded by Mr. Gun and the motion carried unanimously. SPECIAL USE PERMIT

Mr. Rosenfeld made a motion to grant site plan approval, seconded by Mr. Gunn carried unanimously. SITE PLAN APPROVAL.

Mr. Gunn made a motion to adjourn the meeting at 8:55 P.M. seconded by Mr. Brenner and the motion carried unanimously. MEETING ADJOURNED

Respectfully submitted,

Eileen Mang  
Planning Board Secretary