

**Town of Clifton Park Planning Board**  
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PLANNING BOARD

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Eric Ophardt  
Kim Paulsen  
Eric Prescott  
Tom Werner  
(alternate) Andy Neubauer

**Planning Board Meeting**  
**November 10, 2015**

Those present at the November 10, 2015 Planning Board meeting were:

Planning Board: R. Ferraro, Chairman, E. Andarawis, J. Koval, E. Ophardt, K. Paulsen,  
E. Prescott, T. Werner  
A. Neubauer – Alternate Member

Those absent were: None

Those also present were: J. Scavo, Director of Planning  
P. Pelagalli, Counsel  
J. Dean, Secretary

Mr. Ferraro, Chairman, called the meeting to order at 7:00p.m. All in attendance stood for recitation of the Pledge of Allegiance.

**Minutes Approval:**

Ms. Paulsen moved, seconded by Mr. Prescott, approval of the minutes of October 27, 2015 as written. Ayes: Ophardt, Paulsen, Andarawis, Prescott, Werner, Koval, Ferraro. Noes: None.

**Public Hearings:**

There were no public hearings scheduled for this evening's meeting.

**Old Business:**

[2014-054] **Kain Preserve** – Consideration of proposed amendment for 5 Dhara Court to permit installation of a fence in the designated Land Preservation Area. SBL: 250.-1-10.11

Mr. Pelagalli, Planning Board Attorney, and Mr. Joel Koval recused themselves from any discussion and/or vote on this agenda item and both left the meeting room.

Mr. Peter Thalheimer, applicant and homeowner, presented his family's request for approval to add fencing to the rear yard of the home they recently purchased at 5 Dhara Court which is situated within the Kain Preserve development. Mr. Thalheimer explained that after the home was built, he was informed that they would not be able to install the black aluminum fencing as planned that would extend to existing wood fencing on lands of adjoining property owners because the area is considered to be a "protected" area. Since one of the notes included under the title *Land Preservation Area Notes* on the approved subdivision plan states that "any modifications to the land preservation area(s) easement(s) must receive prior approval from the Town of Clifton Park Planning Board," the application is presented at this evening's meeting for Board consideration. The request for modification of the land preservation area restrictions is made for the following reasons: the homeowners had a small and energetic dog and would like to provide an area for him to run; Ms. Thalheimer has difficulty walking and would not be able to chase the dog if he were to escape; future plans call for the installation of a heated therapy spa in the backyard and though a lockable cover would be all that would be required per the Swimming Pool Enclosure Law, the fencing would offer additional safety. The applicant emphasized the fact that the proposed fencing would not require the removal of existing trees. He stated that, at the recommendation of Mr. Scavo, Director of Planning, he has submitted "supporting signatures" from the current owners of adjoining properties.

Ms. Beth Thalheimer, applicant, distributed a copy of the Plot Plan of Lands for their property which was provided to her and her husband at the property closing, stating that the document did not include any reference to fencing restrictions. She explained that due to mobility issues, she is unable to chase their dog: a fence would assure that the animal remained on their property. Ms. Thalheimer stated that the proposed fence would also provide protection from "bears and coyotes" that allegedly roam the area as well as other dogs.

Mr. Scavo explained that Mr. Myers, Director of Building and Development, provided the following comments regarding this application in a memo dated October 20, 2015. The Land Preservation Area was put in as a buffer to the existing homes bordering the development. Permission from the abutting landowners should be required. He noted that the issue has been raised for another lot within the subdivision. Mr. Myers noted that the proposed swim spa appears to more of a pool than a spa and may require installation of a fence if a lockable cover is not available and used.

Mr. Scavo provided comments prepared by the Planning Department. He highlighted *Land Preservation Area Notes* found on the approved, stamped subdivision map which read as follows: The following use/activities shall not be allowed within the designated land preservation area(s)/easement(s): construction of principal or accessory buildings

including sheds, barns, and other improvements including, but not limited to, pools and fences.

An additional statement notes that “any modifications to the land preservation area(s)/easement(s) must receive prior approval from the Town of Clifton Park Planning Board.” In accordance with this statement, the applicant has petitioned this Board for consideration to modify the land preservation area to include a fence on his property that will result in no tree clearing. Noting that the Kain Subdivision was controversial from the time it was originally proposed, Mr. Scavo explained that Board members had been provided with a copy of the “comments and responses” document prepared by the Planning Board after a public hearing regarding the subdivision plan was conducted at the February 14, 2006 Planning Board meeting. Mr. Scavo noted that the fencing installed by the Thalheimers along the southern property boundary in August, 2015 was not in violation of the land preservation area restrictions since it was located beyond the identified land preservation boundary: this fact was confirmed by a field crew from McDonald Engineering, the town’s designated engineer.

In response to Mr. Ferraro’s question regarding the location of the fencing installed by the applicants in August and proposed additional fencing, Mr. Thalheimer explained that his family had installed a section of fencing along their southern property boundary line in anticipation of the placement of the following additional fencing sections: a 40’ section from the easterly side of the house to the existing fence which separates the Thalheimers property from the Lands of Gendron and a 50’ section from the southerly corner of the house to the newly installed fence. Mr. Ferraro expressed concerns that the existing and potential property owners within the Kain subdivision were not informed of restrictions imposed by the Planning Board as conditions of subdivision approval.

Mr. Bill Lorensen, 14 Hearthside Drive, stated that he views the installation – and proposed installation - of fencing at 5 Dhara Drive to be a violation of land preservation restrictions outlined on the approved subdivision plan. He explained that when the Kain Development project was initially reviewed by the Planning Board eleven years ago, he and some of his neighbors formed a group called Friends of Longkill (FOLK) to “advocate for the protection of important open space in the area.” After a court decision was rendered, the Kain Subdivision plan was approved conditioned upon the preservation of natural buffers between existing homes and those proposed within the development: the Land Preservation Area restrictions were imposed by the Planning Board to assure that the areas would not be disturbed. He expressed three concerns regarding the application. His review of the deeds for properties within the Kain Preserve do not “list the deed restrictions” as promised by the Planning Board,” existing and future property owners have not been provided with a copy of the land preservation area restrictions, and the town has failed to stop the construction of fencing that was installed by the applicant. The speaker called on the Board to reject the request for a proposed fence and to move the “illegally installed fence outside the preservation area.

Ms. Gayle Gendron, 11 Kain Terrace, explained that approved subdivision plans provide a 50’ land preservation area between the Thalheimer’s property and her property line. She pointed out that her existing fence is situated well within her property’s boundary line making the proposed link to that fence impractical.

Mr. Ferraro stated that the “perceived or real intrusion” of existing and proposed fencing on this property on adjoining properties could not be determined without clarification of the accurate locations of existing property boundaries, verification of the established width of the land preservation area, and explanation of the discrepancies between the stamped subdivision plan and individual plot plans and directed Mr. Scavo to seek clarification of these issues. Mr. Ophardt observed that fencing could be installed outside the boundaries of the land preservation area, though Ms. Thalheimer commented that it would be impractical to do so since it was her plan to install a deck and spa in an area behind her home. Mr. Ferraro explained that since Mr. Pelagalli would be unable to comment on this application, the issues of concern should be presented to Mr. McCarthy, Town Attorney, for review.

Mr. David Gibson, 107 Longkill Road, noted that the Board’s decision regarding this request could be “precedent setting” and he questioned how the Board would ensure that a similar situation does not occur in the future.

Ms. Paulsen commented that, although she recognizes that the list of restrictions was not clearly communicated to the property owners, Planning Board members spend a great deal of time reviewing applications and imposing conditions that will assure the protection of environmental features deemed significant and preservation of the rights of existing property owners. She believes that restrictions on development placed by prior Boards should not be casually dismissed.

### **New Business:**

[2015-053] **Stevens, Jane** – Proposed (2) lot subdivision, 178 Vischer Ferry Road – Conceptual review. SBL: 258.-1-38.14

Mr. John Stevens, consultant for the applicant, presented this application that calls for a two (2) lot subdivision of a 58.34 acre parcel of land situated within the CR (Conservation Residential) zoning district, specifically located on the westerly side of Vischer Ferry Road approximately one mile south of its intersection with Grooms Road. The plan proposes to subdivide a 7.96 acre parcel containing a main house, outbuildings, and pond from the existing parcel. The existing residence is served by a private well and individual septic system. Mr. Stevens explained that the 58 acre tract is split by a strip of property totaling approximately eight acres that is owned by National Grid. He explained that the utility company has provided two “floating easements” that will permit utility line crossings and provide access for future development.

Mr. Scavo explained that Mr. Myers, Director of Building and Development, provided the following comments in a memo dated October 21, 2015. There are significant wetlands on the property and a National Grid easement splits the entire parcel. The parcel lies within the CR (Conservation Residential) zoning district: all zoning requirements appear to be met. He notes that it appears that wetland areas are currently farmed.

Mr. Scavo reported that the ECC provided the following comments regarding this application. The ECC would like to bring attention to the strip of land to the north of Lot #1, along Vischer Ferry Road. It appears that the wetlands crossing through that strip of land would restrict

development options for that area. In light of this, the ECC recommends extending Lot #1 to the existing northern property border.

Mr. Scavo offered comments prepared by the Planning Department. He explained that §208-16(E)(2) offers three development options within the CR zoning district:

(a) Development on less than 10 acres. A parcel consisting of less than 10 acres may be developed at a maximum density of one dwelling unit per three acres of unconstrained land. A parcel which is less than three acres but larger than 20,000 feet may be developed with one dwelling unit.

(b) Development on 10 acres or more. A parcel consisting of 10 acres or more may be developed at a density of one residential dwelling unit per 10 acres, provided there is at least one acre of unconstrained land available to accommodate a residential use, including any required well and septic system. In lieu of development at said density, such parcel may be developed at a density not to exceed 0.33 unit per acre of unconstrained land, provided 50% of the area of the development site is designated as permanent open space pursuant to the other conditions set forth herein. For example, if an applicant owns a seventy-acre parcel, and 10 acres are identified as constrained, the maximum allowable density with a fifty-percent open space set aside is 20 dwelling units. This example is calculated as follows: 70 acres minus 10 constrained acres equals 60 acres of unconstrained land. This 60 acres multiplied by 0.33 results in a maximum allowable base density of 20 units. These 20 units must be placed on the unconstrained sixty-acre portion of the site in this example.

(c) A one-time, single-lot exception is allowed, meaning a subdivision of one parcel, as it existed as of January 1, 2005, into a maximum of two lots to be used for single-family residential purposes only shall not be required to follow the conservation approach, although it is highly encouraged to be protective of the natural and cultural resources of the community. This shall only be permitted for parcels greater than 10 acres and shall only be allowed if both of the newly created lots will be initially owned by family members, at the discretion of the Planning Board. The newly created lot shall be a minimum of two acres, and all principal buildings shall have a minimum setback of 50 feet from all property lines.

The applicant should note on the subdivision plan what development option is being invoked with the subdivision application. The approximate locations of the existing well and septic on site must be indicated on the subdivision plan. Since the project is adjacent to County Route 90 (Vischer Ferry Road) and is within 500' of active farms located within the Saratoga County Consolidated Agricultural District #2, a referral application to the Saratoga County Planning Board has been made.

After review of the subdivision plan and Short Environmental Assessment Form submitted for consideration, M J Engineering and Land Surveying, P.C. provided the following comments. Based upon review of Part 617 of NYS Environmental Conservation Law, the project appears to be an "Unlisted" action. If the Planning Board is to request Lead Agency status under SEQRA, the need to undergo a coordinated review is optional. Under a coordinated review, the involved/interested agencies to be engaged may include, but are not necessarily limited to the following: Saratoga County Planning Board – 239m referral due to the parcel's proximity

to Consolidated Agriculture District No. 2. Additional agencies may be identified by the Town during its review of the project, especially if physical improvements are contemplated. The project is located within the town's CR (Conservation Residential) zoning district. The proposal does not discuss any improvements on the lands to be subdivided other than the existing buildings will be contained on the 8.0+/- acre parcel. The proposed lot configurations appear to meet the minimum zoning requirements. If and when a proposed use is contemplated for the remaining lands, further review may be warranted. Absent an actual use being proposed on the remaining lands of the original parcel, the Board may consider requesting the placement of a notation on the plat indicating that subsequent development on the parcel may be subject to additional regulatory review for compliance with town zoning requirements and other applicable standards. The applicant needs to obtain the 911 emergency response address and include it on the final plat.

Mr. Ferraro asked that the applicant clarify the terms of the "floating easements" provided to the property owner by National Grid since such things as the width of access points or restrictions on the types of crossings may impact future development of the remaining lands. Mr. Stevens stated that he would provide copies of existing agreements for the Board's consideration.

Mr. Hartnett, Chairman of the Trails Subcommittee of the town's Open Space, Riverfront and Trails Committee, asked that a 15' easement along the property's Vischer Ferry Road frontage be provided for future roadway improvements or multi-use pathway development. Mr. Scavo reported that the required parkland fee could be waived should the applicant provide the requested easement. In response to Mr. Andarawis' question regarding possible future development of the 8-acre homestead parcel, Mr. Stevens stated that he would be amenable to placing a deed restriction on the plan that would prohibit any further subdivision of that parcel. Mr. Scavo pointed out that consolidation of the two parcels could be accomplished by administrative action should the family decide to link them back together in the future, though he noted that this could only be realized if the two parcels remained under single ownership. Board members found the application acceptable though they encouraged the applicant to consider how the proposed subdivision would impact future development of the entire site.

[2015-054] **143 Hubbs Road – Tom Guariglia** - Special Use Permit #81053 to permit the construction of a two-family dwelling within the CR (Conservation Residential) zoning district pursuant to Section 208-16D(3)(a)[8] and Section 208-79 of the Town Code, 143 Hubbs Road – Conceptual review. SBL: 258.-1-38.14

Mr. Koval recused himself from any comment and/or vote on this application and he left the building.

Mr. Duane Rabideau, consultant for the applicant, presented this application for the Board's review. The applicant requests approval to construct a two-family dwelling on an existing 1.43 acre parcel within the R1 zoning district. The parcel is located on the northerly side of Hubbs Road approximately 500' west of Dutch Meadow Drive. The two-family dwelling will be serviced by a drilled well and individual septic system. Access will be provided by a common drive from Hubbs Road. Mr. Rabideau explained that the duplex has been designed with garages fronting the roadway to minimize "impacts to the neighborhood" and allow for preservation of an existing buffer. There are no NYSDEC wetlands located on the parcel: a jurisdictional letter from the

agency has been submitted with the application. A small “wetland pocket” along the roadway will remain undisturbed.

Mr. Scavo explained that Mr. Myers, Director of Building and Development, provided the following comments in a memo dated October 21, 2015. The two-family residence proposed on an existing 1.43 acre parcel in the CR (Conservation Residential) zoning district is permitted with Planning Board approval of a Special Use Permit. Mr. Myers noted that the previous application was rejected due to the lack of information about wetlands which appear on the County’s mapping system to encompass the entire property. Although some ACOE wetlands are evident on the documents provided with the application, no NYSDEC wetlands are indicated. It is recommended that the applicant provide a letter from NYSDEC to resolve the issue.

Mr. Scavo reported that the ECC reviewed this application at its November 4, 2015 meeting and issued the following comments. The ECC requests that the applicant show the locations of existing wells and septic fields on adjacent lots to verify that required separations are met. The ECC is concerned with the proximity of the septic field to the wetlands to the north of the property. The ECC is concerned with the possible high water table and the feasibility of installing a conventional septic system. Since the property is being proposed as a two-family dwelling, the party responsible for maintenance of the on-site well and septic system should be identified.

Mr. Scavo stated that Mr. Reese, Stormwater Management Technician, offered the following comment on the application. The site plan should show erosion and sediment control practices to protect the ACOE wetlands that exist on this site.

Mr. Scavo explained that the application did not require a referral to the Saratoga County Planning Board since it was not located within 500’ of an agricultural district.

In response to Mr. Hartnett’s request that the applicant verify that the parcel has sufficient right-of-way for future roadway improvements or trail development, Mr. Rabideau confirmed that the right-of-way width was ample. Though Mr. Werner asked if a side-load garage could be located to the westerly side of the building, Mr. Rabideau explained that this would not be possible because of the location of the septic system. Mr. Rabideau also pointed out that the proposed design would fit with the existing neighborhood character since there is a “mixed housing stock along Hubbs Road.” Mr. Andarawis commented that he found the design acceptable since the existing buffering to remain along Hubbs Road would reduce “visible impacts.”

Mr. Scavo asked Board members to review the draft Planning Board schedule for 2016 that will be e-mailed to them and to forward any comments they may have to him before December 1, 2015.

Ms. Paulsen moved, seconded by Mr. Ophardt, adjournment of the meeting at 8:45p.m. The motion was unanimously carried. The next meeting of the Planning Board will be held as scheduled on November 24, 2015.

Respectfully submitted,

Janis Dean, Secretary

