

APPROVED MINUTES
Town of Goshen Planning Board
Town Hall
41 Webster Avenue
Goshen, NY 10924

AUGUST 19, 2010

Members Present:

Reynell Andrews
Lee Bergus
Susan Cleaver
Mary Israelski
Ralph Huddleston, Chair
John Lupinski
Raymond Myruski

Also Present:

Neal Halloran, Building Inspector
Dennis Lindsay, PB Engineer
Kelly Naughton, PB Attorney
Leslie Dotson, Planner

Minutes – The Planning Board approved the minutes of its July 15, 2010 meeting with amendments.

PB member Susan Cleaver noted that “Maplewood” is on the September 2nd agenda and yet the PB hasn’t received an application, stating that the PB is only supposed to set a date after an application has been submitted. The Building Inspector said he has not received an application. Ms. Naughton said that there is an application. Ms. Cleaver said she wanted to go on record that she is questioning how “Maplewood” got on the agenda.

Hudson Valley Nursery -12-1-113 & 12-1-45.2 – 48.82+/- acres located at 2709 Route 17M in the HC and RU zones, with an AQ3 & AQ6 overlay. Lot line change, act on resolution.

The PB had authorized its attorney to draft a resolution approving the lot line change at its July 15, 2010 meeting.

Ms. Naughton said that the lot line change is not subject to SEQRA, the PB determined at its July meeting that a public hearing was not needed and that the application does not need to be referred to County Planning or Public Works. She said the Owner’s Endorsement and revised plans have been submitted. Ms. Naughton said that prior to signing, the applicant shall comply with the Town Engineer’s July 12, 2010 memorandum. She also said that the general conditions will apply to the approval.

VOTE BY PROPER MOTION, made by Ms. Israelski, seconded by Ms. Cleaver, the Town of Goshen Planning Board approves the application of Hudson Valley Nursery, with the aforementioned conditions, for a lot line change. Approved unanimously.

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| Mr. Andrews | Aye | Mr. Huddleston | Aye |
| Mr. Bergus | Aye | Ms. Israelski | Aye |
| Ms. Cleaver | Aye | Mr. Lupinski | Aye |
| | | Mr. Myruski | Aye |

PUBLIC HEARINGS

Heritage Custom Homes – 18-1-127.21 – 59.6 +/- acres, 5 lot subdivision located on Clark Rd. in the RU zone with an AQ3 overlay.

Representing the applicant: Brad Cleverley, PE

Mr. Cleverley said this is a 5-lot subdivision at the corner of Clark Road and Route 94. There will be four lots along Route 94 and the fifth larger lot of 46 acres fronting on Clark Road. There are existing DEC wetlands on the site which will not be disturbed. There will be individual wells and septic systems, he said.

Mr. Lupinski said he was told there was an old cemetery near the original house owned by the Weslowski family. He said that Bill Johnson told him there was a small cemetery on the parcel. Mr. Cleverley said he is not aware of a cemetery and that nothing was detected from the archeological study. He said that if a cemetery exists where it is suggested to be, that it is not in the area to be disturbed as part of the subdivision.

Mr. Huddleston said he believes the PB should take a look and will ask Mr. Johnson to show them where it is. Ms. Naughton said the applicant should also be present.

Mr. Lindsay said he reviewed the site and that it complies with the requirements for Small Scale Development. As such, it is exempt from the Town's water supply protocols, he said, but recommended that to ensure an adequate water supply, a condition be included in the approval ensuring adequate water before a house is built. He said he has made recommendations for the best visibility and sight distances for the driveways and access and suggested that a portion of the driveway be paved. He said he filed a five-page report.

Mr. Huddleston opened the meeting to public comment.

Leslie Cosgrove of 147 Clark Rd. said she is concerned with the water situation because she lives two doors from the site and doesn't want her water compromised. She said she wants a report done to ensure there is adequate water. She asked about further lots and wondered why it was stated to be an application for 21 lots.

Mr. Lindsay said that if the applicant asks for one more lot it will trigger a different type of review, an open space review, that is more comprehensive and will include water

testing protocols and a further examination of the property's ability to develop that number of units.

Brad Paris of 146 Clark Rd., asked why the proposal went from 21 lots to five lots. Mr. Halloran said that "21 lots" was a typographical error made in his office.

Mr. Paris asked about the legal significance of the wetland designation. Mr. Huddleston said that he is a wetland scientist and that in this region a 100 ft. buffer is sacred unless there is a very unusual limitation on the property. In New York State wetlands are sacred and a 100 ft. wetlands buffer is restrictive and if there were to be any change in the wetlands law, he expects it would become even more restrictive, he said.

Mr. Paris said he is concerned that the company that performed the cricket frog review was hired by the developer. Leslie Dotson said that the DEC is also involved in the review process. Mr. Huddleston said that he is a cricket frog consultant for the Village of Florida and that if there is any chance of a cricket frog on the property, the DEC would be "all over it". He said that in New York "we are not just protecting the individual frog but we are protecting the habitat. I wouldn't worry about the cricket frog being neglected in Orange County," he said.

Denise (last name was inaudible) of 150 Clark Rd. said she too is concerned about her water supply being adequate and asked what type of homes will be built on the property. Mr. Halloran said that the applicant is proposing single family homes.

Ms. Naughton said that currently the PB does not have any evidence that there are water problems and that it should not put conditions on something that it doesn't have any evidence to support. She said the Building Inspector cannot issue a CO without a demonstration that there is adequate water. She said that since this type of subdivision is not subject to the Town's water testing protocols she is suggesting a deed restriction for each lot that notifies the prospective purchaser that no testing has been done to determine the adequacy of the water for the lot. The deed restriction can be removed by order of the PB upon proof submitted to the Building Inspector in consultation with the Town Engineer that there is adequate water.

Mr. Paris asked if there is anything to protect the existing homeowners.

Mr. Lindsay said that the Town of Goshen has done a lot of area testing and from that has developed certain districts where the presumptive density was one unit per three acres and one unit for six acres and you should have adequate water if you limit yourself to that type of density. In this case, there are five lots on 60 acres or one unit per twelve in a zone that sets one per three acres as your minimum, so there should be water for that, he said. Once the applicant adds one more lot, over five, it will trigger a much more

comprehensive study that will analyze the adjacent properties, etc. Mr. Huddleston noted that there is four times the protection of the standard code.

Mr. Halloran said that to obtain a Building Permit proof of a designed septic system for the lot will have to be submitted.

Ms. Naughton said the only outstanding issue is the cemetery. Mr. Huddleston said that cemetery law states that if there is a cemetery public access has to be provided.

Mr. Cleverley said he will pursue the cemetery issue.

Bill Johnson said he has an operating dairy farm that borders the property and “for the record there are smells, noise and dust that go along with the operation of a dairy farm.” The property is next to an agricultural district. He said he wants that on the public record.

Ms. Naughton said the PB needs to complete SEQRA.

VOTE BY PROPER MOTION, made by Mr. Myruski, seconded by Mr. Andrews, the Town of Goshen Planning Board issues a Negative Declaration on the application of Heritage Custom Homes, determining that there will be no negative environmental impact from the project. Approved unanimously.

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| Mr. Andrews | Aye | Mr. Huddleston | Aye |
| Mr. Bergus | Aye | Ms. Israelski | Aye |
| Ms. Cleaver | Aye | Mr. Lupinski | Aye |
| | | Mr. Myruski | Aye |

VOTE BY PROPER MOTION, made by Mr. Myruski, seconded by Mr. Bergus, the Town of Goshen Planning Board closes the public hearing on the application of Heritage Custom Homes. Approved four to three.

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| Mr. Andrews | Nay | Mr. Huddleston | Aye |
| Mr. Bergus | Aye | Ms. Israelski | Aye |
| Ms. Cleaver | Nay | Mr. Lupinski | Nay |
| | | Mr. Myruski | Aye |

Mr. Huddleston asked Mr. Cleverley if the applicant would give an extension, in case they can't get the cemetery information requested by the PB within the 60 day time frame. Mr. Cleverley said he sees no reason to give an extension, that he believes he will obtain the information within the time and if not, an extension can then be considered.

Battiato – 18-1-13 – 8.8 acres, 3-lot subdivision located on Arcadia Rd in a RU Zone with an AQ3 Overlay.

Representing the applicant:

Brad Cleverley, Project Manager

Mr. Cleverley said this is an existing lot on Arcadia Rd and the application is for a 3-lot subdivision. There will be a gravel driveway access leading to the three lots and a conservation easement over the rear portion of the property. The individual driveways will be paved. There will be individual wells and septic.

Mr. Lindsay said he has recommended profiling the driveways and recommended edge treatment on the driveways to protect from erosion. The PB had approved a gravel driveway coming off Arcadia Rd., he said. The applicant has not yet submitted revised plans.

The applicant, Mr. Battiato, asked if it is normal to require a paved driveway. Mr. Lindsay said the slopes go to 12% and that there will be wash-outs if something isn't done with them. Mr. Huddleston said the PB consistently requires pavement of 12% slopes.

Mr. Huddleston asked for public comment.

Marie Condolucci of 4228 Sommerville Way said her main concern is the water and stated she has an issue with water as it is. She said the tester well was performed in the middle of Lot #2 and that the proposed well on Lot #3 is 250 ft. closer to her well than the testing well. Ms. Condolucci said the water test was done in August, 2007 and added that she doesn't see any type of protocol that was followed according to prior weather conditions. She is concerned that the well tested will not accurately show the impact to her well. She said she also has an issue with the vegetation and noted that the proposed driveway for Lot#3 will go uphill next to her house.

Robert Otruba, 4194 Route 94, said he too has concerns about his water and the well test. He said there is a lot of water coming off the hill during precipitation events and asked if there is concern about wash outs of the access road and asked if measures will be taken to curb erosion. His concern is the velocity of the water coming off the paved driveways into the gravel area, he said. Mr. Otruba also said that the conservation area is adjacent to his house and asked what it entails. Mr. Cleverley said the conservation easement will go across lots #1, 2 & 3 and will mean that "what is there today will be there tomorrow". Ms. Naughton said the conservation easement is a permanent restriction granted in favor of the Town restricting the activities that can take place and will be filed with the County Clerk.

Ms. Cleaver said she is concerned about the existing trees and the driveways and would like to protect the tree line. Mr. Bergus suggested connecting the two easements and include all of the trees along the property line. Mr. Huddleston asked the applicant to include the trees in the conservation easement.

VOTE BY PROPER MOTION, made by Ms. Israelski, seconded by Ms. Cleaver, the Town of Goshen Planning Board adjourns the public hearing on the application of Battiato to September 16, 2010. Approved unanimously.

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| Mr. Andrews | Aye | Mr. Huddleston | Aye |
| Mr. Bergus | Aye | Ms. Israelski | Aye |
| Ms. Cleaver | Aye | Mr. Lupinski | Aye |
| | | Mr. Myruski | Aye |

Mr. Lindsay said he has not yet received a profile of the driveways from the applicant and that while he will not be opposed to a 12% slope if the applicant paves the surface, he wants to see the profile. The Town has a code requirement (83-15d2) that states the maximum permitted driveway grade is 10% but the PB can determine that based on mitigations such as pavement, edge treatments for erosion protection and dissipation of energy at the bottom of the slope when the water gets there, are appropriate and can waive the requirement, Mr. Lindsay said.

Ms. Naughton said the PB is permitted to waive the requirement under subdivision regulations Section 83.32 but it must fall within one of three categories. At the July meeting the PB determined that the burden was on the applicant to demonstrate that one of the three categories was appropriate and the PB has not yet received anything from the applicant. Mr. Cleverly said it will be submitted at a later date.

Mr. Lindsay told the PB that that while the applicant's water test was in compliance at the time it was conducted, it does not comply with the current code requirements. As an example, he said a 72 hour test was not conducted. Some of the things can be corrected now but some cannot without further testing, he said. "The applicant did run at a high volume which probably would comply with the requirements of three homes. But the net result is that the applicant's choices are three: the applicant can reduce the number of lots to two, they can conduct water testing in accordance with current code or they can ask for variance relief by going to the ZBA." Mr. Cleverly handed a written response regarding Mr. Lindsay's comments to the PB chair. Mr. Huddleston said it will not be reviewed tonight.

Mr. Battiato asked to clarify whether the water test will be accepted as it is. Mr. Huddleston said "No, not without a waiver from the ZBA." He said the PB doesn't have the ability to give the applicant the relief he needs. He said the PB engineer will pass

along his information and has said some positive things that could work in the applicant's favor with the ZBA.

Dance Studio – 12-1-57.1 – 2.3 +/- acres, located at 2537 Route 17M in the CO zone with an AQ6 overlay. Site plan approval

Representing applicant Gina Musial:

Jason Anderson

Mr. Anderson said that Ms. Musial would like to open a dance studio in a portion of the former Furniture Options building that is partially occupied by Northern Windows. He said that a septic test has been performed by a professional engineer. He said he did calculations for the parking requirements and found that they fall well within the requirements. Mr. Anderson said he utilized an existing macadam parking area in his calculations. The area is presently un-striped. Mr. Anderson said that the dance studio will primarily be operating from 3 p.m. to approximately 7:30 p.m. while Northern Windows is open from the early morning to 5 p.m.

The PB discussed the parking and access and egress at length. They determined that all un-striped parking areas should be striped to provide the most efficient use of the lot. Mr. Bergus said the PB should look at the situation of cars pulling in and out. Ms. Dotson said she thinks there is adequate stacking space in the wide driveway. A potential concern would be rush hour along Route 17M, she said.

Mr. Anderson said that the applicant must open when the school year begins and so if she doesn't get approval tonight, she won't be able to open this year.

Ms. Naughton said that the County has said it is a "local determination". She also said that a public hearing is at the discretion of the PB and that the PB can waive certain elements of the requirements of a minor site plan in Section 97.75b of the Town Code. Mr. Huddleston read the requirements and told Ms. Naughton what could be waived. The PB found that the following requirements are not necessary for this application: 97.75b – 1, 7, 8, 9c, 9d, 10, 11, 12, 13, 15c, 16, 18, 19, 20, 21

Mr. Lindsay said the applicant ran a test of the existing septic system, but that normally it would be witnessed by the Town and was not. He said any approval should be subject to confirmation of the septic test results. No one is using the system right now, he said. Mr. Anderson said there hasn't been any history of problems with it.

Ms. Naughton said that the proposed conditions of approval would be that the applicant comply with the Town Engineer's memo dated 8-16-10 regarding the septic system, that the applicant stripe the parking lot, place a "customer parking only" sign in the area adjacent to the dance studio and maintain the existing exterior lighting.

VOTE BY PROPER MOTION, made by Ms. Israelski, seconded by Ms. Cleaver, the Town of Goshen Planning Board types the application of Gina Musial “Dance Studio” as a Type II Action under SEQRA. Approved unanimously.

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| Mr. Andrews | Aye | Mr. Huddleston | Aye |
| Mr. Bergus | Aye | Ms. Israelski | Aye |
| Ms. Cleaver | Aye | Mr. Lupinski | Aye |
| | | Mr. Myruski | Aye |

VOTE BY PROPER MOTION, made by Ms. Cleaver, seconded by Ms. Israelski, the Town of Goshen Planning Board determines that a public hearing is not necessary, thus waives a public hearing on the application of Gina Musial “Dance Studio”. Approved unanimously.

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| Mr. Andrews | Aye | Mr. Huddleston | Aye |
| Mr. Bergus | Aye | Ms. Israelski | Aye |
| Ms. Cleaver | Aye | Mr. Lupinski | Aye |
| | | Mr. Myruski | Aye |

VOTE BY PROPER MOTION, made by Mr. Bergus, seconded by Ms. Cleaver, the Town of Goshen Planning Board agrees to waive the items previously listed on the application of Gina Musial’s “Dance Studio” Approved unanimously.

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| Mr. Andrews | Aye | Mr. Huddleston | Aye |
| Mr. Bergus | Aye | Ms. Israelski | Aye |
| Ms. Cleaver | Aye | Mr. Lupinski | Aye |
| | | Mr. Myruski | Aye |

VOTE BY PROPER MOTION, made by Ms. Israelski, seconded by Ms. Cleaver, the Town of Goshen Planning Board conditionally approves the minor site plan of “Dance Studio” subject to the aforementioned conditions. Approved unanimously.

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| Mr. Andrews | Aye | Mr. Huddleston | Aye |
| Mr. Bergus | Aye | Ms. Israelski | Aye |
| Ms. Cleaver | Aye | Mr. Lupinski | Aye |
| | | Mr. Myruski | Aye |

Matchpoint Sports – 11-1-25.22, 10+/- acres, located on 17M in the CO zone with an AQ6 and scenic road corridor overlay. Updated site plan.

Representing the applicant:

Jason Anderson

Mr. Halloran said that the applicant wants “to not have to enclose the utilities on the roof.” At one point in time the PB was adamant about enclosing the utilities on the roof, Mr. Halloran said, but the applicant had trouble last winter with the snow and the building ended up filled with gas. The applicant wants to take the shields off the utilities.

Mr. Anderson said that the PB directed the applicant to put screens up to hide the utilities, but there was no definition as to what they were. He showed a photo of the condition of the roof after the last snow storm. He said they tried to design it to work but had trouble with the amount of snow. He said he doesn’t see how they can put screens up that will address the issue.

Mr. Anderson said the applicant is proposing a revised landscaping plan, providing for landscaped screening of 12-15 ft. tall white birches and two ash trees in the center island to address the PB’s original issue and now the safety concern which they encountered last winter. Ms. Cleaver asked if they could change the ash tree to something else and Mr. Anderson agreed as long as they are dense trees.

Ms. Naughton said this would be an amended major site plan approval so would require a public hearing. The PB cannot waive a public hearing with a major site plan, she said.

There was a lengthy discussion about whether it could be considered as a field change only. Ms. Naughton said she will have to look further into how this was addressed by the PB originally and will provide the PB with the information at the next meeting. The applicant has to come back before the PB so that same night the PB could hold a public hearing and have an amended resolution. If it is determined that it would be an amendment to a major site plan, and not a field change, and a public hearing is scheduled, then we are covered, Mr. Huddleston said.

VOTE BY PROPER MOTION, made by Ms. Israelski, seconded by Mr. Andrews, the Town of Goshen Planning Board sets a public hearing on the application of Matchpoint Sports for September 16, 2010. Approved unanimously.

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| Mr. Andrews | Aye | Mr. Huddleston | Aye |
| Mr. Bergus | Aye | Ms. Israelski | Aye |
| Ms. Cleaver | Aye | Mr. Lupinski | Aye |
| | | Mr. Myruski | Aye |

OTHER BUSINESS NOT ON THE AGENDA

Mr. Halloran told the PB that on the Houston Rd. subdivision of Woodlawn Estates, there is a note in the minutes that says “we are going to have a 60 ft. buffer between the

development and the farm and that didn't translate into the resolution or site plan." The farm owner was present to talk about the omission. She asked when was the 60 ft. buffer dropped, why was it dropped, and who dropped it.

Ms. Naughton told the PB that it is bound by the plan that it approved. She said that the 60 ft. buffer was discussed two years prior to this plan being approved by resolution in March, 2007. There are a variety of reasons why the 60 ft. setback could have been in or out, she said. Her firm did not represent the PB at the time.

Mr. Halloran said he will speak to the developer about it when he speaks to them about their violation of the conservation easement. It was reported that the developer has piled materials on the conservation easement.

ADJOURNMENT: A motion to adjourn the meeting at 9:50 p.m. was made, seconded and approved unanimously.

Ralph Huddleston, Chair
Notes Prepared by Susan Varden