

**TOWN OF LIBERTY
PLANNING BOARD MINUTES
November 2, 2010**

MEMBERS PRESENT

Diane S. Deutsch, Chairman
Lynn Dowe
Ray Kelly
Dean Farrand
John Van Etten
Denise Birmingham, Alternate

ABSENT

Peter Stettner, Alternate

ALSO PRESENT

Walter F. Garigliano, Town Attorney and Mark Van Etten, Building CEO
See attached sign in sheet

CHAIRMAN DEUTSCH CALLED THE MEETING TO ORDER AT 7:00 PM.

ON MOTION MADE BY LYNN DOWE AND SECONDED BY JOHN VAN ETTEN, THE BOARD UNANIMOUSLY APPROVED THE MINUTES FOR OCTOBER 5, 2010.

PUBLIC HEARING:

Council of Missionary Churches of Christ, Inc.

Special Use Permit
113 Breezy Hill Road
SBL: 5.-1-6.1
Zone: RD #2010-0023

Nine notices sent, six green cards received. Chairman Deutsch asked if there was anyone from the public who wished to comment.

No one appeared.

ON A MOTION MADE BY DEAN FARRAND AND SECONDED BY JOHN VAN ETTEN, THE PUBLIC HEARING WAS CLOSED. ALL IN FAVOR. APPROVED.

Phyllis Cassino
2 lot Subdivision
193 Old Monticello Road
SBL: 37.-1-4.1
Zone: RD #2010-0024

Sixteen notices sent, twelve green cards received. Chairman Deutsch asked if there was anyone from the public who wished to comment.

No one appeared.

ON A MOTION MADE BY LYNN DOWE AND SECONDED BY JOHN VAN ETTEN, THE PUBLIC HEARING WAS CLOSED. ALL IN FAVOR. APPROVED.

Council of Missionary Churches of Christ, Inc.

Special Use Permit
113 Breezy Hill Road
SBL: 5.-1-6.1
Zone: RD #2010-0023

Daniel Diaz appeared for this project. After a short discussion it was brought to the Board's attention by member, Dean Farrand that the following section from the Town of Liberty Code would apply to the basketball court.

(84-12) - Yard regulations

Every part of a required yard must be unobstructed except for plantings, accessory buildings in a rear or side yard and ordinary projections of open porches, balconies, steps, sills, cornices, ornamental features projecting not more than twelve (12) inches and covered in-ground facilities such as septic systems.

A. Permitted obstructions - Fences or walls not over six and one-half (6 ½) feet in height may be erected anywhere on the lot, except within clear-sight triangles. Fence or walls with a height in excess of six and one-half feet shall conform to the requirements set forth herein for buildings. Paved areas (other than such as are needed for access to the buildings on the lot) shall not project within fifteen (15) feet of a street line or four (4) feet of a lot line.

It was also determined that the gate should be kept locked on the fence to prevent children from getting out into Breezy Hill Road unattended. It was reiterated that no lighting would be required for the basketball court as no one would be playing at night and that the fence along Breezy Hill Road would be raised to prevent stray basketballs from flying in or on Breezy Hill Road.

The waiver was then discussed with the following result.

Dean Farrand said he knows its in the regulation but the regulation gives the Board no guidance on how they can verify. Attorney Garigliano said he believed it was intentional and that the Town Law has a similar provision and that he would discuss it at the end of the meeting that he thought they ought to suggest that the new Town Law provision be brought into Town of Liberty's Code as opposed to what's in the Code which would give the Board a little more guidance, but he did think that if the Board believes it was a hardship to the applicant and it isn't going to add anything to the review, those would be the two things the Board needed to decide. Is it a hardship to the applicant and is it going to add anything to the review? Here where the Board has gone out there, looked at it and seen it, it's a little perverse, but the fact that it's already half there makes it easier to look at. Shows you were it's going to be. Can do the measurements and everything.

Attorney Garigliano said that those are the two things the Board clearly needs to look at and he thought the second one was important, so if someone were to come in and say they couldn't afford it, but somebody is sitting at this table and I think it's necessary for the Board in order to complete the

review, which in this case, it's there. Chairman Deutsch, said that again it was discretion. Attorney Garigliano said he believed the Code was very open-ended on purpose to give the Board the ability to make a good discretionary decision and if you're going to give a waiver, don't do that in the same resolution as an approval, handle the waiver first and then after you give the waiver, consider the application.

Dean Farrand asked if they were not at risk of being arbitrary. Attorney Garigliano said not if they found it upon, if the record reflects and you agree that it doesn't add anything to your ability to review this to ask for that information, that to him was the key.

Lynn Dowe said he thought they would still have to take this on a case by case basis. When someone comes in and says I want this 15 feet off the road because that's what the Code says, we still have the option to say we want it farther back because of site distance.

Dean Farrand thought that the Board needs to be careful in it's stated reason for this particular situation.

Mark Van Etten said he wanted to be clear on the usage of the property. The Building Department has it listed as a summer camp. They do come up only on weekends? I just want to be clear. How many weekends a year, most of the summer? Daniel Diaz said five weekends and mostly families that come up and they just stay there with their children and perhaps one church may come with a group of young people. Mark Asked then if it was made up of just family units. Daniel Diaz said yes and the children, because it is mainly for the church people, not for the public.

More discussion was held with the following result:

First draft of the motion: ON A MOTION MADE BY JOHN VAN ETTEN AND SECONDED BY DEAN FARRAND, THE PLANNING BOARD ACCEPTS THE LETTER REQUESTING A WAIVER BASED UPON THEIR UNDERSTANDING THAT THERE WILL BE NO LIGHTING AND THAT THE INCLUSION OF ANY OF THESE THINGS IN THE LETTER WOULD NOT OCCUR IF IT WAS NOT WHAT THE BOARD CONSIDERED TO BE A PAVED AREA UNDER SECTION 84-12A.

Denise Birmingham said she would be more comfortable if they were to accept the waiver, but not for the reason stated in the letter, but for the reason being that it's not necessary for this particular project.

Attorney Garigliano said he thought that the Board would have to find both of those things to be safe. He thought that the Board would have to find that its somehow prohibitive or detrimental or unfair to the applicant to require and that it wouldn't add to your ability to review the application. You'll have to define both of these, otherwise you'll have a large corporate client in here saying we have a billion dollars in the bank but we don't want to hire a surveyor because it won't add to your review. Chairman Deutsch said alright then we need to redo the motion.

ON A MOTION BY JOHN VAN ETTEN SECONDED BY DEAN FARRAND THE BOARD ACCEPTS THE APPLICANT'S LETTER AS SUBMITTED TO US WITH THE UNDERSTANDING THAT THERE WILL BE NO LIGHTING ON THE SITE AND THAT THE BOARD CONSIDERS IT A PAVED AREA AND COMPLIES WITH SECTION 84-12 A AND IN ADDITION TO THAT THE BOARD FEELS THAT THERE IS A HARDSHIP FOR THE

APPLICANT AND THE ADDITION OF THE INFORMATION LISTED IN THE APPLICANT'S LETTER WOULD NOT ADD MATERIALLY TO THE REVIEW OF THE APPLICATION. ALL IN FAVOR. APPROVED.

ON A MOTION MADE BY JOHN VAN ETTEN AND SECONDED BY DEAN FARRAND, APPROVAL OF THE SPECIAL USE PERMIT FOR COUNCIL OF MISSIONARY CHURCHES OF CHRIST, INC. WAS GRANTED ON THE AFFIRMATIVE FINDING ITS ACTUALLY A PAVED AREA UNDER SECTION 84-12 A AND ON THE FOLLOWING CONDITIONS: 1. NO LIGHTING IS TO BE USED; 2. THE FENCE BORDERING THE ROAD IS TO BE HIGHER; AND 3. A LOCKING MECHANISM IS TO BE PLACED ON THE GATE TO PREVENT CHILDREN FROM ROAD ACCESS. ALL IN FAVOR. APPROVED.

Phyllis Cassino
2 lot Subdivision
193 Old Monticello Road
SBL: 37.-1-4.1
Zone: RD #2010-0024

Anthony Siciliano and Amy Jackson appeared for this project. A short discussion was held where it was determined that the file was complete.

ON A MOTION MADE BY DEAN FARRAND AND SECONDED BY JOHN VAN ETTEN, APPROVAL OF THE 2 LOT SUBDIVISION FOR PHYLLIS CASSINO WAS GRANTED. ALL IN FAVOR. APPROVED.

Davidowitz
Special Use Permit
245 Ferndale - Swan Lake Road
Unit # 35
SBL: 41.-1-9.8
Zone: RD #2010-022

Jack Tompkins appeared for this project. After a short discussion it was determined that the measurements at the actual property are correct and what the Board requires and that the notation requested is indeed on the map. It was then decided that this project should come back for a public hearing on December 7th and be sent for 239 review.

Werner Colony Holding LLC
Special Use Permit / Re-approval
County Route 15 / State Route 55
SBL 46.-1-6 & 7.1
Zone: RS/RD #2008-0006

Applicant, David Tauber appeared for this project. He has requested an extension on this project which was approved on November 4, 2008.

ON A MOTION MADE BY JOHN VAN ETTEN, SECONDED BY LYNN DOWE, A SIX (6) MONTH EXTENSION WAS GRANTED TO WERNER COLONY HOLDING LLC UP TO AND INCLUDING MAY 4, 2011. ALL IN FAVOR. APPROVED.

Green Acres Cottages Inc. / Samuel Goldberger

Special Use Permit
20 Denman Road
SBL: 30.-1-90.3
Zone: SC #2010-010

Lisa Edwards of Kelly Engineering appeared for this project. After a short discussion wherein it was determined that the site plan now shows what the Board requires, it was decided that this project should come back for a public hearing on December 7th and that it should also be sent for 239 review.

Robert Head

Subdivision
429 Willi Hill Road
SBL: 38.1-31.2 and 31.3
Zone: AC #2010-0007

Joseph Woods appeared for this project. After a short discussion it was it was determined that this project would be referred to Mark Van Etten, the Code Enforcement Officer to compare the plan with the subdivision map that was approved on June 3, 2003. After having done so to discuss the project with Joseph Woods to determine where it stands and report the status of the project back at a meeting in the near future.

Attorney Garigliano asks if he can speak with the Board.

Attorney Garigliano: I have a suggestion which emanates from a local law that was introduced last month in another Town that Kenny and I are involved in down the road a piece where they had a number of minor site plan changes which goes back to what Dean Farrand was saying. It completely clarifies some of the things that seem mystical. There's a provision that's not new, it's newer than our zoning law in the state enabling legislation. It specifically deals with Planning Boards granting waivers on site plans. And what that would mean is that if you had somebody come in here like they're in here all the time on these bungalow colony things where they want to add a deck or something, you would have the authority granted to this board by the Town Board to determine that that doesn't need to go through the whole process. Not have a public hearing, not go through SEQR, not have a 239 referral, not make Nancy's life miserable with 160 notices for neighbors because usually those are the ones that have piles and piles and piles of notices and it gives you the authority to require whatever information you need to determine whether or not you'd give a waiver. I think it's something that would make things here a lot smoother. Because we've had a rash of decks, bay windows and things that you could [grant one].

Ray Kelly: I think that doing the surveys is a substantial cost in comparison to the little deck you want to put on.

Attorney Garigliano: We had people come in in the Town down the road and they said they spent three times as much on the process as they did on the nails.

Ray Kelly: Exactly.

Attorney Garigliano: The only reason that I feel extremely comfortable in making this suggestion to this Board is because I know that at least quite a few people around this table go out and look at these things and the maps are just designed for you to have just an approximation of what's in the field without going there. Once you go there and look, you don't need the map. Once you go there with your tape and you know it's 20 feet four inches, you don't need the map. So I would like this Board to consider that and if it's something you want me to do, then I want your permission to write a letter to the Town Board on behalf of the Planning Board saying this is a process we'd like you guys to consider that it's something they can do quick and it's completely authorized by the Town Law. I think it's 274 a of the Town Law. It has specific authorization in it and it would give you the ability on some of these things to not have to go through the process. They still have to come here. There's another way you can do it to which Thompson has which is you give the building inspector the right to give the waiver. I'm not in favor of that.

Several Board members said no.

Attorney Garigliano: I think it's more consistent if you make them come to the Planning Board, but for the Planning Board to have the right to give a waiver when it makes sense.

Dean Farrand: Are there guidelines as to what those waivers are?

Attorney Garigliano: Again, they're pretty nebulous but as long as you're consistent in your application and you make a record that "we gave the waiver because of x, y, z."

Ray Kelly: As long as we were able to determine the conditions in which it was going to be built.

Attorney Garigliano: It says you have to put down the reasons you granted the waiver. The obvious reason is that three of the members went there, they looked at it, what do we need 16 pages of maps for, we went there and looked at it.

Chairman Deutsch: But we'd still have the ability to require, we'd want something, a sketch or something.

Attorney Garigliano: It provides that to get the waiver, they've got to give you whatever you reasonably require to be comfortable the waiver is warranted.

More discussion was held and it was determined that Attorney Garigliano would contact the Town Board with the Planning Board's permission.

Nancy Saucier then asked the Board about training requirements.

**ON A MOTION BY JOHN VAN ETEN AND SECONDED BY DEAN FARRAND, THE MEETING WAS
ADJOURNED AT 8:30 PM.**

Respectfully submitted,
Nancy Saucier, Planning Board Secretary

The foregoing represents unapproved minutes of the Town of Liberty's Planning Board from a meeting held on November 2, 2010 are not to be construed as the final official minutes until so approved.

 X Approved as read