Rye City Planning Commission Minutes

May 7, 2002

PRESENT:

Michael W. Klemens, Chairman
Peter Larr
Franklin Chu
Barbara Cummings
Hugh Greechan
Lawrence H. Lehman

ABSENT:

Martha Monserrate

ALSO PRESENT:

Christian K. Miller, AICP, City Planner
Nicholas Hodnett, Chairman, Conservation Commission/Advisory Council (CC/AC)
James McGee, CC/AC

Chairman Klemens called the regular meeting to order in the Council Hearing Room of the City Hall and noted that a quorum was present to conduct official business.

I. HEARINGS

None

II. ITEMS PENDING ACTION

1. Klemens Residence

The Chairman noted that since he was the applicant for the subject application that he was recusing himself and left the room. Vice-Chairman Larr served as chairman for the agenda item and began by noting the provisions of the City's Code of Ethics. Mr. Larr stated that based on prior practice and discussions with Corporation Counsel that a serving member of a board is entitled to submit an application, but that such member cannot present the application to the board. Mr. Larr noted that the applicant's architect, Paul Benowitz, would present the application and serve as his representative. The Commission suggested that this practice should be codified in the ethics law.

Mr. Larr indicated that the Commission conducted a site walk of the property on May 2, 2002.

Mr. Benowitz provided an overview of the application, noting that it involves a one-story addition on the rear of an existing residence. The proposed addition is necessary to accommodate a growing family including aging parents and has been located based on the internal layout of the existing residence. Mr. Benowitz noted that the proposed addition would result in a net increase in floor area of approximately 700 square feet.

Mr. Benowitz described prior restoration activities on the property in connection with the applicant's purchase of the property to remove a sub-surface oil tank and contaminated soil. Those activities were part of a wetland permit issued by the Planning Commission in 1999. In addition, Mr. Benowitz noted the on-site and off-site wetland restoration activities by the applicant to improve quality of the adjacent Blind Brook. The on-site restoration efforts were applied by the applicant as mitigation for the proposed 270 square foot increase in impervious area within the 100-foot buffer.

The Commission concluded that it was appropriate to apply prior restoration activities as 2:1 mitigation for the increase in impervious area in the wetland buffer, given that such restoration had occurred relatively recently. The Commission questioned whether the City has granted permission for the applicant's off-site restoration activities. The City Planner indicated that he was not aware of such permission. The Commission noted that off-site areas and the area associated with the 1999 oil tank removal should not be applied towards the mitigation requirements. It was noted that approximately 1,745 square feet of restoration area significantly exceeded the minimum mitigation requirements for the proposed project.

The Commission discussed the ownership of lands related to the former bed of Westland Road. Mr. Benowitz provided a recent copy of the deed of the applicant's property. The Commission requested that copies of the deed be provided for their review in advance of their next meeting. The City Planner noted that he would submit it to Corporation Counsel for his review.

The City Engineer noted the presence of a Westchester County Sewer trunk line within or near the bed of Westland Road. The City Engineer suggested that the location of this line be shown on the site plan. He noted that it was a "no build" easement that must be avoided during construction.

The Commission requested that the applicant provide appropriate information showing the location of the FEMA flood zone and topographic elevations. Mr. Benowitz noted that the entire property is located within an A-9 flood zone.

On a motion made by Lawrence H. Lehman, seconded by Barbara Cummings and carried by the following vote:

AYES: Peter Larr, Franklin Chu, Barbara Cummings, Hugh Greechan, Lawrence H. Lehman
NAYS: None
RECUSED: Michael W. Klemens
ABSENT: Martha Monserrate

the Planning Commission took the following action:

ACTION: The Planning Commission set a public hearing on application number WP111 for its next meeting on May 21, 2002.

2. Rye Municipal Boat Basin

Peter Fox (Boat Basin Supervisor) noted that the Rye Boat Basin was undertaking a project to dredge Milton Harbor as part of its regular sediment removal program. He noted that the project was consistent with a similar project approved by the Commission in 1998. The dredging area includes the marina and channel. Mr. Fox indicated that an approximately 100-foot by 150-foot sediment basin is also proposed to be installed in the harbor. This basin will collect sediment and make future maintenance easier and reduce the extent of required dredging.

Mr. Fox noted that in addition to the City permits are required from the Army Corps of Engineers, New York State Department of Environmental Conservation (NYSDEC), Connecticut Department of Environmental Protection and the U.S. Fish and Wildlife Service. As part of those approvals, Mr. Fox indicated that the Boat Basin would be responsible for some water quality testing as part of a data collection project to evaluate the impact of the project on existing wildlife. The Commission questioned whether diamondback terrapins have ever been seen in the area. The Commission noted that dredging could impact these species. Mr. Fox indicated that he had not seen terrapins and was not aware of any wildlife concerns raised by NYSDEC, which has conducted wildlife inventories in the area.

The Commission discussed with Mr. Fox the relationship of the proposed dredging to the American Yacht Club property. Mr. Fox noted that it would not interfere with the Club's marina.

On a motion made by Michael W. Klemens, seconded by Peter Larr and carried by the following vote:

AYES: Michael W. Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh Greechan, Lawrence H. Lehman
NAYS: None
ABSTAIN: None

ABSENT: Martha Monserrate

the Planning Commission took the following action:

ACTION: The Planning Commission determined that the Rye Municipal Boat Basin dredging project was consistent with the policies of the City's Local Waterfront Revitalization Program.

3. Rapisardi Residence

The Commission noted that the Rapisardi's were issued a notice of violation for landscaping activities conducted within an area that was intended to be left in a natural wooded state as part of the 1998 Kroll subdivision approval. The Commission noted that the matter was sent to the Planning Commission and not the Courts for a remedy.

The Commission reviewed the language of the original subdivision resolution and discussed possible measures to return the restricted area to a natural state. The Commission stated that it conducted a site walk of the property and noted that many of the plants were wetland appropriate, but questioned the precedent that could be set for property owners that violate conditions of approval.

Linda Whitehead (applicant's attorney) indicated that her client was not aware that he violated the prior subdivision restriction. She suggested that Mr. Rapisardi's intent was to clean up an area littered with bottles, cans and tennis balls. Ms. Whitehead noted that the resolution does not prohibit such clean-up activities. She added that the landscaping that was installed includes native plants and that the applicant intends to provide a wetland seed mix for the remainder of the wetland area.

The City Planner inquired as to the applicant's position on the other subdivision restriction, which prohibits the installation of plantings. Ms. Whitehead stated that the City's Wetlands Law permits routine maintenance and landscaping. Nick Hodnett noted that the activities on the property appeared to exceed "routine" could therefore be considered a violation of the City's Wetlands Law.

Mr. Rapisardi noted that all of the activities in the restricted area were consistent with the "natural wooded state" restriction. He noted that no trees were removed and that new evergreen trees and other plantings were installed based on the advice of a wetlands consultant. Mr. Rapisardi indicated his intent was only to clean up the area, which had been littered with tennis balls and other debris and to improve the screening in the rear of his property from adjacent properties. He noted that he was willing to work with the Commission to further improve the wetland area.

The Commission discussed possible mitigation strategies but reached no conclusion as to how the applicant's plan should be modified. The Commission noted that they would consult with wetland professionals to determine if additional mitigation strategies should be implemented. The Commission asked the applicant how long would it take for the restricted area, if left undisturbed, to return to its prior natural state. Pam Lester (applicant's landscape architect) indicated that it would take approximately 2 to 3 years, but that the leaf matter that existed would likely take less time. She stressed, however, that the proposed wetland seed mix needs to be ordered quickly if it is to be implemented this growing season. The Commission noted that the applicant should delay the purchase of the seed mix and that the applicant would have up to two years to implement any approved plan.

The Commission discussed how similar situations could be avoided on this and other properties in the future. The City Planner suggested that physical markers be placed in the field to better delineate restricted areas and that the description of natural wooded area be better defined.

On a motion made by Michael W. Klemens, seconded by Peter Larr and carried by the following vote:

AYES: Michael W. Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh Greechan, Lawrence H. Lehman
NAYS: None
ABSTAIN: None
ABSENT: Martha Monserrate

the Planning Commission took the following action:

ACTION: The Planning Commission set a public hearing on application number WP110 for its next meeting on May 21, 2002.

4. 205 Grace Church Street

Linda Whitehead (applicant's attorney) introduced the property owner to the Commission and provided an overview of the application. In her presentation she noted that the existing undeveloped building lot consists mostly of wetland and wetland buffer area. The applicant has prepared an environmental assessment describing the existing extent and condition of the wetland and proposed mitigation measures to improve the quality of the existing wetland. Ms. Whitehead noted the presence of invasive species in the wetland area and that untreated City drainage from Grace Church Street is conveyed through an existing easement to the wetland on the rear of the applicant's property. She indicated that the

property is oversized and the proposed house complies with the requirement of the City Zoning Code.

She suggested that the size and location of the residence respects the existing wetland area. Ms. Whitehead noted that the proposed residence is below the maximum permitted FAR and has been shifted to the front of the lot to reduce wetland impacts, which involve approximately 282 square feet of wetland fill. She indicated that the residence would be located in an area that is currently lawn and would include approximately 3,500 square feet of buffer impacts and approximately 7,600 square feet of mitigation area. Ms. Whitehead explained that as part of the mitigation the applicant proposes to install sub-surface water quality structures and a vegetative swale to treat the stormwater runoff from Grace Church Street. She also indicated that the plan includes a proposed field demarcation to define the wetland area and that the applicant is willing to subject the property to appropriate deed restrictions to prevent future disturbances to the wetland.

Ms. Whitehead concluded her presentation by noting that the proposed project will potentially improve the quality of the existing wetland. She noted that the Commission on an adjacent parcel in 1995 approved a similar application involving the construction of a residence on an undeveloped parcel.

The Commission noted strong reservations with the proposed wetland fill and indicated that such fill had never been approved in the past. Ms. Whitehead disagreed and noted that subdivisions on Morris Court and Johnson Place (i.e. the “Preserve”) included wetland fill as part of their wetland permit approvals.

The Commission discussed the proposed driveway and house layout and questioned the location of the proposed garage and extent of required cut and fill. The Commission also questioned the location of the driveway curb-cut and sight line. The applicant noted that the driveway was configured to avoid the removal of an existing large maple tree along the site frontage and that they would provide a sight-line analysis for the proposed driveway.

The Commission discussed the history of the subdivision. The City Planner explained that it appeared that subject lot and an adjacent lot were in common ownership at one time and that the Tax Assessor (probably at the owner’s request) combined the lots for tax purposes. The City Planner explained that the merging of the lots for tax purposes does not mean that the two lots had been merged into one building lot. He noted that the subdivision for the subject lot was approve many years ago and does not appear to have been consolidated from a subdivision perspective. The City Planner also noted that he researched the size and location of improvements on the adjacent lot, which includes an existing residence and garage, and determined that it complied with zoning and therefore not subject to the City’s lot merger provisions. The Commission requested that the applicant provide a prior ownership history of the lots and supporting information confirming that they have not been merged into one building lot.

The Commission discussed possible measures to prevent future encroachment into a protected area. The City Planner suggested that physical demarcations of protected areas was well as strongly worded deed restrictions can work, but that it is always difficult to protect environmentally sensitive areas whenever they are located close to development.

The Commission discussed with the City Engineer the proposed water quality treatment structures and drainage provisions. The City Engineer noted that if such structures were located in the easement their maintenance would be the City's responsibility, which would not necessarily be objectionable depending on the type of structure and its compatibility with the City's maintenance equipment. The City Engineer also questioned the proposed drywells and whether they would function properly given the water table elevation on the property.

Alexandra Moch (applicant's environmental consultant) explained that the intent of the modifications in the drainage easement were to relocate the discharge pipe further from the wetland and create a vegetated swale that would function as an intermittent stream.

Nick Hodnett questioned the location of the wetland boundary delineated by the applicant. The Commission agreed and requested that the City's wetland consultant be retained to review the material submitted by the applicant and confirm the wetland boundary.

The Commission questioned why it was even considering the application given the precedent that could be set for permitting a residence in a wetland and buffer. Ms. Whitehead responded by noting that a denial would be considered a taking of property and that a similar application was approved on the adjacent property in 1995. She also advised that the Commission consider the existing quality of the wetland and the potential improvements proposed by the applicant.

The Commission agreed that more information was necessary, including confirmation of the wetland boundary, before a public hearing could be set on the application.

5. Minutes

The Planning Commission reviewed and approved with minor modifications the minutes of its April 23, 2002 meeting.

There being no further business the Commission unanimously adopted a motion to adjourn the meeting at approximately 10:05 p.m.

Christian K. Miller, AICP
City Planner