

Rye City Planning Commission Minutes

June 4, 2002

1 **PRESENT:**

2

3 Michael W. Klemens, Chairman

4 Peter Larr

5 Franklin Chu

6 Barbara Cummings

7 Hugh Greechan

8

9 **ABSENT:**

10

11 Martha Monserrate

12 Lawrence H. Lehman

13

14 **ALSO PRESENT:**

15

16 Christian K. Miller, AICP, City Planner

17 George Mottarella, City Engineer

18 Nicholas Hodnett, Chairman, Conservation Commission/Advisory Council (CC/AC)

19 James McGee, CC/AC

20 James Nash

21

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

24

25 **I. HEARINGS**

26

27 **1. Turney Subdivision**

28

29 Before opening the public hearing the Commission considered the environmental impacts
30 of the proposed subdivision.

31

32 On a motion made by Peter Larr, seconded by Franklin Chu and carried by the following
33 vote:

34

35 AYES: Michael W. Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh
36 Greechan

37 NAYS: None

38 RECUSED:

39 ABSENT: Martha Monserrate, Lawrence H. Lehman

40

41 the Planning Commission took the following action:

42

Rye City Planning Commission Minutes (Cont.)

June 4, 2002

Page 2 of 9

1 **ACTION:** The Planning Commission adopted a negative declaration of environmental
2 significance as required by the New York State Environmental Quality
3 Review Act (SEQRA) for subdivision application number 273.
4

5 Chairman Klemens read the public notice. The City Planner confirmed the receipt of the
6 affidavit of mailing of the public notice as required by the City Code.
7

8 David Mooney (applicant's attorney) provided an overview of the application noting that it
9 involves the subdivision of an existing oversized lot into two building lots, each having an
10 approximate dimension of 50-feet by 165-feet. The existing residence on the property is
11 proposed to be maintained and the existing garage would be relocated to the rear of the
12 existing residence. Mr. Mooney noted that the existing swimming pool would be removed.
13

14 Mr. Mooney noted that a variance would be required from the Zoning Board of Appeals
15 (ZBA) from section 197-71 of the Rye Zoning Code. This provision relates to the minimum
16 side-yard setback based on the height of the existing residence. Mr. Mooney noted that
17 this variance would be presented at the ZBA's next meeting and that the applicant would
18 seek final subdivision approval from the Planning Commission after a decision on the
19 variance.
20

21 The Commission questioned the zoning of the property and minimum lot size. Mr. Mooney
22 responded that the property is in the RT District, which requires a minimum lot area of
23 5,000 square-feet for single-family residences.
24

25 There were no public comments.
26

27 On a motion made by Peter Larr, seconded by Barbara Cummings and carried by the
28 following vote:
29

30 AYES: Michael W. Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh
31 Greechan

32 NAYS: None

33 RECUSED:

34 ABSENT: Martha Monserrate, Lawrence H. Lehman
35

36 the Planning Commission took the following action:
37

38 **ACTION:** The Planning Commission closed the public hearing on subdivision
39 application number 273.
40
41
42

Rye City Planning Commission Minutes (Cont.)

June 4, 2002

Page 3 of 9

1 **2. Dunn/Stevenson Residences**

2

3 Cormal Byrne (applicants' architect) provided an overview of the application noting that it
4 involves two properties located at 6 and 8 Pine Island Road. The wetland permit is
5 necessary to remove three existing utility poles and overhead wires from an existing
6 wetland and relocating said utilities underground within the 100-foot wetland buffer. Mr.
7 Byrne indicated that the design for the relocation was approved by ConEdison (utility
8 service provider). Mr. Byrne noted that a new above-ground transformer would be located
9 adjacent to Pine Island Road.

10

11 The Commission questioned whether the hole created by the removal of the utility poles
12 would be filled. Mr. Byrne indicated that the holes would not be filled and that the project
13 architect will supervise the removal. The Commission noted that the area was not publicly
14 accessibly so that the holes would not pose a risk and that tidal action would naturally fill the
15 holes in a relatively short time.

16

17 The Commission questioned the height of the transformer and its potential electrocution
18 threat in the event of flooding. Mr. Byrne indicated that the transformer would be located at
19 elevation 10. He noted that each residence would have a disconnect switch to minimize
20 electrocution, but that he would need to confirm the specific design with Con Edison. The
21 City Engineer added that a cut-sheet of the design should be provided to the City for its
22 review. The Commission suggested that the transformer be raised above the 100-year
23 flood elevation or at least to elevation 11 to minimize flooding impacts.

24

25 The Commission questioned the noise from the transformer and its impacts on adjacent
26 property owners. Mr. Byrne noted that the transformer would not produce significant noise
27 and would be screened with landscaping.

28

29 There were no public comments.

30

31 On a motion made by Peter Larr, seconded by Barbara Cummings and carried by the
32 following vote:

33

34 AYES: Michael W. Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh
35 Greechan

36 NAYS: None

37 RECUSED:

38 ABSENT: Martha Monserrate, Lawrence H. Lehman

39

40 the Planning Commission took the following action:

41

Rye City Planning Commission Minutes (Cont.)

June 4, 2002

Page 4 of 9

1 **ACTION:** The Planning Commission closed the public hearing on wetland permit
2 application number 113.
3

4

5 **II. ITEMS PENDING ACTION**

6

7 **1. Turney Subdivision**

8

9 The Commission noted that it intended to approve the subdivision but that it would wait until
10 after the Zoning Board of Appeals (ZBA) has acted on the variance. The Commission
11 reviewed a draft memorandum to the ZBA supporting the requested variance and
12 recommended that it be sent to the ZBA for their consideration.
13

14

15 The Commission discussed how it would handle the renewal/extension of the subdivision
16 approval in the event the applicant did not implement the subdivision within a specified
17 expiration period. The Commission noted concern with approvals lacking expiration
18 provisions and the implementation of projects many years after their approval. The City
19 Planner noted that the approval of a subdivision (unlike site plans) have a 360-day
20 limitation under New York State Law as to their renewal. If an applicant fails to meet the
21 conditions of such approval within such time period, the subdivision would need to go
22 through the entire subdivision review process. Typically, the City Planner noted,
23 subdivisions include conditions that can be fulfilled within the 360-day limitation and include
24 items such as the proper filing of easements, and other documents and posting of
25 performance bonds for the implementation of common public improvements. Conditions
26 requiring that residences in a subdivision be completed within a 360-day period are less
27 common. Often such conditions are not fulfilled within such a time period, potentially
28 triggering the need to re-approve a subdivision since New York State Law limits the
29 number of permissible extensions.

30

31 The Commission noted that approved, but undeveloped lots should be reviewed to have
32 them subject to new laws. The City Planner noted that the City Council in adopting new
33 land use laws determines the applicability of a law to pre-approved subdivision lots. He
34 also questioned whether the Commission could, in such a re-approval, move lot lines or
35 eliminate lots to an approved subdivision, which in some cases may already be filed in the
36 Westchester County Land Records Office or properties sold to new owners. The City
37 Planner further noted that a more complete legal opinion might be necessary regarding the
38 extent to which the City can require established properties to new laws.

39

40 The City Engineer noted that the City had records of sanitary sewer violations on the
41 property. Mrs. Turney indicated that she was aware of the issue but that it relates to
42 construction activities conducted by the City and that she was under the impression that it
had been resolved. The City Engineer indicated that he would review the matter.

Rye City Planning Commission Minutes (Cont.)

June 4, 2002

Page 5 of 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

2. Dunn/Stevenson Residences

The Commission noted that it would approve the subject application subject to the following conditions:

- The site plan shall be revised to elevate the base of the transformer to at least 11 feet above sea level.
- The applicant shall provide appropriate documentation to the City for its review regarding the safety measures of the transformer to prevent electrocution in the event of flooding.
- There shall be no placement of fill within any excavated hole caused by the removal of utility poles and the project architect shall supervise such removal.

On a motion made by Peter Larr, seconded by Franklin Chu and carried by the following vote:

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

the Planning Commission took the following action:

ACTION: The Planning Commission adopted a resolution conditionally approving wetland permit application number 113.

3. Mahoney Residence

The Commission reviewed its observations from the site walk of the property, noting the proximity of the garage to the off-site stream and culvert on the adjacent Apawamis Club property. Representatives from the CC/AC noted the presence of standing water near a leaf pile in the approximate location of the proposed garage.

The Commission discussed whether mitigation would be meaningful given the relationship of possible wetland plantings to the stream and the limited quality of the existing wetland. The Commission noted a low-lying area on the property at the corner of Dogwood Lane and Highland Avenue that appeared to have wetland characteristics and could be improved with wetland plantings. The Commission noted that this area is also subject to regular flooding due to an undersized City drainage system. Beth Evans (applicant's wetland consultant) noted that the area in question was not a wetland and that the soil

Rye City Planning Commission Minutes (Cont.)

June 4, 2002

Page 6 of 9

1 below six inches is sandy and drains very well. Ms. Evans noted that the top layer of
2 organic material appears to be from prior gardening activities.

3
4 The Commission debated whether wetland plantings or drainage improvements to offset
5 the increase in impervious area from the garage would be the preferred method of
6 mitigation. The Commission reviewed the functional criteria in the City's Wetlands Law
7 and specifically noted Section 195-1.A(1)(b), which states that one of the functions of a
8 wetland is to control flooding and stormwater runoff. The Commission discussed possible
9 drainage improvements with the applicant and City Engineer. The City Engineer noted that
10 drywells could be installed to address increases in stormwater runoff, but cautioned that the
11 benefit of these structures depends on soil conditions and extent of rock in the area.

12
13 The City Engineer suggested that the applicant contribute to an area drainage project to be
14 included in the City's upcoming Capital Improvement Program (CIP). The applicant found
15 that concept acceptable and suggested that a contribution of \$1,500 be provided based on
16 the estimated cost of approximately 1,200 square feet of wetland plantings to mitigate for
17 the approximately 600 square-foot increase in impervious area within the wetland buffer
18 related to the construction of the detached garage. The Commission agreed with the
19 suggestion and noted that the payment of fee-in-lieu is consistent with the City Wetlands
20 Law and its prior practice with respect to the 2:1 mitigation requirements.

21
22 On a motion made by Michael Klemens, seconded by Peter Larr and carried by the
23 following vote:

24
25 AYES: Michael W. Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh
26 Greechan

27 NAYS: None

28 RECUSED:

29 ABSENT: Martha Monserrate, Lawrence H. Lehman

30
31 the Planning Commission took the following action:

32
33 **ACTION:** The Planning Commission set a public hearing on wetland permit application
34 number 112 for its next meeting on June 18, 2002.

35 36 **4. Breitel Residence**

37
38 The Commission discussed its displeasure with the condition of the site and what
39 appeared to be the continued use of the property by contractors. The Commission noted
40 the continued presence of a dumpster and unlicensed commercial vehicles parked in the
41 front yard and sediment accumulation on Hook Road. The Commission and City Planner
42 noted that these enforcement concerns were being pursued with the City Manager and City

Rye City Planning Commission Minutes (Cont.)

June 4, 2002

Page 7 of 9

1 Building Inspector. The Commission discussed possible measures to have the applicant
2 get better control of the property and improve the condition of the site. The City Planner
3 noted that the approval of the remediation plan would address some of these issues, but
4 that the City should assume that the applicant will continue to be unresponsive. To address
5 this concern the City Planner noted that he would advise Corporation Counsel to keep the
6 violation pending before the Rye City Court so that any failure to comply with the approved
7 remediation plan could be pursued from a legal perspective.

8
9 The Commission discussed the proposed remediation plan with Beth Evans (applicant's
10 wetland consultant). The Commission noted the removal of fill from the adjacent
11 Westchester County property and the off-site wetland. Ms. Evans noted that the extent of fill
12 was approximately 350 cubic yards (equivalent to 35 truckloads) and had an approximate
13 depth of between three and four feet. Ms. Evans noted that the plan would use existing on-
14 site boulders to create a wall along the rear property line to provide some useable lawn
15 area for the applicant's children. She further explained that the wall would help delineate
16 the rear property line to prevent future encroachment on to the adjacent Westchester
17 County property. Ms. Evans indicated that the plan includes boulder monuments to
18 delineate the edge of the planted wetland buffer area.

19
20 The Commission questioned when was the best time for removal. Ms. Evans noted that
21 this summer and fall was the best time since it would provide time for the seed bank to
22 regenerate.

23
24 The Commission questioned the status of Westchester County's review of the plan. Ms.
25 Evans noted that the plan had been referred to the County for their review. The City
26 Planner noted that he contacted the County Parks Department to solicit their comments
27 and advise them of the Commission's meeting. He noted that the County did not respond
28 to his call.

29
30 The Commission noted that the remediation of the site should occur simultaneously with
31 the removal of material from Westchester County property. The Commission requested
32 that the applicant's wetland consultant supervise the implementation of the remediation
33 plan. Given the circumstances, the City Planner recommended that the City's wetland
34 consultant supervise on-site construction. The Commission and Ms. Evans agreed.

35
36 The Commission advised Ms. Evans that the applicant be present at the public hearing to
37 hear the comments of neighbors. The Commission also noted that it would be helpful if the
38 applicant address some of the issues regarding the current condition of the property to
39 show a good faith effort to restore the property and better control its use and access.

40
41 James Nash (CC/AC member) questioned the removal of the fill from the wetland and the
42 removal of inappropriate material from the side of the residence. Ms. Evans noted that all

Rye City Planning Commission Minutes (Cont.)

June 4, 2002

Page 8 of 9

1 fill would be removed from assumed wetland areas and that a note was included on the
2 plan referring to the removal of inappropriate material. The Commission noted that the
3 Steve Coleman report (City's wetlands consultant) did not indicate that wetlands existed
4 (even prior to site construction activities) on the applicant's property. Ms. Evans indicated
5 that this was consistent with her field inspection and the year 2000 aerial photography
6 provided by the City Planner. She noted that it appears that only ten feet of wetland area
7 may have been filled. The Commission concurred but noted that if during supervised
8 implementation of the plan additional wetland areas were found further Commission
9 approval would be required. The City Planner advised the Commission that the plan would
10 remove fill from wetlands, but that considerable fill would remain in the wetland buffer area.

11
12 The Commission concluded its review by agreeing that Chairman Klemens and member
13 Cummings work with the City Planner to prepare a draft resolution for its consideration at
14 the next meeting. The resolution should include appropriate conditions to improve the
15 condition of the property (including installing an anti-tracking pad and controlling access to
16 the property), require the posting of performance bonds and proper construction staging.

17
18 On a motion made by Michael Klemens, seconded by Peter Larr and carried by the
19 following vote:

20
21 AYES: Michael W. Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh
22 Greechan
23 NAYS: None
24 RECUSED:
25 ABSENT: Martha Monserrate, Lawrence H. Lehman

26
27 the Planning Commission took the following action:

28
29 **ACTION:** The Planning Commission set a public hearing on wetland permit application
30 number 107 for its next meeting on June 18, 2002.

31
32

33 5. Minutes

34
35 The Planning Commission reviewed and approved with minor modifications the minutes of
36 its May 21, 2002 meeting.

37

38 Miscellaneous Matters

39

40 Councilman Chu noted that the City Finance Committee is reviewing a fee study conducted
41 by the consulting firm Maximus. Councilman Chu noted that the Finance Committee is
42 reviewing the consultant's recommended fees and requested input and direction from the

Rye City Planning Commission Minutes (Cont.)

June 4, 2002

Page 9 of 9

1 Commission regarding the proposed Planning Department fees. After considerable
2 discussion the Commission noted that the proposed fees are expected to recover only
3 between 15% and 68% of the department's actual costs. The Commission agreed that
4 fees should be increased so that at least 50% of the department's actual costs are
5 recovered.

6

7 There being no further business the Commission unanimously adopted a motion to adjourn
8 the meeting at approximately 10:55 p.m.

9

10

11

Christian K. Miller, AICP
City Planner