

TO: Town of Gardiner Planning Board

FROM: James M. Freiband, Principal Planner

DATE: November 13, 2018

SUBJECT: Minor Project Site Plan and Lot Line Revision - Lazy River Campground –Bevier Road (Public Hearing Closed)

1. At the October meeting the Board reviewed the application for the Minor Site Plan Approval as well as the application for a lot line revision to provide the current requirement for a 250 foot setback to features. The applicant also found that in preparing the survey data, that the former Lobster Pound Restaurant site was part of the historic properties of the Bevier House , a National Historic Register site. As such, the action is classified a a Type I action and required additional processing.
2. At the meeting the Board authorized issuance of a notice of lead agency coordination letter to determine Lead Agency for processing SEQR. Under the Gardiner Code, the Planning Board is the Lead Agency unless another involved agency expresses interest. If no responses are received by the meeting date, the Planning Board is by default lead agency.
3. In anticipation of that event, I have reviewed the FEAf dated October 2, 2018 for the minor site plan and lot line revision and completed a draft Part II, findings. This application and the SEQR review is for the water feature addition. Based upon the physical parameters in the record and applicant's data, the proposed action has no effect on assessment 2,3,4,5,6,7,8,9,11,12,13,14,15and 16. The only Yes answers are impact on Land (alteration of the feature footprint) and impact on Historic Resources. In both cases the assessment for the minor site plan is no or small impact.
4. The SEQR determination on the water feature has an extremely limited impact on the two assessments. It is recommended that the Board process this SEQR Part II and report a Negative Declaration on Part III if the Planning Board remains Lead Agency.
5. I previously reported on the required findings for the Site Plan, which are detailed in the Memorandum of October 15, 2018. MY recommendations remain as stated. Copy attached.
6. Also forwarded separately is the completed draft FEAf Part II

PPBS inc.

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1. At the August meeting the Board closed the discretionary public hearing and discussed the proposed minor project addition consisting of a water feature entitled lazy river ride. The public hearings raised numerous comments concerning security, sound levels, traffic and expansion of the camp area. Ultimately, the matter was tabled pending action by the ZBA.
2. I submitted a further review in September noting the timelines for Board action. The Board had tabled the application premised on a ZBA review of the setback required for the water feature. After discussion with the applicant and a meeting September 20, (minutes previously distributed to the Board) the applicant has withdrawn the ZBA application and submitted a lot line revision now before the Board. (Transmittal dated 9/28/18) The period for Board action on the minor site plan expires this month (220-62H).
3. Typically the Board has treated lot line revisions as type 2 actions under SEQR premised on NYCRR part 617.5c15 : Per DEC Handbook : "Non-discretionary or "ministerial" decisions are based entirely upon a given set of facts, as prescribed by law or regulation, without use of judgment or individual choice on the part of the person or agency making the decision. For example, the issuance of a building permit to construct a residence in an approved subdivision would be ministerial if the plans show the structure will conform to all local building codes. Per the Board attorney the language of 188-9 does leave Board discretion to not approve a LLR even when the requirements of that section are met. Therefore, the LLR would be an Unlisted action.
4. The applicant submitted a new long form EAF for this project dated 10/2/2018. In doing so one of the review items was E.3(e) historical properties. The Bevier House is a registered landmark about 1/3 mile from the site on Bevier Road. While not adjacent to the project site, it does abut the Lobster Pound lot and the applicant has submitted a lead agency coordination letter. If the Board determines that this project site is "substantially contiguous" to the register property, this application would be classified as a Type I action under SEQR.
5. Processing of a Type I action is set forth in Code 110-5 and requires lead agency co-ordination and subsequent lead agency determination and action. The involved agencies are the DOH and DEC for the minor site plan and Part 666. The Planning Board is the sole involved agency for the lot line revision.
6. Additionally, the applicant has submitted a letter for the record dated September 27th addressing in some detail the public objections and concerns. In each case the applicant has identified mitigating measures either already taken or now proposed. The letter identifies three material changes to the site consisting of a traffic measure (construction of speed table and safe speed sign installation on Bevier Road) installation of a sound monitor to document compliance with 220-40C; and installation of split rail fence along the common property line with the Lasers.
7. There was discussion among the Board members at the last meeting that the site is overdeveloped or that the water feature was an expansion of the special permit. The Building Inspector has already reported on the status of the operation noting that only the improvements

associated with the new check-in station still had some minor completion issues. Beyond those findings, the site corresponds to the plans already approved by this Board.

8. There was also a discussion as to how to monitor compliance with the existing special permit conditions and in particular for annual reviews. As set forth in 220-10F the special permit runs with the land. Section 220-64 notes that enlargement, alteration or construction of accessory structures not previously approved shall require site plan approval only. Thus the matter before the Planning Board is regulated by Section 220-65. Enforcement of *site plan* is covered by 220-68 which allows revocation after a violation of the site plan. Enforcement of zoning is strictly within the jurisdiction of the Town Building Inspector (220-53). There is no provision in Section 220-62H for renewal of special permits.
9. There is, in my opinion, an inherent ability for the Town of enforce the special permit conditions as part of the *license renewal process in Chapter 200*. It should be noted that this chapter excerpted from the prior zoning Section 30.58(D). This is a *licensing* procedure and, on its face, is required annually. The failure to obtain such licenses is enforced by the Building Inspector (200-16) and provides for an appearance ticket and action by the Town Justice. The Town Justice has the right under this statute to revoke the license, effectively closing the camp.
10. Public comment to the contrary, Mr. Vance's review of April 20, 2015 concludes that the structures and details of the development were in place prior to the 1982 revisions for Flood Plain Development.
11. The lazy river water feature is an accessory use to the existing special permit in the RA district. As provided in 220-45D, the requested construction remains subject to the NYCRR Part 666 for a Rivers System Permit and this amended site plan approval by the Planning Board.
12. Two of the three measures I recommended in my prior review and proposed by the applicant as material modifications to the site are consistent with the site plan review authority of the Board:
 - a. the installation of speed calming measures on Brevier Road (if endorsed by the Town Board and Highway Superintendent) and
 - b. the installation of a formal fence along the passable sections of the Laser property line.
13. I recommend against the proposed passive noise monitoring system. As discussed at the Sept 20th work session, the Town does not have the resources to monitor consistently the after-hours operations at the site. The automatic noise limiting devices I recommended would alleviate that issue by essentially shutting down amplification when preset sound levels are reached, based on the distance to the nearest property line.
14. My other recommendations on this site remain: that a fire zone be posted at the footpath entry to the water features and that the path be improved to allow a gurney to be rapidly moved between the features and the fire zone.
15. The Sept 9, 2018 of the index site plan sheet "Note" needs to be corrected as a variance is no longer required to process this application.
16. SEQR: If the Board determines that the project is an unlisted action, Part 2 of the FEA/Items 1 through 18 Part II are all no or small impact. A Negative Declaration is recommended. If Board determines that this is a Type I action, the Lead agency coordination letter should be issued prior to processing the SEQR Part II.
17. RECOMMENDATION: Subject to the Board's determination on the SEQR procedures, it is recommended that the Board conditionally approve the minor site plan subject to the recommended modifications to site plan features listed above and to filing of the lot line revision to meet the required feature setbacks. The site plan in final form and all fees paid. As noted before, I recommend that the Board formally correspond with the Town Board to reinstate the Camp licensing requirement for Lazy River Campground.