

The Deerpark Planning Board met for a public hearing on Wednesday, August 27, 2008 at 7:00 p.m. at Deerpark Town Hall, Route 209, Huguenot, N.Y. The following were present:

PLANNING BOARD MEMBERS

Willard (Skip) I. Wilson, Chairman

Dan Loeb

David Dean GarySpears

Theresa Santiago

Derek Wilson

OTHERS

Mr. Glen Plotsky, Town Attorney

Mr. Al Fusco, Town Engineer

Mr. Chad Martel, Applicant

Mr. William A. Onofry, Esq.

The secretary read the public hearing notice: "Notice is hereby given pursuant to the Zoning Law of the Town of Deerpark, Orange County, New York, that the Planning Board of the Town of Deerpark will hold a Public Hearing to determine whether a waiver should be granted to the provisions of the Subdivision Regulations of the Town of Deerpark as they pertain to the length of a permitted cul de sac and to the number of lots permitted to be serviced by a cul-de-sac. Specifically the hearing is to determine whether the Planning Board should grant a waiver to permit the applicant to construct a One Thousand Four Hundred Seventy-Five (1475?) Foot cul-de-sac where the provisions of the Subdivision regulations only permit cul-de-sacs of Eight Hundred (800?) Feet or less and a waiver to permit a cul-de-sac to service 10 lots where the provisions of the Subdivision regulations only permit cul-de-sacs to service 9 lots. The Hearing described above shall be conducted on the 27th day of August, 2008 at 7:00 PM, or as soon thereafter as practicable, in the Town of Deerpark Town Hall, Route 209, Huguenot, Town of Deerpark, Orange County, New York 12746. The nature of the proposed action is Subdivision of 84 and 9/10 acres, more or less, in the River Recreational Corridor District to construct 16 single family residences in accordance with Section 5.10 of the Town of Deerpark Zoning Law pertaining to the Upper Delaware River Provisions, while also implementing a conservation easement over 36.69 acres, more or less, that shall be dedicated. The location of the proposed action is in the vicinity of Wilson Road and Hawk Mountain Road, Town of Deerpark, County of Orange, State of New York. Said properties are designated as Section 23, Block 1, Lot 62.32 of the Tax map for the Town of Deerpark, County of Orange, State of New York. A copy of the proposed site plan and related documents are on file in the Office of the Building Department, Town Hall, Route 209, Huguenot, Orange County, New York, for inspection and review. All interested parties, and all persons will be given reasonable opportunity to be heard in respect to the application. Persons may appear in person, by attorney, or through a representative."

Skip Wilson: Sir, would you please explain to the public what you're attempting to do?

William Onofry: Yes, Mr. Wilson. For the record, I'm William Onofry of Cuddeback and Onofry, here on behalf of Martel Holdings, and my client Mr. Chad Martel is also present. What we are attempting to seek is a waiver of the Subdivision Regulations, which would allow for the developer to implement a cul-de-sac of approx. 1,475 feet, that would service 10 lots. The current Subdivision Regulations only allow for a length of 800 feet, and allow for cul-de-sacs to service 9 lots. And for some of the reasons that I'm going to state before, consider the circumstances that constitute a hardship, that would justify the granting of the waiver on both counts, that would allow for the use of a cul-de-sac in the northwest portion of the subdivision, with a length of 1,475 feet, more or less, that service 10 lots. From our position, this plan derives from a plan originally submitted years ago. The plan has gone through various changes, it's now considered phase 2. Phase 1 resulted in the subdivision of the land to the extent that 7 lots along Wilson Road were created. Martel Holdings now seeks to take its' remaining 84 plus acres and create 16 lots. The property sits within the River Recreational Corridor, and most of it falls within the ridge line of the Delaware River. Within the River Recreational Corridor, all parcels must be 2.0 acres or larger, and comply with all other requirements of Section 5.10 of the Zoning Law.

Furthermore, the developer intends to establish a conservation easement that will be permanent in nature, and restrict certain actions upon the conservation easement, for the lands that are conserved. And in fact, the developer is willing to enlarge the conservation easement even beyond what was stated in the public notice. To the point that 50% or more of the 84 plus acres would be subjected to a conservation easement. Now, with respect to the number of lots serviced by a cul-de-sac, it is our position that the benefit to the applicant would greatly outweigh the detriment or the burden placed upon the township or the community at large. Right now the regulations call for a cul-de-sac to service 9 lots. Because of the way that lots are counted, even though 2 of the lots are currently along Wilson Road, and the developer intends to provide access to and from the primary access along Wilson Road, we still must count those lots within the overall count, when talking about how many lots the proposed road, known as Martel Road, will service. By adding 10 lots that are serviced to this cul-de-sac, as opposed to 9, we believe that basically there's no adverse impact that will be a detriment to the community, whether we speak of the community at large within the town of Deerpark, or the community that will be created along Martel Drive. We're talking about adding one lot that will be used for residential purpose, that residential purpose will conform with all other residential purposes within the area. The number of traffic, the number of cars, will be minimal, when talking about the increased number of lots. Based on the fact that the average family has 2 cars at most, and this will be a confined area. So, based on that, and based on the fact that there truly won't be an adverse impact, for health, safety and welfare concerns, and because of the topography and for other reasons I will state afterwards, we believe that a waiver of the Subdivision Regulations that would allow this cul-de-sac to service 10 lots, as opposed to 9, is justified under the circumstances. With respect to the extension of the cul-de-sac, from our position and from I think the Boards' position, that has been the issue of concern and debate and many submissions throughout. The applicant has submitted plans in different respects. At one point there was a contemplation of a road that took Hawk Mountain Drive all the way up and connected it with what is known as Martel Drive and took it some point to the upper northwest corridor of the subdivision. Then there were other concepts that were generated by Martel Holdings, and its' engineers to determine whether or not loop roads could be used. The developer also contemplated the use of a stub road or a stub road with a cul-de-sac coming off of it. And then of course, the version that is being submitted is, yet another option that Martel Holdings has set before the Planning Board for consideration, and it feels that this option is the best. In terms of the idea of extending Hawk Mountain Drive all the way up to the upper northwest corridor...when evaluating that proposal, the topography and engineering complications exist, such as slope grade, road maintenance, etc. There are cuts that would be stemming from the ridge line, that was adverse to anything that the NYSDEC wants because of the fact that this parcel is unique in that there are scenic considerations. The scenic considerations are that no other parcel, and I would go so far as to say that no other parcel within the Town of Deerpark, would probably have to deal with. This parcel is one of a very few number of parcels that remains within the River Recreational Corridor of this size, that is suitable for subdivision of some sort. So, for those reasons the extension of Hawk Mountain Drive was deemed not feasible, and another plan was submitted. With respect to the loop roads, topography also became a problem. You're dealing with ridge line concerns, but also the fact that this is the side of a mountain, and when you're going to either the north or the south of the road that is called Martel Drive on the submitted map, you're dealing with grade issues and you're also increasing the amount of road that would have to be maintained by the Town. So, for those reasons, along with the fact that you would be grading two outlets onto Wilson Road, the developer came up with another option. The stub road was submitted as another possibility, but that stub road does not allow for the developer to control the development, nor does it allow for the town to control the development. The stub road, if permissible, would have to run in a northerly fashion, which may bring into issues, slopes, grades, etc. The number of lots that the developer would be able to get would be decreased, and there's no definite circumstance, if the township required co-operation with another parcel owner, the owner of the land that is known as the former Wilson Farm, we've done the research and tried to establish whether or not that's a possibility, if that condition were set, there's no way to handle that. Therefore, this submission of an extended cul-de-sac, is deemed by the developer to be the most efficient use,

under the hardship circumstances. Now, because of the fact that we're dealing with mountainside topography, the developer wanted to make sure that he fully complied with the Subdivision Regulations to provide adequate frontage along the cul-de-sac. But he also needed to provide himself with frontage that would allow him to work within the slopes of the land, and make sure that his points of ingress and egress, basically where he establishes the driveways, would work amongst the land. This would be a concept where he could limit the development. All the lots in the upper section are 2 acres or more, as required, and in some cases the lots are 8 or 9 acres. Another one over 11 acres. This concept has been reviewed by the Highway Superintendent, and he stated on the record, that he would prefer to service an extended cul-de-sac, as opposed to a loop road. Most recently we have been required to seek the review of the Fire Department, because of health, safety and welfare concerns. The developer has sought the opinion of the Chief of the Fire Department responsible for servicing this parcel along Wilson Road. He has reviewed it. He has determined that the end of the cul-de-sac must be extended to the point where it has the width of 100', which would allow for any apparatus that comes into the cul-de-sac to turn around. He has determined that he would like to have a dry hydrant established, and the developer is willing to make that happen, to the extent as possible. Obviously dry hydrants are fueled by groundwater, rain water, etc. But he's willing to do that. We've because whether or not a bulb or a pull-off, or something like that was necessary, and the fire department has determined that it is now. The fire department chief basically states that as submitted, it's acceptable to him, with those minor changes. Basically, the submission here is in the developers' eyes, the best use of the land. The parcel is what it is, it's a mountainside parcel. Yet at the same time, the fact that you have a parcel within the RRC, you have lots that are well over 2 acres in some respects, or at least 2 acres by minimum. The fact that you have a developer that is willing to expand even the conservation easement that is set forth in this plan, to reach the 50% level. I think that these characteristics would not only justify the fact that this developer is willing to work with the Planning Board, to explore all options before going forward. But it also has established, and throughout the years has established, that the Planning Board has done its' due diligence, I believe, in insuring that this is the option that is necessary, under the circumstances. This parcel is what it is. The slopes are what they are. The developer can manipulate to a certain extent, but after working with the Planning Board, and working with his professionals, it is his opinion that this is the best use of the land, and we respectfully request that under the circumstances, in light of the hardships faced, that the extended cul-de-sac also be granted.

Skip Wilson: Are there any comments from the public?

At this point there is inaudible conversation between the Chairman and the Town Attorney

Gary Spears: What was that submitted? A letter?

William Onofry: Mr. Plotsky, how do you want us to address this, because I haven't had time to review anything.

Glen Plotsky: Essentially what we're referring to, for purposes of the tape recording, which can't see what's happening, a document has been handed out. It's a 5 page document from the Wilson Road Coalition. I can't comment on its' contents, I haven't had enough time to review it. But a copy of this should be made a part of the record.

Chad Martel: I mentioned it before that I reached out to this gal, twice, and gave her the opportunity to sit down with me and express her concerns, and go over the map, so she would know everything that's going on. It's easy to send a letter, that I haven't even had a chance to look at, but she won't sit down with me in person, to go over their concerns.

William Onofry: I think Mr. Martel just wants the Board to know that we have stated at various times

that we've tried to approach the Coalition, or at least its' leadership, specifically inviting the Coalitions' leadership to sit down with us. Because at one point, some other options were proposed, and so I think...

Chad Martel: I mean when you reach out to someone, and they're not willing to sit down with you, it makes it very hard for me to help their concerns.

David Dean: To be honest with you, this is a little disconcerting, that it's not even signed by anybody. It's just handed out, and there's nobody to hold responsible here, to even question any of this, or discuss it. I mean there's no signature, there's no indication of actually who wrote this letter. So, I find that, at least in my eyes, that makes it less real.

Theresa Santiago: I don't like that either.

William Onofry: Mr. Plotsky, if you won't mind, I think that in terms of addressing at least the concerns of the Coalition, with respect to proving unnecessary hardship does exist; we do believe that we have at least demonstrated that this hardship is unique to the property; the use will not alter the essential character of the neighborhood, it's a residential development within the RRC, as permitted. The alleged hardship has not been self-created to the extent that we're trying to use the land in the best possible way, to develop it in a residential manner, and the terrain is what it is.

Chad Martel: If I may say, we can easily come in with that stub road, which we talked about before, it's permissible in the Code, and we could just go boom, boom, boom, but... I live here and I want to do what is right with the piece of property.

Skip Wilson: Is there any member of the Wilson Road Coalition here this evening?

Derek Wilson: Somebody just raised their hand to your question.

Skip Wilson: Sir.

Unknown: I'm a landowner on Wilson Road,,,

Skip Wilson: Do you have a statement to make sir?

Unknown: No, I'm not prepared.

Dan Loeb: I'd like to make a comment. I wouldn't expect him to respond to these, without really taking a look at it, that would be asking too much. We all just got this. The question is whether or not it should be admitted into the public record as such, because it has no representative. I don't think there's any question that there does exist this coalition of people, it does exist, it has a website. I'm just concerned if we should accept it as a public comment.

William Onofry: I think that's a valid concern. Under the circumstances, the statements are what they are in the writing, whether or not the Board wishes to recognize it, that's obviously up to the Board to decide, and we have no way of actually determining what the Board will do.

Glen Plotsky: I need to comment on at least 2 items that are contained within this letter. And this is based on a fairly cursory, quick review. The first is that I do not believe that the variance that is being discussed as the subject of this hearing is the use variance, it is an area variance. It has to do with the number of lots, not the type of lot or the proposed use of the lot. And it has to do with the length of the cul-de-sac. So, I think in both of those areas, I don't believe it's a use variance. There seems to

be some focus in the latter part of the letter about whether the hardship is self-created. While that is a factor to be considered by this Board. And I'm not sure that this Board is bound by the same criteria that is required by the ZBA to consider in determining an area or a use variance for that factor. But it is a guide, and it would be appropriate for this Board to at least consider those factors. Even if it is self-created, and I'm not expressing an opinion one way or the other in that regard. The fact that it is self-created does not necessitate denying the variance. We've discussed a number of these issues and the Board may discuss them more, as determination and review moves forward. But these two things jump out at me as I read this letter.

Derek Wilson: I also just read this at the beginning of the meeting. The variance procedures for the ZBA, as State Law... this is the first one that we've done since I've been on the Board...

Glen Plotsky: As I've said, you don't strictly follow those same criteria, however, they provide a guide.

Derek Wilson: When we hold the public hearing for the variance, is this the public hearing for the subdivision also?

Glen Plotsky: No, this is public hearing for the length of the cul-de-sac and the number of lots. It's not actually approving 10 lots, nor are you approving a cul-de-sac of 1,475 feet. Basically, this is a conceptual review, and the variance pertains to the concept of possibly permitted an extended variance. You are not granting approval. What you are doing is saying that the developer can come back to us with a plan with those enhanced numbers, no bigger than they are, but up to this point, we're prepared to at least consider those. There's no guarantee that he ends up with a 10 lot subdivision, even if you say yes, we'll grant the variance and consider 10 lots on a cul-de-sac, he may end up with 9 or 8.

Derek Wilson: Two meetings ago I had a schedule conflict, but I sent my comments suggesting a conservation subdivision, because it would allow you to get what you want to do here, you could vary the number of lots, you could actually vary the minimum lot sizes, and then whatever happened with that?

William Onofry: Right now we have almost 50% covered with a conservation easement. This subdivision does allow for expansion for at least 50% if not more. By 50% it does qualify for conservation subdivision. However, we don't necessarily want to re-configure the lots, but we are willing to expand the conservation easement and comply if necessary, with the regulations. And it's just basically, the time spent conceptualizing this and it's already been set forth, the fact that we have a proposed roadway between lots 6 and 7 of phase one, they are what they are, and we have to work with that from our perspective. But if necessary, we will expand the conservation easement, so long as Mr. Martel can still use the proposed site plans that were developed by his engineer, and can develop the property as he intended.

Derek Wilson: When I suggested a conservation subdivision, that that is the minimum standard of 50% area that has to be.

Glen Plotsky: That was actually the reason why we did not include that verbiage in the public hearing notice, because Mr. Onofry picked up on the fact that there is a 50% requirement, and at least at that time, they were just a little short. So, rather than represent something that....

Derek Wilson: That 50% would be the 50% of the 84 acres proposed...but from the original Hunt Subdivision, when you did the 7 lots you incorporated conservation easement area, that overlays part of this parcel.

William Onofry: I understand what your point is, is that 50% of the parcel now or 50% of the parcel

before phase one... from our perspective it's 50% of what exists now. It's 50% of the 84 acres, but to the extent that we could expand it, and would allow Mr. Martel to achieve what he would like to develop... because obviously lots 2.8, 2.7 those are some of his prime lots, and at the same time he has an idea of being able to go back as far as necessary so he could get the use, etc. But there's room for expansion there, there's room for expansion in other parts of the subdivision. We've actually got sketches, but we didn't submit these maps because Mr. Plotsky said that this was picked up by me after the fact, and we didn't want to misrepresent to the Board that it complied, until we actually determined that it can comply. But this subdivision can comply for a conservation subdivision. So, you have a possible conservation subdivision within RRC District that has oversized lots. You're developing 16 lots on an 84 and some acres parcel. I really think that along with the topography and the need for extended...

Derek Wilson: My question then is, if you pursue, correct me if I'm wrong, but if you pursue a conservation subdivision, then there's no variance necessary, right? Because a conservation subdivision allows you to vary, without the procedure going through a variance. Right?

Glen Plotsky: I would have to do additional research and get back to you.

Dan Loeb: The lot area in acreage, when one proposed a 9 lot and a 10 lot, what acreage are we talking about? In other words, can you go from 9 lots and you create 10 lots, the tenth lot, how much acreage would that be?

Chad Martel: It's 2 acres, you'd lose a 2 acre lot, 2 acre difference.

David Dean: The way the 10 lots are being counted on the cul-de-sac road, literally 2 of those lots are being serviced with egress and ingress from Wilson Road?

Chad Martel: Yes, previously approved from phase one.

William Onofry: That is Mr. Martel's intention, the lots have not been sold and have not been developed otherwise. But the intent has always been to provide ingress and egress directly to and from Wilson Road by way of a driveway.

David Dean: In reality, even though there are 10 lots on this road, 2 of those lots exist already with access to and from Wilson Road. So 8 lots are going to utilize this road with the cul-de-sac for egress and ingress.

Chad Martel: Correct, we're only creating 8 new lots.

Derek Wilson: When you proposed lots 6 and 7, so if you're going to bring 2 driveways in close, on each side where a town road comes out... I'm just saying you might run into some engineering complications. It might be better to bring them out internally.

Chad Martel: Lot #6 has over 350' of frontage on Wilson Road. The upper one the same thing...

Derek Wilson: I'm saying that you might run into conflict with the road standards, if you leave the driveways where they were proposed from, you know, on the 8 or 7 lot subdivision, they might have to be re-structured, if you're making that a town road coming out to meet the criteria.

Glen Plotsky: Is there any public comment now that there's been more discussion?

David Dean: Mr. Chairman, I'll make a motion that we close the public hearing.

Gary Spears: Before I second that, the written comment that we received tonight, is that considered for public comment?

Glen Plotsky: Well, I was going to ask, rather than closing the public hearing, perhaps you want to close the public hearing for this evenings' purposes, but allow for a written comment period specifically, or at least in part, to allow the applicant, or his representative, to respond to the written submission, if they deem it appropriate to do so. It would seem to me that the Board could and should accept the written document as part of the record. The weight that the Board gives, based upon the fact that the document is unsigned and that there's maybe nobody here from the Wilson Road Coalition... sir, I didn't understand your status, in terms of being a member of the Coalition... so, the fact that there may or may not be someone here from the Coalition, and the fact that it is unsigned, we have issues that were raised by the Board as concerns. The question that I have, does the applicant need time to submit something to the Board, essentially in response to this document, or would the Board rely on their verbal response this evening, at which point we can close the public hearing at this time, and then at an appropriate time in the future, deliberate and make a decision.

Derek Wilson: I have 2 questions. Does a variance subdivision have to meet the same tests as a variance by the ZBA? And the other one is, if it meets the criteria for the conservation subdivision under State Law, whether any variance is necessary to be granted? I think that some of the Board members in previous discussions had concerns about setting precedent on a longer cul-de-sac.

Chad Martel: If anyone from the Coalition, I would be more than willing to discuss things, as I've said before.

William Onofry: Even though I've had a cursory review of this document, I think that for as much as there may be concerns stated here, there's a lot of good that is stated here with respect to Mr. Martels' approach to developing property, etc. The standards are what they are, and what Mr. Plotsky advises the Board, we've established to our satisfaction, I believe, that there is a hardship, there's a hardship under the circumstances, and for that reason we're just requesting a waiver to the Subdivision Regulations. If the Board sees fit to keep this public hearing open, at least to give Mr. Plotsky time to review the comments...

Glen Plotsky: Given the applicants' response at this point, I think it would be appropriate to entertain a motion to close the public hearing, there's not need for additional input from anyone else but myself. I will then, based upon Mr. Wilsons' query, to advise the Board to do some research with regard to the impact if any, if the applicant should choose to submit it as a conservation subdivision. And also, the appropriate standard of review and analysis that you must perform to grant or deny the variance. And I will do that basically as a comparison as a standard and considerations as that the ZBA uses.

Derek Wilson: We want to schedule this for discussion at the next meeting?

Glen Plotsky: I don't think that I'm going to need a whole lot of time. I think that at the last meeting we were talking about trying to have some kind of written resolution that the Board could review in advance of rendering an actual determination. Perhaps we put it on for the next meeting, just for me to answer these two questions, and to have a very limited discussion as to whether or not you're inclined to grant or deny this, and then before the following meeting, you would actually submit a written resolution or alternative resolutions, so that you could either move to approve or to deny the request for variance, with an appropriate written resolution to submit at that time.

Dan Loeb: Mr. Onofry, none of us got this letter before tonight. I did want to point out that I just had the same cursory reading and there appears to be a sympathetic tone for Mr. Martels' project, I couldn't tell you the details or anything, so I'm glad that you mentioned that, because now I have more time to look at this.

David Dean: Mr. Chairman, my motion stands.

Derek Wilson: I'll second.

Skip Wilson: Okay, Theresa?

Theresa Santiago: Aye.

Dan Loeb: Aye.

Derek Wilson: Aye.

Gary Spears: Aye.

David Dean: Aye.

Skip Wilson: Aye.

Motion carried.

Public hearing closed at 7:40 p.m.

Respectfully submitted,

Barbara Brollier, Secretary