

PLANNING BOARD
TOWN OF COLONIE

COUNTY OF ALBANY

THE PROPOSED PROJECT OF CEDARVIEW CONDOMINIUMS
6-14 CEDARVIEW LANE, REVIEW AND ACTION ON CONCEPT
ACCEPTANCE AND FINAL PLANS

THE TAPED AND TRANSCRIBED MINUTES of the above
entitled proceeding BY NANCY STRANG-VANDEBOGART
commencing on September 8, 2009 at 8:52 p.m. at the
Public Operations Center 347 Old Niskayuna Road,
Latham, New York 12110

BOARD MEMBERS:

JEAN DONOVAN, CHAIRPERSON
TOM NARDACCI
MICHAEL SULLIVAN
ELENA VAIDA
CHARLES J. O'ROURKE
PETER STUTO, Jr. Esq., Attorney for the Planning
Board

Also present:

Joseph LaCivita, Director, Planning and Economic
Development

Kevin DeLaughter, Planning and Economic Development

Ed Esposito, Monarch Design Group

1 CHAIRMAN DONOVAN: Cedarview condominiums
2 is the next project on the agenda this
3 evening.

4 It doesn't look like we have a lot of
5 people interested in Cedarview condominiums.

6 I have some questions.

7 Who is the presenter for Cedarview
8 Condominiums?

9 MR. ESPOSITO: Monarch Design, my name is
10 Ed Esposito. I'm a landscape architect.

11 CHAIRPERSON DONOVAN: Joe, I had
12 requested in writing if there were any
13 variances on any of the sites that we be given
14 a copy of the variance. I noticed that going
15 through the paperwork here that there was a
16 use variance that was granted on this
17 property. I don't have a copy of that.

18 While Kevin is looking for a copy of the
19 use variance for the property, Elena also had
20 a question as to whether or not this project
21 falls under the grandfathering clause in
22 relation to concept and if we need to again
23 approve the concept for this. I would ask our
24 attorney if you could address that please.

25 MR. STUTO: In my discussions with Kevin,
Senior Planner, the stance of the Planning
Department is that this project is meeting all
the current criteria under current Local Law 1
of 2007. That is the current Planning Law in
that the grandfathering provision is not
needed to be accessed. What they are
requesting is reissuance. All the information
is completed and before the department and to
be presented to the board and that this be
considered by the board for reissuance of
concept.

 CHAIRPERSON DONOVAN: So it's your
position that we do have to reissue the
concept approval for this?

 MR. STUTO: Do you have any one question
before I answer that?

 MS. VAIDA: I'm still confused on the
procedure. This was approved before the Land
Use Law went into effect.

 MR. DELAUGHTER: Concept was, I believe,
November of 2006.

1 MS. VAIDA: And then there was no
2 expiration on concept approval.

3 MR. DELAUGHTER: For site plan review
4 there was. It's the same as it is currently.

5 MS. VAIDA: So, one year.

6 MR. DELAUGHTER: One year with a one year
7 extension.

8 MS. VAIDA: Was there a written
9 application made for an extension?

10 MR. DELAUGHTER: I don't know. I'm not
11 that familiar with the file.

12 MS. VAIDA: This is what sort of troubles
13 me is procedurally how we get these things and
14 then what we're supposed to be reviewing them.
15 I don't know if it's my legal mind, but I need
16 to understand what the criteria is for the
17 review.

18 If it's a brand new concept submission
19 then it seems like we need to start at point A
20 with the concept approval process. If it's
21 under the grandfather clause, then I think
22 that would be your job to tell us that this
23 falls in that clause because blah, blah, blah
24 and therefore you don't need to address
25 concept approval. If it doesn't then it seems
like we need to understand what the procedure
is for moving forward.

MR. DELAUGHTER: I guess that I would say
that this does not fall under the grandfather
provisions. The concept technically has
expired so there is a need for - however you
want to term it - reissuance or new concept
acceptance prior to moving forward.

The question is what kind of procedural
process you go through to get to that point.
Do we start all over with the development
coordination committee and the department
reviews?

MS. VAIDA: I'm not saying that I agree
with what is in the Land Use Law but if you
apply the Land Use Law, there just isn't a
procedure called reissuance. It's either an
extension or a new application or somehow it
gets grandfathered in. I just don't see any
other alternative.

1 MR. ESPOSITO: If I may, perhaps we can
2 do a little presenting because I've been
3 involved with the Hodgkin's initially. It's
4 true that a use variance use was granted on
5 October 27, 2005. We have had uninterrupted
6 submissions. The project concept has not
7 changed. This visual board is two years old
8 for a reason. We had an undertaking given the
9 fact that we've always been a two building
10 site and a 1.16 acres for a full SWPPP review,
11 which I think is quite an undertaking for an
12 acre project.

I know that we have discussed this before
where we could have developed less than an
acre and tried to stay under the stormwater
but that was not our intent. We've always had
two storm ponds and the same number of
parking. The only thing that's holding this
project up was the permission for our
stormwater management to connect through the
lands of Shaker Commons.

13 MR. O'ROURKE: But sir, that's not this
14 board's issue. This board's issue is that your
15 concept acceptance has expired. We can't pick
16 and choose as a board or vary from the Land
17 Use Law. The Land Use Law states that you have
18 to come back and go through all the
19 departmental reviews. That's the way that I
20 read it.

21 CHAIRPERSON DONOVAN: I would recommend
22 that as with other issues that we've dealt
23 with, it would be the Land Use Law -- this is
24 something that should be looked into. Because
25 either there is a procedure to do something
like this or he's got to go back to the
planning process.

MR. O'ROURKE: Even if he were to have
followed the old way and asked for an
extension -- you knew that you were having
problems with the SWPPP.

MR. ESPOSITO: It has been uninterrupted
continued service.

MR. O'ROURKE: But who within the
department -

MR. ESPOSITO: As of this moment, I feel
that we have all the departments signed off. I

1 feel that it's been an active process to go to
2 engineering -

3 MR. O'ROURKE: Sir, has there been
4 communication between your developer, you and
5 anybody in the town? Has there been any
6 communication?

7 MR. ESPOSITO: Yes, there has been.

8 MR. O'ROURKE: What dates?

9 MR. ESPOSITO: The file is full of
10 communications of correspondence -

11 MR. O'ROURKE: Did you ask for an
12 extension?

13 MR. ESPOSITO: We filed a new
14 application. The town, via Mike Lyons'
15 correspondence with Pure Waters and
16 Highway -- we've had active letters -

17 MR. O'ROURKE: Do you have dates, sir?

18 MR. ESPOSITO: If you don't have the
19 correspondence, I've got in my records from
20 the approval in late '05 through '06 and -

21 MR. O'ROURKE: Right, but were you aware
22 that your concept approval expired?

23 MR. ESPOSITO: Sir, not at any point were
24 we informed that. The site plan had not
25 changed at that point. That's our position
that it's the same plan.

MR. O'ROURKE: We're bound by a Land Use
Law and this has expired.

CHAIRPERSON DONOVAN: My major concern
really is - and Joe this is for PEDD - that we
have an application in front of us that's here
because the use variance had been granted. I
don't know if there are any stipulations and I
don't know what was on that use variance. I
don't have a copy of that in my packet. I'm
not going to act on anything unless I've got
everything that I need and I don't. I don't
have it.

FROM THE FLOOR: Whose responsibility is
it to present that to you?

CHAIRPERSON DONOVAN: I would expect that
you would have been working with Planning and
Economic Development. To get that I would have
received a copy in my packet.

FROM THE FLOOR: Would we have presented
that?

1 CHAIRPERSON DONOVAN: No, I would expect
that from Planning.

2 FROM THE FLOOR: Because I worked with
3 Kevin and he gave me a list of things to make
4 sure that we had them here tonight at the
meeting.

5 CHAIRPERSON DONOVAN: And I've told Kevin
6 in the past that if there is a variance on the
7 site that I wanted a copy of it. I don't have
it.

8 FROM THE FLOOR: I'm sure that if they
9 told us that, we would have presented that.

10 CHAIRPERSON DONOVAN: It's on file in the
11 Building Department. It's not your
12 responsibility to make sure that it's in my
13 packet. I'm sorry that this has happened. This
board will not act unless we have the

14 information that we need.

15 MR. DELAUGHTER: Just to address the
16 variance issue: Attached to the zoning
17 verification there is a variance report - the
18 use variance was granted. Do you have that
attached?

19 CHAIRPERSON DONOVAN: I don't have that.

20 MR. DELAUGHTER: The variance actually
21 was granted at that time that the site was at
22 a residence A1 district so the use variance
23 was required. The property was rezoned to a
24 multi-family residence district with the Land
Use Law so that the variance at this point is
moot.

25 CHAIRPERSON DONOVAN: I would still like
to see it because I would like to make certain
from our attorney and from the Town Attorney
that is indeed the case. I understand that we
have a new Land Use Law but I also was under
the understanding, and I know that there are
people that would disagree with me, that
variances go with the land.

MR. DELAUGHTER: If the underlying need
for the variance is eliminated then I would
say that any submissions attached to it would
be moot along with the variance itself.

CHAIRPERSON DONOVAN: I would still like
to see it though, Kevin.

1 MR. DELAUGHTER: We can certainly provide
2 that. I can tell you that the variance report
3 does not indicate any conditions or comments
4 attached to the variance.

5 I guess the question in terms of the
6 procedure -- I don't think that there is any
7 question that the board is being asked to take
8 action on this. It's been termed as a
9 reissuance but it's a new action on concept
10 acceptance. So, you're being asked at this
11 point to take action on that new issuance of
12 concept acceptance as well as final approval
13 on the same night. I don't know that there is
14 anything in the Land Use Law that prohibits
15 compression of the process. I think it's the
16 board's judgment whether or not they would
17 feel comfortable in doing that.

18 CHAIRPERSON DONOVAN: C.J., you're
19 shaking your head.

20 MR. O'ROURKE: No way.

21 CHAIRPERSON DONOVAN: C.J. is not
22 comfortable.

23 Mike, do you have any comments?

24 MS. VAIDA: Do we have all the documents?
25 According to the Land Use Law and application
26 requirements for conceptual site plan review -

27 MR. O'ROURKE: But it's only getting
28 reviewed to SWPPP.

29 MR. DELAUGHTER: I think that there is a
30 memo from the Department of Public Works dated
31 August of 2009 where they have all said that
32 they have reviewed and are satisfied with the
33 final plans. That would include the stormwater
34 management office who reviews the SWPPP.

35 MS. VAIDA: So are you saying that we
36 have all of the items listed in the section 6
37 and then it's A through -

38 MR. O'ROURKE: That's the problem again.
39 It's back to the SEQRA that was adopted.

40 CHAIRPERSON DONOVAN: I have a full
41 environmental assessment form that shows A1
42 going to the east and B2 going to the north.
43 If there is a new Land Use Law than the SEQRA
44 should be updated.
45

1 MR. NARDACCI: Jean, that's my question.
2 First of all, I'm not comfortable at all with
3 concept and final review on the same night. We
4 just don't do it. Regardless of the project
5 being granted concept approval by a prior
6 board, I don't think it's a good process to
7 have for us. This is the first time that we're
8 looking at this project. This project deserves
9 to be reviewed just like any other project at
10 concept. We shouldn't be saying well, it's a
11 reissue. We just had this issue come up. This
12 doesn't require TDE review but -

13 MR. LACIVITA: I think that's where the
14 underlying question is, Tom. Do we take it
15 through right to the beginning stages with the
16 TDE review? We have issued concepts before on
17 some projects. I think those are the
18 underlying questions as to the process that
19 has to be put into place. If we're going to
20 take it back to square one, then it should go
21 back to a DCC which is going to add more time
22 to the process and so on. I think that we have
23 to be careful as to what procedures we put
24 into place when it comes to issues for
25 something. Especially, when we have all the
department sign-offs.

15 MR. NARDACCI: We have SEQRA. Do we have
16 to readopt SEQRA tonight? Would that be
17 required as far as a new concept, especially
18 if zoning has changed?

17 MR. O'ROURKE: I would say so. It's not
18 even the same building.

18 MR. DELAUGHTER: SEQRA doesn't
19 necessarily have to have an expiration. You're
20 looking at the same project that a SEQRA
21 determination has been issued for. Physically
22 you're looking for the same surrounding
23 conditions. You are looking at a change of
24 surrounding zoning so that's something that
25 the board may want to consider taking a new
action on the SEQRA determination as well.

23 MR. STUTO: I think at least it's within
24 the board's discretion.

24 MR. NARDACCI: I understand that folks
25 own properties and they've had projects
working through the process, but from our
standpoint I just don't see how we can review

1 and grant approvals on a project that hasn't
2 had the same rigorous review as the project
3 before this. I think that when you talk about
4 equity as far as what we're making decisions
5 on, that's my feeling on the subject. I think
6 that we're hearing that from others.

7 CHAIRPERSON DONOVAN: I think so too.
8 It's our intension to make certain that
9 everything that we do is above board and all
10 information is due to us and the public is
11 aware of it and the applicant is aware of it.
12 I just don't see it here.

13 MS. VAIDA: I don't have anything against
14 your project. It might be a great project. I
15 haven't reviewed it. The problem is that I
16 think that we're constrained by the provisions
17 of the current Land Use Law. There just isn't
18 a procedure in place to do what you're asking
19 us to do. That's the problem.

20 MR. ESPOSITO: The project zoning was on
21 the cusp. We knew that we were A1 but we did
22 not shortcut at any point.

23 We did have Victor Caponera present a
24 case for a variance and the variance was
25 granted when it was A1. Then it went to SFR
and multifamily which allowed the very same
plan.

We had a finite list of things. We did
presenting concept and preliminary as a
follow-up. We did go to every department and
as stated, the architecture has not changed,
the floor plans are still the same and the
percentages have not changed. We can speak to
that.

The only large point was the discharge of
the stormwater. We knew that we had SWPPP. In
fact, one of the items for engineering was to
update ours with the code that had changed for
stormwater management. We had a ten page
notice of intent. We did that.

We were asked to submit a new site plan
application. I feel deeply sorry for the
client who did not present for concept to this
board, but we did submit to the Planning
Board. We did go through and do what we were
asked to do. My problem is that we have filed

1 easements and I have all of these things. We
2 have submitted several packages.

3 I don't see that you have the full SWPPP
4 and engineering report. Obviously you're
5 asking for material which we gave to Planning
6 and Development and engineering and we were
7 told that those materials were accepted and
8 complete. I don't mind backtracking but in
9 fairness to the client, we did do concept
10 approval.

11 MR. LACIVITA: The board does not usually
12 get in their packets the full SWPPP. The board
13 relies on the review of the departments to
14 review that information and deem it complete
15 and acceptable and then submit a report to the
16 board. I do know that when it comes to
17 variances - and I talked to Mike Rosch about
18 this as well and maybe this speaks to your
19 point C.J. - the project was being continued
20 through the process. The variance is still
21 accepted, whether the zoning has changed. A
22 variance still carries forward as long as the
23 developer or the engineer shows continual
24 process on the project. I can't say that
25 within the last 18 months that I've sat in
this seat and that this project has been going
forward in going through the process and with
various reviews with various departments.
That, to me, did show that the project was
being carried forward. Unfortunately, the
grandfathering provision and what we have to
do in terms of reissue is in question.

1 MS. VAIDA: I don't know how difficult it
2 would be if we followed the Land Use Law and
3 he did file a new application and if
4 everything as been done, I would assume that
5 it would be no problem to get this through
6 very quickly since what you're saying is all
7 the documents are done and all the studies are
8 done. So, why couldn't it just be put together
9 in proper form and get in to us and do it the
10 right way? My problem is when do we bend the
11 rules? Who do we decide to bend the rules for?

12 MR. LACIVITA: I honestly don't know if
13 we've bent the rules here. I think that
14 everything is here. I think that some of the
15 documents might need to be updated, especially

1 the SEQRA. In fact, certainly things have
2 changed. We can look to make some adjustments
or update some documents and try to get this
before you.

3 MR. O'ROURKE: I think that's important.
4 Again, not to belabor the fact but there is
just no such thing as a reissuance of concept
5 acceptance. We must move forward with concept
acceptance but we can't take an old concept
6 acceptance and then reissue it. We don't have
that authority. We're bound by the land use.

7 There's something else that's very
8 important too. Tom stays right on it in terms
of asking about spreadsheets. I know that we
9 haven't done it in probably six or eight
months but I'd like to see what projects are
10 out there because I'm sure that these aren't
the only folks that aren't even aware that
11 their concept acceptance has run out. This is
like the third one that they've asked us to
12 reissue. It's a processes problem.

CHAIRPERSON DONOVAN: Yes, it is.

13 MR. O'ROURKE: Do you folks have an
attorney?

14 MR. ESPOSITO: We didn't feel that we
needed one. I'm licensed to present and we
15 have a sheet of ten drawings.

16 MR. O'ROURKE: Some of it is on your part
too because the Land Use Law states that you
17 have one year for concept acceptance and then
you can file in writing for an additional
18 year. So, you would have had two years that
you're coming up on.

19 FROM THE FLOOR: Well, when we did the
variance we had Victor Caponera as our
20 attorney.

21 MR. O'ROURKE: Right, but that's what I'm
saying. It's not the board's fault and I hope
22 you don't think that we're against your
project in any way, shape or form. It's the
23 processes that this board has to follow that
is in question.

24 FROM THE FLOOR: And being an amateur in
all of this -

25 MR. O'ROURKE: And that's what I'm saying
is that at some point you should have been
told that working through the department.

1 That's not really their job. Your attorney
2 knows the land use.

3 FROM THE FLOOR: Let me ask Joe.

4 Joe, did you know about this? I didn't
5 know about it. I know that there are a million
6 rules here. I can't know them all. Did you
7 know about this?

8 MR. LACIVITA: About what?

9 FROM THE FLOOR: About the concept
10 expiring?

11 MR. LACIVITA: We did know it; yes.

12 FROM THE FLOOR: And did you tell us?

13 MR. LACIVITA: I believe that during some
14 course of the operation that we did tell you
15 that we were going to have to reissue.

16 MR. ESPOSITO: Well, every
17 correspondance and letter has the Planning and
18 Economic Development on it, so we are current.
19 We don't mean to be a problem or cause any
20 ripples. If you tell us what to do, we've done
21 it in the past. If we have to resubmit for
22 another meeting -

23 MR. O'ROURKE: I think Elena hit it on
24 the head. I think that the quickest thing to
25 do instead of reissuing which is something
that doesn't exist in the law, is to just come
back through the processes from the start. I
mean, don't go back two years. You have all
the documentation that you need. SEQRA has
changed since the zoning has changed.

26 FROM THE FLOOR: How long are you talking
27 about?

28 MR. O'ROURKE: Joe, you would know how
29 quick you could get him through and on the
30 schedule. I don't think that you need full PDD
31 review.

32 MR. DELAUGHER: I think that as far as
33 the departments are concerned, we're looking
34 at the same plan that was originally looked
35 at.

36 MR. O'ROURKE: I think it's technical, in
37 my opinion.

38 MR. DELAUGHTER: If it's a question of
39 getting updated forms in the board's hands and
40 SEQRA determination and so on, then the

1 question becomes: Are you comfortable at that
2 point doing everything in one night.

3 MR. O'ROURKE: I'm not opposed to that in
4 the scope of this project, as long as we have
5 all the information. I don't know. I don't
6 speak for the rest of the board.

7 MR. NARDACCI: No, I think that would
8 work for me.

9 MR. SULLIVAN: As long as it's okay with
10 counsel, it would be okay with me.

11 MR. STUTO: I guess there is nothing
12 prohibiting that in the Land Use Law.

13 FROM THE FLOOR: Joe, if you know what we
14 have to do, I'll come down and see you at your
15 office and you can tell me what we have to do
16 and we'll get it done.

17 MR. LACIVITA: Sure.

18 CHAIRPERSON DONOVAN: Joe, for our first
19 meeting in October?

20 MR. LACIVITA: Sure.

21 CHAIRPERSON DONOVAN: Put them on first

22 so they won't have to sit here for two hours.

23

24 ***(Whereas the proceeding concerning the***
25 ***above entitled matter was adjourned at***
8:45 p.m.)

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CERTIFICATION

*I, NANCY STRANG-VANDEBOGART, Notary
Public in and for the State of New York,
hereby CERTIFY that the record taped and
transcribed by me at the time and place noted
in the heading hereof is a true and accurate
transcript of same, to the best of my ability
and belief.*

NANCY STRANG-VANDEBOGART

Dated October 10, 2009