

Rye City Planning Commission Minutes
January 12, 2010

MEETING ATTENDANCE:

Planning Commission Members:

- Barbara Cummings, Chair
- Martha Monserrate, Vice-Chair
- Carolyn Cunningham
- Nick Everett
- Hugh Greechan
- Peter Jovanovich
- Peter Larr

Other:

- Christian K. Miller, AICP, City Planner
- JoAnn Rispoli, Secretary
- Lori DeCaro
- George Mottarella, P.E.,
- John Kirkpatrick, Esq., Special Counsel
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I. EXECUTIVE SESSION

ACTION: Peter Larr made a motion, seconded by Martha Monserrate, that the Planning Commission convene into executive session:

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|---------------------------------|--------|
| Barbara Cummings, Chair: | Aye |
| Martha Monserrate, Vice- Chair: | Aye |
| Carolyn Cunningham: | Aye |
| Nick Everett: | Absent |
| Hugh Greechan: | Absent |
| Peter Jovanovich | Aye |
| Peter Larr: | Aye |

II. HEARINGS

1. Molloy Cottage

ACTION: Peter Larr made a motion, seconded by Martha Monserrate, that the Planning Commission find that wetland permit application number WP261 is complete and that it grant the waiver of application information requested by the applicant, which was carried by the following vote:

- | | |
|---------------------------------|--------|
| Barbara Cummings, Chair: | Aye |
| Martha Monserrate, Vice- Chair: | Aye |
| Carolyn Cunningham: | Aye |
| Nick Everett: | Absent |
| Hugh Greechan: | Absent |
| Peter Jovanovich | Aye |
| Peter Larr: | Aye |

- The Chair noted that a new public notice was prepared, published and circulated for the hearing. She stated that all information provided by the applicant and concerned parties, whether pursuant to the prior notice or new notice, is included

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1 in the official record. She stated that the Commission has a long agenda and
2 requested that public comment on the application be limited to providing new
3 information and to not repeat information already included in the substantial
4 record.

- 5
- 6 • Nick Ward-Willis (applicant's attorney) reviewed the application history noting that
7 in August the Planning Commission declared the project an Unlisted Action under
8 SEQRA. He noted that the applicant objected to that classification and stated
9 that other seawalls considered by the Commission were considered Type II (i.e.
10 SEQRA exempt) Actions. Mr. Ward-Willis stated that in November the applicant
11 submitted a complete application, which included a full environmental
12 assessment form and LWRP Coastal consistency applications.
13
 - 14 • Mr. Ward-Willis explained that permits and approvals were required from
15 NYSDEC, NYSDOS and ACOE. He noted that NYSDEC would issue a consent
16 order that will allow the wall to remain after NYSDOS issues a coastal
17 consistency determination and that the ACOE will issue a permit after a similar
18 finding from NYSDOS. NYSDOS has stated that it will not issue a coastal
19 consistency finding until the Rye City Planning Commission makes a coastal
20 consistency finding.
21
 - 22 • Mr. Ward-Willis stated that the application was before the Planning Commission
23 as a violation for constructing a wall in a wetland/wetland buffer without a permit.
24 He noted that the wall will still need to go through a building permit process.
25
 - 26 • Mr. Ward-Willis stated that he does not agree with the information provided on
27 the record by Mr. Tartaglione. He stated that the application is eligible for a
28 waiver pursuant to 195-B(2) of the Wetlands Law because the project involves
29 less than a quarter-acre of disturbance.
30
 - 31 • Mr. Ward-Willis stated that the applicant has provided information from multiple
32 engineers attesting to the structural soundness and integrity of the seawall. He
33 noted that it was common for the City to issue after the fact permits for activities
34 that did not obtain approvals. He stated that after-the-fact building permits are
35 issued by the Building Department for activities such as decks and finished
36 basements. He noted that the applicant has done everything possible short of
37 tearing it down to demonstrate that the wall is structurally sound.
38
 - 39 • Azsure Dee Sleicher (applicant's coastal engineer) stated that no plans were
40 available of the wall, but that she concurs with the assumptions and analysis
41 provided by Mr. Miller (applicant's structural engineer) regarding its structural
42 integrity. She noted that her firm conducted a similar analysis to assess the
43 wave impact of the wall. She agreed with the methodologies provided by Mr.
44 Miller for an after-the-fact application. She noted that each engineering report
45 provided by the applicant has been stamped by a licensed professional engineer.

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- Ms. Sleicher noted that the four weep holes are provided for the approximate 80-foot wall length, which is acceptable and would be required by a designed wall. She noted that the bird nests in the weep holes need to be removed, but that maintenance is required for any seawall, particularly given the harsh conditions of a coastal environment.

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- Ms. Sleicher stated that removing the wall would not be a good option since it would result in substantial erosion. The demolition process would also require jack hammers and potential debris in Long Island Sound. She also noted that the transportation costs related to demolition would be substantial and that the pre-development condition likely cannot be restored. She noted that keeping the wall would not have an impact on the wetland.

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- Chuck Pateman (consultant to Ray Tartaglione) questioned whether the Planning Commission had retained a professional engineer to evaluate the applicant's engineering reports. The Commission stated that all reports and information relevant to the Commission's decision would be provided to the record and included in its resolution of decision as appropriate.

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- Mr. Tartaglione added to the record an email dated January 7, 2010 from the New York State Board for Engineering and Land Surveying, which noted that the applicant's engineering firm MRES Engineering appears to not have a Certificate of Authorization to provide engineering services in New York State. Mr. Tartaglione added that the determinations of Ocean and Coastal Engineering were based on the analysis of MRES Engineering.

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- Mr. Ward-Willis noted that he had not reviewed the email and could not respond. He noted that issues of the structural integrity of the wall would be addressed by the City's Building Department as part of the required building permit process.

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- Michael Clay Johnson stated that he was a neighbor to the Molloy Cottage and that he is not an engineer, but that he supports the work that was completed by the applicant. He noted that the wall preserved the shoreline and stopped an eroding slope.

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ACTION: Peter Larr made a motion, seconded by Carolyn Cunningham, that the Planning Commission close the hearing on wetland permit application number WP261, which was carried by the following vote:

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Barbara Cummings, Chair: Aye

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Martha Monserrate, Vice- Chair: Aye

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Carolyn Cunningham: Aye

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Nick Everett: Absent

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Hugh Greechan: Absent

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1 Peter Jovanovich Aye
2 Peter Larr: Aye
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5 **2. Shenorock Shore Club**
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- 7 • Chair Cummings noted that she is a member of Shenorock Club and recused
8 herself for discussion of this application. Vice-Chair Monserrate served as chair
9 for this agenda item.
10
11 • Azsure Dee Sleicher (applicant's coastal engineer) stated that the applicant
12 involves the expansion of approximately 2,000 square feet of dock to
13 accommodate 39 boats up to 21 feet in length. She noted that the existing
14 mooring field would also be modified to reduce the number of boats from 30 to
15 16. The total 55-boat capacity would remain unchanged. The new dock would
16 provide safer and more efficient boat access.
17
18 • Duncan Hennes (170 Stuyvesant Avenue resident) stated that he was speaking
19 as a trustee on behalf of American Yacht Club, which is in support of the
20 application. He noted that the revised dock configuration would stop the
21 encroachment of Shenorock boats on the riparian rights of the adjacent AYC
22 property known as the Gibbons Parcel.
23

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25 **ACTION:** Peter Larr made a motion, seconded by Peter Jovanovich, that the
26 Planning Commission close the hearing on modified wetland permit
27 application number WP272, which was carried by the following vote:
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29 Barbara Cummings, Chair: Recuse
30 Martha Monserrate, Vice- Chair: Aye
31 Carolyn Cunningham: Aye
32 Nick Everett: Absent
33 Hugh Greechan: Absent
34 Peter Jovanovich Aye
35 Peter Larr: Aye
36

37 **III. ITEMS PENDING ACTION**
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39 **1. Molly Cottage**
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- 41 • The Planning Commission agreed that the proposed action would not have a
42 significant adverse impact on the environment that would require a positive
43 declaration and the preparation of an environmental impact statement.
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- 1 • The Commission noted that it was troubled by the application. The wall was
2 constructed without a permit, which made it difficult for the Commission to assess
3 the pre-development condition, the extent of erosion claimed by the applicant
4 and the need for the project. The Commission noted that it was unable to
5 determine whether a lower stone wall or some other alternative design could
6 meet the reasonable needs of the applicant and address erosion concerns.
7
- 8 • The Commission noted concern with the findings of the applicant's engineer
9 regarding the structural stability of the wall. The Commission noted that the
10 engineering reports include a number of qualified statements and assumptions
11 that make it difficult to confirm the structural integrity of the wall. The
12 Commission noted that the project increased the size of the existing seawall by
13 235%, which was substantial. The construction of the wall did not give the
14 Commission the opportunity to consider non-structural measures as required by
15 the LWRP. The Commission also did not have the opportunity to consider
16 alternative structures or wall designs that could meet the needs of the applicant
17 and reduce impacts to the "maximum extent practical" as required by the City's
18 Wetlands Law.
19
- 20 • The Commission noted concerns with the undesirable precedent that would be
21 set by approving a substantial wall that was constructed without the required
22 permits. The Commission noted that it has considered other after-the-fact
23 applications (such as fences and small walls), but none that involved a structure
24 as substantial at the 16-foot high wall constructed by the applicant. Those
25 applications allowed the Commission to more reasonably assess the pre-
26 development condition and make the findings required by the City's Wetlands
27 Law.
28
- 29 • The Commission noted that if the application were denied by the Commission,
30 the applicant would still need to address the violation issued by the Building
31 Department. The Commission noted that if the wall were required to be removed
32 or substantially altered by the Building Inspector that the extent of disturbance
33 associated with that activity would likely trigger the need for the applicant to
34 return to the Planning Commission for a wetland permit consideration.
35
- 36 • The Commission directed the City Planner to prepare a resolution of denial for its
37 consideration at its next meeting. The Commission noted that the resolution
38 should include the considerations it discussed above.
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42 **2. Shenorock Shore Club**

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- Chair Cummings noted that she is a member of Shenorock Club and recused herself for discussion of this application. Vice-Chair Monserrate served as chair for this agenda item.

ACTION: Pater Larr made a motion, seconded by Carolyn Cunningham, that the Planning Commission approve modified wetland permit application number WP272, which was carried by the following vote:

Barbara Cummings, Chair:	Recuse
Martha Monserrate, Vice- Chair:	Aye
Carolyn Cunningham:	Aye
Nick Everett:	Absent
Hugh Greechan:	Absent
Peter Jovanovich	Aye
Peter Larr:	Aye

3. 36 Howard Place

- The Commission noted that it had received a legal memorandum from the applicant's attorney and John Carey (attorney for Mrs. Custer a neighbor on Holly Lane that abuts the applicant's property). The Commission requested that this information be referred to Corporation Counsel for their input.
- The Commission requested that the plans be revised to clarify how the proposed roadway slope reduction would be achieved. The Commission requested that the revised plan have a section and profile of this area at a more legible scale.
- Larry Nardecchia (applicant's engineer) reviewed the proposed plans noting that approximately six inches of pavement would be added to raise the elevation of Grace Church Street and the slope of the driveway would be reduced. He provided a comparison of the changes in the existing and proposed slope of Howard Place. He noted that the existing width of Howard Place would not change. Mr. Nardecchia confirmed that the width of Howard Place is roughly 9 feet and is approximately 12 feet in one location.
- The City Engineer questioned if the applicant has the right to make the improvements to the roadway. Mr. Messina (applicant's attorney) stated that the road is not owned by anyone. The City Engineer stated that the ownership must be clarified because the plan proposes a common sewer line that must be municipality owned and maintained. He stated that the common sewer line will require a 10-foot easement be given to the City.
- Mr. Messina stated that the City has the right of access. The Commission clarified that the City Engineer will require that the ownership of the road be

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1 identified so that the proper authority can legally give the required easement to
2 the City. Mr. Messina noted that the deeds of abutting properties do not extend
3 to the centerline of the road, but rather exclude the roadway. Mr. Nardecchia
4 stated that existing properties have public water so may have been easement
5 secured when water was installed on Howard Place.
6

- 7 • John Carey (attorney for Mrs. Ben Scott Custer, owner of 8 Holly Lane)
8 presented a legal argument that the applicant has no legal right to enjoy the use
9 or access of Howard Place. Mr. Messina disagreed.

- 10
11 • The Commission agreed that there are a variety of legal arguments that must be
12 addressed by Corporation Counsel before the application can go forward. The
13 Commission agreed to carry this matter over to the Commission's next agenda.
14

15 16 **4. 183 Forest Avenue**

- 17
18 • The Commission reiterated its previous request that the mitigation plan be
19 amended to provide six additional hardwood trees preferable in the wetland
20 buffer. Richard Horsman (applicant's landscape architect) stated that he would
21 amend the plan, but noted challenges with providing additional trees including the
22 amount of rock on the property and concern with the creation of additional shade,
23 which will impact the growth of the proposed grasses in the wetland buffer.
24

- 25 • Lori DeCaro questioned whether the wetland buffer should be delineated. The
26 Commission noted that it agreed to provide marker delineations for mitigation
27 areas, not the buffer. The Commission noted that the plan has been
28 substantially revised since the CC/AC's first review. Additional revised
29 comments should be provided.
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- 31 • The Commission agreed that upon submission of a revised plan that it would
32 consider setting a public hearing on the matter.
33

34 35 **4. 180 Theodore Fremd Ave**

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37 • The Commission reviewed the project history noting some of its prior concerns
38 with the application including the adequacy of proposed on-site parking,
39 environmental concerns and possible hazardous materials inside the building, the
40 applicant's right to use the adjacent driveway and the adequacy of the vehicle
41 sight distance at the site egress.
42

- 43 • Linda Whitehead (applicant's attorney) stated that additional information would
44 be provided to address those concerns as part of the applicant's site plan review

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1 process. She noted that at this point the applicant is seeking Planning
2 Commission comment on the proposed zoning text amendment, which requires
3 City Council approval.
4

- 5 • The Commission noted that the B-1 District appears to be an appropriate location
6 for day care, but requested that the City Planner review the adequacy of the
7 proposed on-site parking requirement.
8
- 9 • The Commission requested that sidewalks be provided on Theodore Fremd.
10

11 12 13 **6. 15 Bradford Avenue**

- 14
15 • The Commission noted that it would conduct a site walk of the property. It also
16 requested that the drainage design be revised to assume a 100-year storm event
17 and that percolation and deep hole tests be conducted.
18
- 19 • The Commission reviewed the proposed tree preservation plan and agreed that it
20 would review the plan at the site walk.
21

22 **7. Wainwright House**

- 23
24 • Brian Smith (applicant's engineer) stated that the applicant is seeking to convert
25 a gravel patio into a bluestone patio. He noted that the patio is currently subject
26 to heavy use and requires a more durable material. He stated that the patio
27 would encroach into the buffer by 14 feet. He stated that a surface water control
28 plan has been submitted to the City Engineering Department and that
29 appropriate stormwater measures have been provided.
30
- 31 • The Commission requested that the plan be revised to eliminate the
32 encroachment into the buffer. Mr. Smith confirmed that the patio would be for the
33 seasonal tent used by Wainwright each year. The Commission noted that the
34 construction of a permanent patio associated with the use of the tent will require
35 the applicant to submit an application for site plan approval. The City Planner
36 confirmed that this was also the opinion of the City Building Inspector.
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40 **8. Minutes**

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