

**Town of Charlton  
Planning Board Minutes and  
Public Hearing Minutes  
758 Charlton Road  
Charlton, New York 12019**

Minutes of the Planning Board Meeting – May 20, 2013

Chairman Jay Wilkinson called the meeting to order at 7:04 p.m. at the Charlton Town Hall.

Present: Jay Wilkinson, Chairman, John Kadlecek, Mark Hodgkins, Dawn Szurek, Connie Wood, Marilyn Phillips, Tracy Bullett, Esq., Acting Planning Board Attorney and Kim Caron, Recording Secretary. Chris Mitchell joined the meeting at 7:25 p.m.

**AGENDA MEETING**

Mr. Wilkinson stated that there is a quorum.

Minutes

Mr. Wilkinson stated that the draft of the April 15, 2013 meeting minutes needed to be approved. Mr. Wilkinson stated that Mrs. York provided comments. No other comments were provided. Mr. Wilkinson stated that the Board could vote on the minutes during the Business Meeting.

**PUBLIC HEARINGS**

Smith/Northeast (226.-1-59 and 226.-1-60)

Mr. Wilkinson stated that the Public Hearing will be at 7:30 and deliberations on the application will follow. Mr. Wilkinson stated that this is a subdivision of a 24 acre parcel to create one new building lot of 21 acres and a lot line adjustment of 1289 Peaceable Street property, Lot 3 on the map, to increase its size to 1.6 acres. Mr. Wilkinson stated that this is a substandard lot to our new zoning. Mr. Wilkinson stated that it had to be created prior to 1972. Mr. Wilkinson stated that the Board took lead agency status and forwarded the application to the County. Mr. Wilkinson stated that verbal County approval was received. Mr. Wilkinson stated that the application was also forwarded to Mr. McNamara for review and the Public Hearing was scheduled for this evening. Mr. Wilkinson stated that the applicant's representative has provided the requested information from the April meeting. Mr. Wilkinson stated that the perk and soil tests have been performed and the AG Data Statement has been revised. Mr. Wilkinson stated that Mr. McNamara has provided comments via letter dated May 1<sup>st</sup>. Mr. Wilkinson stated that issues have been identified that need to be resolved before the application can move forward. Mr. Wilkinson stated that according to the Zoning Regulations a substandard lot cannot be increased or changed in any

way without ZBA approval. Mr. Wilkinson stated that the Board can conduct the Public Hearing and receive comments. Mr. Wilkinson stated that the Board will advise the applicant of the issues set forth in Mr. McNamara's letter. Mr. Wilkinson stated that the barn is less than 100 feet from the property line and there is a deck on the one house on the Lot 1 that is inside the setback area. Mr. Wilkinson stated that there may not be proper separations between the septic systems and wells. Mr. Wilkinson stated that the Board can request the applicant put the distances on the drawing.

Mr. Wilkinson stated that a variance from the ZBA is needed to move forward.

Mrs. Wood inquired, if the lot was grandfathered, what happens in a situation where the well and septic are not sufficient distances apart.

Mr. Wilkinson stated that it would be ok if it is grandfathered however, there should be something documented from when the house was built.

#### SUBDIVISION AND LOT LINE CHANGE APPLICATIONS

##### DeGraff/Sutton (223.-1-10.11)

Mr. Wilkinson stated that the applicants are being represented by John Sutton, Esq. Mr. Wilkinson stated that the applicants are proposing the DeGraff family farm on Jersey Hill Road be subdivided to create one new building lot of 10+ acres and lot line changes to increase the parcels owned by Frank DeGraff and Cathy Cornell. Mr. Wilkinson stated that at the last meeting the applicants came before the Board for a pre-application conference. Mr. Wilkinson stated that the Board identified the items they needed to submit and those documents have been submitted. Mr. Wilkinson stated that it appears that the Board has a complete application. Mr. Wilkinson stated that the Board is missing affidavits for all of the people named on the deed for the family farm and the deeds for the Cornell property and the DeGraff property are needed. Mr. Wilkinson stated that the Board can take lead agency and schedule the Public Hearing. Mr. Wilkinson stated that the application was referred to the County but response has not been received.

#### ZBA REFERRAL

##### Doepel (256.18-1-13)

Mr. Wilkinson stated that this is an application for a variance to build an addition to the existing residence. Mr. Wilkinson stated that the ZBA has requested recommendations.

#### Zoning Report

Mr. Wilkinson stated that the Board has received the report for review.

#### Correspondence

Mr. Wilkinson stated that a report has been received from Lansing Engineering for the Heflin/Durst project. Mr. Wilkinson stated that the Board has to review the report and Mr. Keniry needs to review the report.

Mrs. Wood and Mr. Kadlecek provided feedback from the April Planning Conference.

#### Town Board Liaison

Mrs. Verola was not present.

Mr. Wilkinson made a motion to close the Agenda meeting, seconded by Mr. Hodgkins. All were in favor. Agenda meeting closed at 7:25 p.m.

#### **BUSINESS MEETING**

Opened at 7:30 p.m. with the Pledge of Allegiance.

#### **Minutes**

Mrs. Wood made the motion to approve the draft of the April 15, 2013 minutes with change incorporated. Ms. Szurek seconded the motion. All were in favor. Mr. Mitchell abstained.

#### **PUBLIC HEARINGU (7:30 p.m.)**

##### **Smith/Northeast (226.-1-59 and 226.-1-60)**

Mr. Wilkinson stated that the Public Hearing Notice was published in the Daily Gazette on May 13, 2013 and the cards were mailed to the adjoining neighbors on April 25, 2013.

Mr. Wilkinson reviewed the Public Hearing process.

Mr. Wilkinson opened the Public Hearing.

Mr. Wilkinson: Northeast Land Development is representing the applicants, William Smith and Carol Smith. Could you put your drawing up and go through an overview of the project. As we talked about in the agenda part of our meeting, this is at the northern end of Peaceable Street not far from Route 67. It is about a 24 acre parcel right now and has two houses on this parcel. What they are going to do is make some lot line changes to parcels one and three and Lot 2 in the center will be the newly created lot. At our April meeting, we took the lead agency status and forwarded the application to the County for their review and the Town Engineer and we have those comments. The other questions we had that were raised, revising the AG data statement, has been corrected and submitted for the farm across the street.

Dave Bogardus, Northeast Land Development: As he said I made the correction to the AG Data Statement. At the last Planning Board meeting you had asked us to get a couple of percolation tests and test pits. Those have been done and are reflected on the map that you have in front of you tonight. You had asked me to put a map note on the map regarding the driveway and the curb cut information that is on the map that you have in front of you. What is not on the map in front of you is your consulting engineer suggested that we get a couple more offsets to the buildings. The map I have in front of me and I have a few more with me tonight, the one building offset that he had mentioned that he wanted particularly was the offset from the barn to the right of way line in Peaceable Street, and that's 198 feet. I think code calls for 200 feet. I believe that we have done all of the things that we discussed in our meeting plus I have added the information that your consulting engineer had asked for in his letter to you and to me.

Mr. Wilkinson: So the Town Engineer, as you know, you got a copy of his letter, Mike McNamara, dated May 1<sup>st</sup> has identified issues that need to be resolved before the application can move forward.

Dave Bogardus: He brings forth some existing condition offsets which I disagree with him thinking that we are enlarging a non-conforming use because as his letter states, the action that we are asking for here is a one lot subdivision and a lot line alteration and the things that we are asking to do as he states in his letter don't exacerbate those setback uses at all. That and the fact, in the case of the barn, I don't know how old that barn is but it is at least 150 years old. Its way ahead of the zoning so everything here, I believe is grandfathered.

Mr. Wilkinson: We had a Public Hearing and you have presented an overview of the project. Does anyone want to speak from the public?

Mr. Wilkinson made the motion to close the Public Hearing. Mrs. Wood seconded the motion. All were in favor.

Public Hearing closed at 7:40 p.m.

## **SUBDIVISION APPLICATION AND LOT LINE CHANGES**

### **Smith/Northeast (226.-1-59 and 226.-1-60)**

Mr. Wilkinson stated that the Board should review the letter from Mike McNamara. Mr. Wilkinson stated that the Board acknowledges that the applicant had the percolation test done for Lot 2 and there will be no issues there. Mr. Wilkinson stated that the issue is that there are two existing homes located on Lots 1 and 3 and the new lot in the middle will be Lot 2. Mr. Wilkinson stated that the new lot will be behind Lots 1 and 3. Mr. Wilkinson stated that the existing barn and shed will be on the 21.1 acre parcel which is the proposed Lot 2. Mr. Wilkinson stated that there will be about 220 road frontage. Mr. Wilkinson stated that the significant problem that has to be dealt with first is the part of the letter that deals with the non-conforming lot. Mr. Wilkinson read from Mr. McNamara's letter.

Mr. Wilkinson stated that the Planning Board cannot move forward on this application until an area variance is granted from the ZBA. Mr. Wilkinson stated that the Zoning Ordinance is very clear that the Planning Board cannot change a non-conforming lot without ZBA approval. Mr. Wilkinson stated that on Lot 1 the deck is beyond the setback and will also require a variance from the ZBA.

Mr. Bogardus stated that he believes they are creating a zoning conforming lot and that the lot is grandfathered in as a pre-existing condition and ZBA is not necessary.

Mr. Wilkinson stated that the date of construction for both houses is important because there was a house in the center of that parcel at one time that was torn down. Mr. Wilkinson inquired if there was any information on that.

Ron DiDonna stated that he was the realtor and developer for the Smith family. Mr. DiDonna stated that the raised ranch in question was built in 1969 and the ranch that is turned sideways was built in 1960. Mr. DiDonna stated that they were in conformance with the zoning and the setbacks at that time.

Mr. Wilkinson stated that the Zoning Ordinance and the Planning Board attorney agree that the Planning Board has no jurisdiction at this time until ZBA relief has been granted. Mr. Wilkinson stated that the Planning Board cannot act. Mr. Wilkinson stated that if the Planning Board acts the decision is void.

Mr. Bogardus stated that the consulting engineer provided the Board with information. Mr. Bogardus inquired who has the authority over the information.

Mr. Wilkinson stated that this Board is and this Board is saying that it cannot move forward.

Mr. Bogardus inquired if the Board was agreeing with what Mr. McNamara is saying.

Mr. Wilkinson stated yes and it is in the Zoning Ordinance.

Ms. Bullet stated that the applicant has to go to ZBA for relief before the Planning Board can act.

Mr. Wilkinson stated that the applicants can go for all variances at one time.

Mr. DiDonna stated that if they remove the barn then that is not an issue.

Mr. Wilkinson stated that the issues are enlarging a non-conforming parcel (Lot 3); the deck on Lot 1 is beyond the setback, the separations have not been provided and Lots 1 and 3 septic tanks and drain field systems appear to be non-conforming to regulations now.

Mr. Bogardus stated that he will contact the ZBA.

Mr. Wilkinson stated that he will call the ZBA chairman and let him know the details.

Mr. Wilkinson explained the 62 day time clock from the date of the Public Hearing.

The Board and the applicant's representative agreed to extend the time to act until September 16<sup>th</sup>, 2013.

**DeGraff/Sutton (223.-1-10.11)**

John Sutton, Esq. appeared on behalf of the applicants.

Mr. Wilkinson stated that last month the Board met with the applicants and their representative in a pre-application conference to gather information. Mr. Wilkinson stated that the Board asked for submittal of additional information. Mr. Wilkinson stated that all of the requested information has been submitted. Mr. Wilkinson stated that he spoke to Jeff Cornell regarding what needed to be delineated. Mr. Wilkinson stated that the 10 acre parcel that the house is going to go on needs to be delineated with the building envelope, and well and septic locations to make sure that it can meet the required setbacks.

Mr. Sutton stated that this is the division of the family farm. Mr. Sutton stated that the acreage in the Town of Charlton is 48 acres. Mr. Sutton stated that two parcels have previously been cut off; one for Bob and Kathy Cornell and in the south Frank DeGraff owns another piece. Mr. Sutton stated that the proposal is to take two areas on the east side of Jersey Hill Road and add them to the Cornell and DeGraff parcels and to create two parcels on the west side of the road, a new parcel to the south which has been delineated and a perk test has been conducted and leaving Mrs. DeGraff's house in a parcel of 14.6 acres in the Town of Charlton. Mr. Sutton stated that the parcel will be connected to a parcel in the Town of Galway which is not worth very much money because it is mostly wetlands. Mr. Sutton stated that it is connected so that those two parcels would ride together until either the Town of Galway or the Town of Charlton gave subdivision approval for splitting them up.

Mr. Wilkinson stated that the Board needs affidavits from all of the owners named in the deed for the family farm. Mr. Wilkinson stated that the Board also needs copies of the deeds for the Cornell property and the DeGraff property that the lot line changes will be affecting. Mr. Wilkinson stated that the title of the drawing, "lands of ..." needs to have one owner's address added to it. Mr. Wilkinson stated that the notes on the drawing are correct and the proper information has been included. Mr. Wilkinson stated that the septic was shifted to be outside of the 100 foot buffer.

Mrs. Wood inquired where the entrance to the farm road was located.

Jeff Cornell stated on the 10 acre parcel.

Mrs. Wood inquired how the field on Mrs. DeGraff's parcel was accessed.

Jeff Cornell stated that access was from his parcel.

Mrs. Wood stated that the proposal is creating separate lots and if there is no other easy way to get to that land, if the property ever gets sold, there will be no easy access. Mrs. Wood stated that an easement would be required.

Jeff Cornell stated that it will not be a problem.

Ms. Bullet stated that access can be worked out at a later time and she has discussed this issue with Bill Keniry.

Jeff Cornell stated that the piece is all woods that hasn't been cleared in years.

Mr. Wilkinson asked for permission for the Board to walk the property.

Jeff Cornell stated that would be fine.

The Board and the applicants agreed to meet at the property on Saturday June 8, 2013 at 10:00 a.m. for a site visit.

Mr. Wilkinson inquired about access to the Galway property.

Mr. Sutton stated that the proposal is that it is connected to the mother parcel and would require subdivision approval if the intent ever becomes to sell.

Ms. Bullet stated that the proposal for access is fine.

Mr. Wilkinson made the motion to declare the Planning Board as lead agency status for the purposes of SEQRA and that the action is an unlisted action with a negative declaration as pertains to SEQRA for the parcels located at 36, 43 and 44 Jersey Hill Road. Mrs. Wood seconded the motion. All were in favor.

Mr. Wilkinson stated that the application has been forwarded to the County Planning Board and response should be received before the next meeting.

Mr. Wilkinson made the motion to schedule the Public Hearing for June 17, 2013 at 7:30 p.m. Mr. Kadlec seconded the motion. All were in favor.

Mr. Wilkinson provided the Public Hearing cards and instructions.

Mr. Wilkinson asked Ms. Bullet to notify the Town of Galway Planning Board of the hearing.

**ZBA REFERRAL**

**Doepel (256.18-1-13)**

Mr. Wilkinson stated that this is an application before the ZBA for an area variance to construct an addition to the existing residence that does not meet the side yard setback.

Mr. Wilkinson stated that the residence is located on a corner lot. Mr. Wilkinson stated that there would not be any impact on the neighbors by the proposed addition.

Mr. Wilkinson stated that he will draft a letter to the ZBA and send to everyone for approval.

**ZONING REPORT**

The Board reviewed the current report.

**CORRESPONDENCE**

Mr. Wilkinson stated that the letter from the Planning Board to the Town Board regarding the solar panels and the proposed local law was not read at the meeting.

Mr. Wilkinson asked that the letter be made part of this record and a copy of the letter is annexed hereto as **Attachment 1**.

**TOWN BOARD LIAISON**

Mrs. Verola was not present.

Mr. Wilkinson made a motion to adjourn the meeting. Mrs. Wood seconded the motion. All were in favor.

The meeting was adjourned at 8:30 p.m.

Respectfully Submitted,

Kimberly A. Caron  
Recording Secretary