

APPROVED
Town of Red Hook Planning Board
Meeting Minutes
December 16, 2013

Charlie Laing opened the meeting and confirmed the agenda at 7:30 pm. A quorum was determined present for the conduct of business.

Members present — Brian Walker, Charlie Laing, Betty Carr and Sam Phelan. Also present were planning consultant Michele Greig and Planning Board attorney Jennifer Gray. Sam Harkins arrived approximately 7:35.

In confirming the agenda, Mr. Laing said that one new item would be added under other business.

On a motion by Betty Carr and seconded by Sam Phelan, the minutes of the December 2, 2013 meeting were unanimously approved.

Mr. Laing announced that the first item on the agenda, a public hearing for the Preserves at Lakes Kill project, would likely be continued at the Jan. 6, 2014 meeting due to numerous requests from people who were unable to attend this meeting. (At this time, Sam Harkins arrived.)

PUBLIC HEARING

Preserve at Lakes Kill – Feller Newmark Road – Preliminary Subdivision Plat Approval

Application for Preliminary Subdivision Plat Approval to create 11 residential lots, one lot for a community septic system, and one open space parcel on approximately 100.45 acres in the Agricultural Business (AB) and Rural Development 3 (RD3) zoning districts.

Mr. Laing read the public hearing notice that was published in the Daily Freeman and the Poughkeepsie Journal.

Engineer Mike Bodendorf and John Wagner, the applicant's attorney, were present. Mr. Bodendorf introduced himself and gave a brief description of the project for the audience.

The board reviewed a Greenplan memo dated 12-13-13. Signs for livestock crossings and bus stops were discussed. Mr. Laing noted that the revisions for the turnaround should be forwarded to the Fire Department for review.

Mr. Bodendorf said that the applicant has a memorandum of understanding with the Winnikee Land Trust for the Conservation easement.

Mr. Laing asked if there were any changes regarding ways to obtain adequate sight distance at the project's entrance. Mr. Bodendorf said the two choices of grading the road or building a retaining wall were pending. Mr. Wagner said recently discovered historical information about Feller Newmark Road indicating that it is a town road has reduced the right of way from 50 feet to 33.

Brian Walker asked what the historical information about the road signified. He asked how it affects the project, and what the applicant was trying to achieve by giving this information. Mr. Wagner replied that establishing the type of road was required for the application. He said that historical records show that Feller Newmark Road dates back to 1830 or prior, and was laid out by the highway commissioners to a width of 2 rods, which at the time was the standard for a town road. Betty Carr asked how that relates to the site distance. Mr. Bodendorf said that to obtain adequate site distance, the road must be improved, and the applicant was demonstrating that they can achieve the sight distance with the new information. Charlie Laing asked if the proposed retaining wall would be within the 33 foot right of way. Mr. Wagner said yes.

Mr. Phelan asked where the split rail fence proposed to protect the wetlands would be placed. Mr. Bodendorf said along the property perimeters, which generally follow the buffer line. Mr. Phelan asked if it was delineated on the plat. Mr. Bodendorf said yes, and offered to clarify it better.

Mr. Phelan asked how the land in conservation easement may be used. He said he was concerned that the land would fall into disuse. Ms. Greig said that the conservation subdivision regulations state that the preserved land can be used for agriculture, conservation of resources or passive recreation. Mr. Phelan asked if timber harvesting was considered an agricultural use. Ms. Greig said it was. She added that if agricultural use were to be considered, it would be wise to consider how that might impact other resources on the property. Mr. Laing asked whether there are valuable agricultural soils on the land. Ms. Greig explained that some of the soils could be agriculturally important if they are drained, which could have an adverse impact on vernal pools and wetlands.

Sam Harkins said that if the land were to be used for agriculture, the proposed 15-foot right of way would not be wide enough for agricultural equipment. Mr. Bodendorf said that he proposed a 15-foot access because no vehicle could cross the bridge at the end of the access road, except possibly an ATV. He said that in order to go any further, the bridge would have to be rebuilt with oversight by the Department of Environmental Conservation. Mr. Laing concurred, but said that in the long term, it might be beneficial to manage the woods in the back, and if there were no access, it could be a detriment. Mr. Bodendorf asked what a reasonable access width would be. Mr. Laing said that a 30 foot easement is standard. Mr. Phelan said that he would like to be assured that the lands could be accessed by agricultural equipment. Mr. Wagner said whatever would be done would be subject to approval from the DEC, whom he thought would look critically on any disturbance in the area.

Brian Walker asked who would be responsible for maintaining the lands under conservation easement. Mr. Laing said the homeowners association would own the property. Ms. Gray confirmed that maintenance issues would be addressed in the terms of both the homeowner's agreement and the conservation easement.

Mr. Phelan asked if public access would be allowed on the conserved land. Mr. Laing said that had been considered, but it had been decided against. Mr. Wagner added that forcing a private landowner to allow public access on his or her land is not constitutional.

Sam Phelan made a motion to open the discussion to the public. Sam Harkins seconded and all members voted in favor.

Kelly O'Conner, 8 David Lane, said that it was important to her that the present character of the area be maintained. She said a group of homeowners had formed the Red Hook Community

Preservation Alliance and has retained an attorney. She read a letter addressed to the board from David R. Everett of Whiteman Osterman and Hanna, LLP, requesting that the planning board continue the public hearing until January 6 to give sufficient time to compile and review project documents to represent the Alliance. Mr. Laing said the public hearing will be continued.

Susan Ellis, 74 Banner Road, stated she is a member of the Conservation Advisory Council. She said that the CAC is concerned about the lack of response to a memo that was sent to the board for the Dec. 6 meeting. In reference to the homeowner's agreement, she asked who will oversee the homeowner's agreement and storm water management plan and whether the application of herbicides and pesticides has been addressed. Mr. Laing agreed that the homeowner's agreement should regulate the use of herbicides and pesticides. Mr. Phelan asked if there was a draft of the homeowner's agreement available yet. Ms. Greig and Ms. Gray said there was not.

Ann Wyrick, 335 Feller Newmark Road, read a letter from County Legislator Debra Blalock. Ms. Blalock is opposed to the project because of the significant negative impact on Feller Newmark Road. She wrote that she will urge her colleagues in the Dutchess County Legislature to reject the county owned and operated treatment plant proposed. Mr. Laing asked Ms. Greig if the County Water and Wastewater Authority has agreed to own and manage the project's septic system. Ms. Greig replied that a memorandum of understanding has been submitted between the Authority and the applicant.

Laurie Husted, 46 Cambridge Drive, current chairwoman of the Conservation Advisory Council, wondered how this project became viable in Red Hook, referring to the Centers and Greenspaces plan the community has adopted. She asked for a formal response to the CAC's April memo to the Planning Board, and read a statement prepared by natural resources specialist Karen Schneller McDonald on behalf of the CAC which posed additional questions concerning the project's impact on wetlands, ground water and buffers, as well as storm water management and effects on the ecosystems.

In response, Mr. Laing said that the maps show a 100-foot buffer protecting all wetlands and streams. He said that the Centers and Greenspaces initiative, which resulted in the zoning that now governs this particular project, was not intended to take all the development out of the countryside and place it next to the villages. He said that compromise would always be necessary and the board would continue to work to implement the best project that they can under the existing zoning. He said the Centers and Greenspaces zoning attempts to incentivize the selling of development rights where resources deemed important can be protected.

Nancy Guski, 210 Guski Road, representing the Town of Red Hook Tree Preservation Commission, said she visited the site where the proposed retaining wall will be constructed to gain adequate site distance. She described the relationship between trees, groundwater and erosion. She said she was concerned that removing too many the trees would cause excessive runoff and erosion, which may kill even more trees. She was particularly concerned about a number of mature deciduous and conifer trees that would be removed. She said the infrastructure proposed does not improve the quality of water, and concluded that aesthetically, Feller Newmark road would be negatively affected by the project. Mr. Laing asked Mr. Bodendorf if as many trees would be removed if the grading option were employed rather than the retaining wall. Mr. Bodendorf said the grading option would require the removal of more trees than the retaining wall. He noted that the proposed green infrastructure promotes ground water recharge and cleans the water.

Chris Close of Echo Valley Farm said he was concerned about the farmers near the project who move livestock and equipment across the road. He said the project is not good for farming. He read a letter from Dutchess County Legislator Micki Strawinski. She stated she shares the concerns of those who express opposition to the project, and said that in her opinion, the project is contrary to many elements of the Centers and Greenspaces Plan.

Hank Cha, 1 Crestwood Road, asked what benefits the developer was bringing to the community when the best argument he'd heard so far was "it wouldn't be so bad". Mr. Laing responded that the Planning Board's job is to implement the town's zoning laws, and work with applicants to obtain the best possible outcome.

Mr. Close asked about the specifics of the proposed retaining wall. Mr. Bodendorf said the average height of the wall would be 4 feet, composed of segmented gravity block, perhaps with a finish similar to the wall that currently exists east of the project. He said landscaping would be added.

Robert McKeon, 163 Crestwood Road, distributed a document pertaining to the zoning aspects of the project. He offered the following objections and perceived zoning discrepancies:

- According to the town's subdivision application forms, maps submitted should be 36 x 42 inches. The applicant's maps exceed that size, and therefore could not be copied by opponents of the project for independent review. Thus he said the application was defective. Mr. Bodendorf responded that he had asked the Planning Board for permission to use larger maps, and the Planning Board had granted it.

- All of the zoning districts must be listed on the maps, and the Historic Overlay district is not noted on the maps or mentioned in the SEQRA review.

- The applicant has made changes in the right of way of the project, which Mr. McKeon said is a substantive change. He cited section 617.7 F1 of SEQRA law that states that a lead agency must rescind a negative declaration when substantive project changes are proposed.

- Sight distance requirements for individual driveways have not been met.

- Zoning law states that a house should generally be located not closer than 100 feet from primary conservation areas. He said some proposed house sites are located as close as 10 feet from primary and secondary conservation areas.

- Zoning design standards, section 120.20, dictates buildings shall be sited a minimum of 200 feet from the property line contiguous to land in the AB district. He said there needs to be a buffer from each of the proposed houses in the AB district.

- The project does not comply with the town's policy objectives which states that "Land to be subdivided and developed shall ...be used safely for building purposes without ... resulting in significant damage to the agricultural, ecological and scenic characteristics of the area."

- Regarding conservation subdivisions regulations, Mr. McKeon took exception to the yield plan formula interpretation that allows for the number of lots that the project has. He cited section 120-26 which states that the "maximum number of units, whether derived from the formula method or an engineered yield plan, shall not be considered an entitlement. The applicant must

also demonstrate compliance with all applicable criteria and standards of the zoning law...these requirements may result in ... a unit count that is less than the maximum allowed.”

-The cul-de-sac street is restricted to 820 feet in all zoning districts other than LD, RD5 and RD3. He referred to a letter from the town Zoning Enforcement Officer, which he included in his handout.

Mr. McKeon requested that the board deny the application as it has been presented.

Mr. Laing asked Ms. Greig to respond to Mr. McKeon’s dispute with the density calculations. Ms. Greig said the applicant has calculated permissible density for the lands in each of the two zoning districts that the projects lie in, and added them together. She said the formula method was used rather than a conventional subdivision engineered plan. She said that the calculations have been reviewed by Greenplan and the town engineer.

Ms. Greig said the cul-de-sac is located in the RD3 district, where it is allowed to be 1,000 feet long.

In response to a question from Mr. Phelan about whether wetlands factor in the density calculations, Ms. Greig said that in the RD3 district wetlands, steep slopes and other features must be subtracted from the gross acreage before the density can be calculated. In the AB District, one dwelling per 10 acres is permitted, without any subtractions for natural resources. Mr. McKeon said those calculations are used to determine ‘maximum’ density. He said they still need to show that the project will conform to all zoning regulations and any other applicable laws, and if they don’t have any road frontage in the AB district, they should not be able to calculate for that number of lots.

Jeff Anzevino, Director of Land Use Advocacy for Scenic Hudson, read a statement in opposition to the project which argued for a more modest plan for the development of the property. He noted that this project is the first to be reviewed under the Centers and Greenspace zoning plan, which seeks to enable residential development while ensuring that farms remain active and vital. He said a more modest development of three residences would be more sensitive to the agricultural context of the area.

Mr. Laing asked Ms. Greig if an Open Development Area (ODA) was being considered by the town. Ms. Greig replied that the town zoning permits private streets, and that the ODA would only be required if the applicant wanted a narrower road. Mr. McKeon asked if the project meets town highway specifications. Ms. Greig said that the highway superintendent would have to confirm that.

Mr. McKeon further commented that the board’s SEQR findings included no discussion of alternatives. Ms. Gray responded that the board had issued a negative declaration, not a findings statement. She said a findings statement is something that would be created and issued after the preparation of an Environmental Impact Statement, which would be necessary only if a positive declaration had been issued by the board.

Trish Dantzig of Kristin Lane asked if a precedent was being set regarding access to landlocked parcels. Ms. Gray said there are many factors that dictate whether a particular piece of property can be further developed. Ms. Dantzig asked how this project could be allowed in light of the town’s new zoning goals to move development closer to the village. Mr. Laing said that when the area was rezoned, the potential density was reduced, and conservation subdivisions have

fewer, smaller, clustered lots. Sam Phelan added that the zoning ordinance is not perfect, and the current ordinance does allow for the development the project represents. Ms. Dantzic and Mr. McKeon said they felt that the project does not fit into the public perception of the Centers and Greenspaces initiative.

Mary Ann Johnson, 315 Hapeman Hill Road, asked what the Planning Board's options are. Juliet Walker, 394 Feller Newmark Road, said that she felt the character of the area would be negatively affected by the project. Larry Thedford, Spring Lake Road, asked the board to look carefully at the long term aspects of the proposal. He and Ms. Dantzic testified that shared driveways can cause bitter disputes among neighbors.

William Hamel, 394 Feller Newmark Road, questioned the need for this type of growth. Karen Jerro, 358 Feller Newmark Road asked why this project was allowed without adequate road frontage, while her neighbor without frontage cannot develop their land. Mr. Laing said he could not comment on the subdivision that Ms. Jerro was speaking of. Ms. Grieg said that up to 4 homes can share a driveway, and driveways do not provide road frontage. She explained that the applicant is proposing a private road, which creates frontage for the lots on it.

Mr. Laing said the public hearing would be continued Jan. 6, and thanked the audience for their participation.

(All letters and comments received with regard to the public hearing have been documented and are available for review at the Planning Board office in the town hall.)

OLD BUSINESS

Red Wing Properties Inc. – Turkey Hill Road – Lot Line Adjustment sketch plan approval

Applicant Paul Doherty and surveyor Bob Ihlenburg were present for continued discussion of an application to adjust the lot line between two lots presently 17.6 acres (in the ABD District) and .09 acres (in the RD3 District) to create one 10-acre parcel and one 7.6-acre parcel.

Attorney Jennifer Gray told the applicant that lot line revisions are permitted in the Agricultural Business (AB) District. However, the zoning law requires 80% of the land to be set aside for conservation easement. Charlie Laing explained that to attain that, the applicant could have one large lot (approximately 15 acres) with a conservation easement and a building envelope, and another smaller lot (approximately 3.5 acres).

Mr. Doherty asked why the smaller existing lot was included in the calculations if it is a separate lot. Ms. Greig said the calculations must be based on the total acreage of both parcels. She said 20% of the total acreage would be the maximum size allowable for the smaller lot.

Sam Phelan commented that he was confident Mr. Doherty could achieve the two-lot subdivision that he desires under these circumstances. Mr. Ihlenburg said one problem is that the preferred access would be off Hapeman Hill Road. Mr. Phelan said that could be achieved with a shared driveway. Mr. Doherty said he did not care for shared driveways. He said he felt it would devalue the lots, and referenced comments about them in the previous public hearing.

The board and applicants discussed possible options. The applicants agreed to continue working on the configuration of the lots. Jennifer Gray said that if the applicants want to continue the sketch plan process, they need to discuss this with the board, since the timeframe

for sketch plan review had expired. The applicants asked the board to grant an extension, and the board generally agreed.

From The Ground Brewery at Migliorelli Farm – 245 Gusky Road – Minor Site Plan

Jakob Cirell was present for continued discussion of application to establish a 500 sq. ft. brewery in an existing 10,000 sq. ft. agricultural storage building on the Migliorelli Farm.

The board reviewed the wastewater collection plan submitted by the applicant, which entails donating the edible waste to a farm for animal feed, and delivering the rest of the wastewater to a licensed septic company. Mr. Cirell said approximately 20 gallons per week of wastewater would be generated if he was producing 400 gallons of product per week.

The board and applicant reviewed the town engineer's response to the wastewater plan and a Greenplan memo. The project has been determined to be a Type 2 SEQR action requiring no further review. Agricultural data statements were sent out.

The board reviewed and modified a draft approval for the project. Mr. Cirell said he would also like to produce hard cider at the site, which is permitted under state and local laws. The board generally agreed that cider could be produced there as well.

Sam Phelan made a motion that the board grant minor site plan approval as amended. Sam Harkins seconded, and all members voted in favor.

Teviot LLC / 245 Woods Road – Special Permit

Engineer Tim Lynch and the applicant's attorney Jon Adams were present for the continued discussion of application for Special Permit to remove trees within 1000 feet of the Hudson River on a 19.22 acre parcel and a 62.91 acre parcel in the WC (Water Conservation) Zoning District and the National Historic Landmarks District.

The board reviewed a new map and site plan, a remediation plan, and a consultant's report from Hudsonia. Mr. Lynch described the remediation plan, which includes adding approximately 140 plantings consisting of groundcovers, shrubs and native plants 4-6 feet apart. Weedy native and non-native regrowth has been significant, Mr. Lynch said,

Mr. Adams said the EAF would be revised incorporating the town planning consultant's suggested changes, but said that the applicant rejects the consultant's suggestion that the DEC might be considered an involved agency for SEQR. He also disputed the consultant's statement that the project was subject to the Historical Landmark Overlay District. He cited a September of 2013 letter from the town Zoning Enforcement Officer, who cited specific sections of the zoning code that needed to be addressed.

Sam Phelan commented that the real issue is whether the planting of trees will be required by the board, which would require the assistance of a landscape architect. Mr. Adams said he hoped the landscape architect's job would be to review the applicant's plan and not replace it. Mr. Phelan said the landscape architect would be asked to define what the intent of the original landscape was. He likened the project to Bard College's Blythewood project, where the historic setting was considered. He said Teviot is a matter of restoration.

Mr. Adams said that the applicant's position is that they were charged with developing a remediation plan that protects a water body (the Hudson River). He said he would question going beyond that. Mr. Phelan said that significant clearing had been done without a permit, and the Landscape architect would not only take into consideration the proposed remediation work, but also the cutting that was done, whether it was excessive, and whether there needs to be some remediation in that respect.

The board generally agreed that the scope of the landscape architect's work would not only pertain to the code protecting the riverfront, but also the requirements set forth in the Historic Landmark Overlay district.

Mr. Adams said the code does not prohibit taking trees down, it prohibits actions that impair the integrity of a water course. Mr. Phelan replied that Mr. Adams was intentionally disregarding the Historic Landmark Overlay District, in which the property does indeed lie. He said the property had some landscape features that have been documented historically, and they should be incorporated into the scope of the work to be done.

Brian Walker said that the applicant had submitted a plan but did not adhere to it, and that is the plan that everyone should go back to.

Jennifer Gray said the landscape architect should review the plan in the context of what's required by the code, which includes the requirements of all the districts in which this particular property lies, including the Historic Landmark Overlay District. She said the landscape architect will issue a report, the applicant will have an opportunity to respond to it, and the discussion will continue from there.

OTHER BUSINESS

The board received a request from engineer Mark Graminski requesting that an extension be granted to the Catlin minor subdivision. On a motion by Sam Phelan and seconded by Sam Harkins, the board unanimously granted a 90-day extension.

ADJOURNMENT

Since there was no further business to come before the board, Sam Harkins made a motion to adjourn. Betty Carr seconded, and it was carried unanimously.

Respectfully submitted,

Kathleen Flood
Planning Board Secretary

Attachments: Approval Resolution, From the Ground Brewery

Resolution Granting Site Plan Approval to From the Ground Brewery

Name of Project: From the Ground Brewery

Name of Applicant: Jakob Cirell

Date: December 16, 2013

Whereas, the Town of Red Hook Planning Board has received an application for Minor Site Plan approval from Jakob Cirell for a \pm 500 sq. ft. brewery/cider mill to be located within an existing farm structure on a \pm 90 acre parcel (Tax Map Parcel No. 134889-6274-00-175624-0000) located at 245 Guski Road in the Agricultural Business District in the Town of Red Hook, Dutchess County, New York; and

Whereas, the Planning Board has reviewed the Minor Site Plan application against the requirements of Article VII of the Zoning Law and the provisions for Minor Site Plan review in § 143-39.1 and has found the proposal complies with all applicable sections of the Zoning Law; and

Whereas, pursuant to § 143-39.1, Minor Site Plan review is limited to building elevation and design, parking, lighting and signage, unless the Planning Board has specific concerns regarding public health, safety or general welfare; and

Whereas, the proposed project does not include any modifications to building design, will include no lighting or signage, and will utilize existing off-street parking; and

Whereas, the Planning Board has reviewed the applicant's proposal for disposal of wastewater against the requirements of the New York State Department of Environmental Conservation; and

Whereas, pursuant to § 143-114C(1), the Planning Board has determined that the proposed project is limited in scope, with compatible land use, site and building design characteristics, and consists of the establishment of a permitted use within an existing complying structure wherein no substantial site improvements are either required or proposed and therefore submission of a formal site plan is not required; and

Whereas, after comparing the thresholds contained in 6 NYCRR 617.4 and 5, the Planning Board on October 7, 2013 determined that the proposed project is a Type II Action that meets the thresholds found in 6 NYCRR 617.5(c)(7) and, therefore SEQRA does not apply; and

Whereas, a Public Hearing on a Minor Site Plan application is not required; and

Whereas, the Planning Board has deliberated on the application and all matters before it.

NOW THEREFORE BE IT RESOLVED, that the Planning Board hereby grants Minor Site Plan approval to Jakob Cirell for a ± 500 sq. ft. brewery/cider mill in accordance with the specifications heretofore submitted upon the following conditions:

1. The following conditions shall be fulfilled prior to the issuance of a Building Permit or, if a Building Permit is not required, prior to the issuance of a Certificate of Occupancy (CO):
 - A. The applicant shall obtain all necessary State and federal permits and approvals for the operation of a brewery/cider mill.
 - B. Payment to the Town of Red Hook of any outstanding fees due and owing for the review of this application.
2. The following are general conditions which shall be fulfilled throughout the construction and operation of the project:
 - A. No direct retail sales, public tours, or public sampling of brewery/cider mill products shall occur on site.
 - B. The applicant shall continue to comply with all conditions imposed by any of the outside agencies in their permits.
 - C. The facility shall be limited in size to the production of 400 gallons total of beer or cider per week.

In taking this action, the Planning Board has determined that no new residential building lots or dwelling units will be created, and thus deems not applicable to this application the requirement for set-aside of recreation or other open space land or the alternative payment of a cash-in-lieu-of-land recreation fee.

On a motion by Sam Phelan, seconded by Sam Harkins, and a vote of 5 for, 0 against, and 1 absent, this resolution was adopted on December 16, 2013.

Resolution Certified, Filed with the Town Clerk and Mailed to the Applicant

Kathleen Flood, Planning Board Secretary

12-16-13
Date