

Town of Otsego Planning Board

Minutes – May 3, 2016

PUBLIC HEARING

Blackbird Hollow, LLC (Joe Galati & Susanne Adsit/Jon McManus/David Brennan) – Site plan review, special permitted use, restaurant/bar/hotel – 6855 State Highway 80 (#69.44-1-5.00)

Chairman John Phillips called the Blackbird Hollow public hearing to order at 7:31. He said that, due to the size of the crowd and length of the agenda, he would limit comments to three minutes per person.

Representative Jon McManus gave a summary of the proposed project in comparison with the 2014 approved project. Phillips opened the floor to comments and questions.

Charlotte Hall of 110 Pine Ridge Road (for the past 34 years) said that the Planning Board has ignored her concerns in the past. She says she expects the proposed project to increase water usage significantly, and feels it represents an abuse of the “Heirloom Barn” law. She asked questions about the shuttling of employees and the bar’s hours of operation. She urged denial of the project, and submitted a written summary (filed) of her concerns.

Kathy Chase complained about the three-minute time limit. This was followed by applause and catcalls from the audience. Similar interruptions continued throughout the hearing. Chairman Phillips offered to increase the limit to four minutes, though some people still exceeded that.

Virginia Hastings of 119 Badger Lane said she drove 10½ hours to attend tonight’s hearing, and was offended by the time limit. She displayed photos and a site plan of the applicant’s property, with commentary. She concluded that the proposed project would have “much impact” on the neighborhood.

Bob Birch said he was representing Doug Hastings. Birch cited the 2000 Zoning Board of Appeals (ZBA) use variance, which gave permission “to operate as a small restaurant and pub.” At that time, the building housed a 49-seat restaurant and five-room inn. Birch said the current proposed project far exceeds the scope of the use variance, and is exactly the opposite of what was intended by the Heirloom Barn law. He said there was nothing to authorize a new building.

Veronica Seaver of 103 Badger Lane said that she liked the 2014 plan, but the new proposed project endangers the “neighborhood feeling” and environmental impact. Seaver said that she had never received a notice about this public hearing. Clerk Bill Deane gave her the notice which had been mailed to her address of record (per the County office) and returned to sender. Seaver wrote down her correct address for the file.

Cheryl Zamelis of 6887 State Highway 80 said she was opposed to the project. She quoted from the guidelines for use variances, and the 2000 variance in particular. Zamelis cited concerns about water usage, safety, and the environment. She said the application should be returned to the Zoning Enforcement Officer (ZEO) for denial based on the *Land Use Law*.

Kathy Chase showed a photo of the old Hickory Grove Inn, contrasting it with the current proposed project, which she said represents a 47% increase in square footage. She questioned the applicant’s occupancy calculations, and cited concerns about parking and increased water usage. Chase said she strongly objects to the

proposed project, and urges the Board to hear the public's concerns and deny it or refer it for an interpretation.

Ellen Pope of Otsego 2000 referred to that group's 2/5/13 and 5/3/16 memos about this property. She said this project does not meet the "Heirloom Barn" criteria, and it "butchers" the building, with no masking. Pope said the application has to be denied or referred back to the ZEO.

Barb Harmon of State Highway 80 said this project is a good example of "Give them an inch, they'll take a mile." She said it would negatively impact the value and enjoyment of neighboring properties. She said that it doesn't really work with the laws, and urged the Board to deny it.

Jennifer Taylor of 114 Badger Lane asked about the sprinkler system: where will the water come from?

Carol Taylor of 114 Badger Lane said that she was not against the 2014 project.

Carina Franck of 6461 State Highway 80 thanked the public for their comments. She noted that the proposed project will not look at all like the old Hickory Grove.

Paul Lord of 101 Sunset Boulevard thanked the Board for their service. He said there is a reason for the emotion in the room tonight, and that the laws are not being properly applied in this case. Lord said he was the principal author of the Heirloom Barn law, and the Hickory Grove was one of two properties he had in mind when he drafted it; however, this proposed project does not meet the intent of that law.

Debbie Creedon said that she agrees with the comments made tonight, citing impacts on the Lake and traffic, and the proliferation of "Dreams Park people." She urged the Board to listen to the citizens, follow the law, and do the right thing. She submitted a letter (filed) listing her concerns.

Rosemary Craig read aloud a 4/30 e-mail from Marcia & Bob D'Amico, citing concerns with water usage, noise, parking, traffic, and the second building.

With no further comments or questions, Tom Huntsman moved to close the public hearing. Craig seconded the motion and it was approved, 7-0.

REGULAR MEETING

The monthly meeting of the Town of Otsego Planning Board was held on this date at the Town Office Building in Fly Creek, New York. Chairman John Phillips called the meeting to order at 8:21PM and asked Tom Huntsman to lead the Pledge of Allegiance.

Clerk Bill Deane took roll call. All regular members were present: Phillips, Huntsman (Vice-Chairman), Darryl Szarpa, Steve Purcell, Rosemary Craig, Scottie Baker, and Ed Hobbie. Also present were alternate members Paul Russo and Chip Jennings, Zoning Enforcement Officer Barbara Monroe, Planning Board Attorney Jim Ferrari, Town Supervisor Meg Kiernan, and Town Councilpersons Carina Franck and Tom Hohensee.

The Board reviewed the minutes of April 5, 2016, e-mailed to the members. Hobbie moved to approve them as written. Baker seconded the motion and it was approved, 7-0.

Correspondence received since the last meeting included an e-mail from Joe Siracusa, asking to be put on the June agenda for a sketch plan conference for

proposed NYSHA projects; and mail related to the Blackbird Hollow application, described elsewhere.

Chairman Phillips asked if anyone had a conflict with tonight's applicants. Craig said she would recuse herself from the Miller application, as usual.

Chairman Phillips asked if anyone from the public had a comment on a non-agenda item. Veronica Seaver noted that the signs on State Highway 80, purportedly marking the town lines for Springfield Center and Otsego, are not located correctly.

The Board moved on to applications.

APPLICATIONS

LLIB, LLC (Bill Miller/Jon McManus) – Request to extend conditional approval of Upper West Side major subdivision to August 14, 2016 – County Highway 28, Pierstown (#84.00-1-15.62)

Rosemary Craig recused herself and left the meeting table, with alternate member Chip Jennings taking her place. Representative Jon McManus said that applicant Bill Miller is again requesting a 90-day extension to his conditional approval for the Upper West Side major subdivision approved in 2011. Clerk Bill Deane noted the current approval is good through May 16, 2016, and a 90-day extension would take it to August 14.

Ed Hobbie moved to extend the approval for another 90 days, to August 14, 2016. Darryl Szarpa seconded the motion and it was approved, 7-0. Miller or an authorized representative will return at the August meeting if he wants another extension. Craig returned to the meeting table and Jennings left it.

Alex Zoeller (Bob Birch) – First lot split – County Highway 26 (#114.00-1-54.21)

Bob Birch submitted a letter (filed), authorizing him to represent applicant Alex Zoeller. Birch said that Zoeller wants to split his 6.5-acre lot into two lots of 3.38 and 3.12 acres, respectively, and has put in a private road built to Donovan specifications in order to meet frontage requirements. Zoeller is aware that the road will not be maintained by the Town.

Attorney Ferrari said he had examined the Town map and proposed deed language, and gave his "OK" for the first lot split.

Rosemary Craig moved to approve the first lot split and authorize the chairman to sign the plat. Ed Hobbie seconded the motion and it was approved, 7-0. Chairman Phillips stamped two copies of the plat "approved" and signed them, keeping one for the file and giving the other to Birch. Clerk Bill Deane advised Birch to file it with the County within 30 days.

Chokgyur Lingpa Foundation (Doris Matta) – Site plan modification, special permitted use, place of worship – 412 Glimmerglan Road (#98.00-1-67.01)

Clerk Bill Deane read aloud from the minutes of April 5 relevant to the Chokgyur Lingpa Foundation application. Representative Doris Matta summarized the differences between the approved 2009 site plan and the current proposal. She said there would be a slight increase in traffic.

Tom Huntsman went through the site plan requirements in Section 8.04 of the *Land Use Law*. The consensus of the Board was that each of these either had been met or were not applicable.

The Board discussed State Environmental Quality Review (SEQR). Rosemary Craig read aloud from the short environmental assessment form (EAF) submitted by the applicant. Chairman Phillips made one amendment. Scottie Baker moved to declare a negative declaration and authorize the chairman to sign the EAF. Steve Purcell seconded the motion and it was approved, 7-0. Zoning Enforcement Officer Monroe noted that the Board had not completed their section of the document. Ed Hobbie moved to reopen SEQR. Baker seconded the motion and it was approved, 7-0. Phillips completed the Planning Board section with member input. Once again, Baker moved to declare a negative declaration and authorize the chairman to sign the EAF, Purcell seconded the motion, and it was approved, 7-0. Phillips signed the EAF. Afterward, Tom Huntsman noted that this probably should have been deemed a Type II action, requiring no further review.

Hobbie moved to deem the application complete and schedule a public hearing for June 7. Purcell seconded the motion and it was approved, 7-0.

Blackbird Hollow, LLC (Joe Galati & Susanne Adsit/Jon McManus/David Brennan) – Site plan review, special permitted use, restaurant/bar/hotel – 6855 State Highway 80 (#69.44-1-5.00)

Tom Huntsman read aloud from the minutes of April 5 relevant to the Blackbird Hollow application. Representative Jon McManus was present, along with attorney David Brennan; and updated letter was submitted, including Brennan as an authorized rep.

McManus reviewed what was requested last month, and questions raised during the public hearing. He said there seems to be a lot of confusion about the project. McManus submitted a revised traffic study for the file, and said there would be no change to the lighting, which is LED dark-sky-compliant down-lighting. He said two handicap-accessible parking spaces had been designated, meeting the New York State building code.

The State Historic Preservation Office (SHPO) responded to the Board's coordinated review letter on April 19, expressing possible archeological concerns, among others. McManus cited an October 2013 archeological study done for the previous application, and said he thinks SHPO does not realize this is the same site which they passed on two years ago. McManus said that he is willing to defer SEQR until June to give time to resolve this issue.

McManus discussed the existing chlorinated well, which supplies seven gallons of water per minute, according to a New York State Department of Health (DOH) approved pump test. Steve Purcell said that he thought seven gallons per minute were sufficient for the water needs, and asked for the depth of the well. McManus said he could get that information to him.

McManus said that they are not changing the building exterior or the footprint of the complex approved by the Board on March 4, 2014. He said a shuttle bus would be used for the weekly cleaning crew. McManus said laundry would be done on-site, and that the DOH and the Watershed Committee had okayed the proposed water usage. He said that the sprinkler system, not shown on the site plan, includes 15,000-gallon water tanks in the basement. McManus said that the lake-access strip of land is not relevant to the current application.

Scottie Baker asked if the restaurant would include outdoor seating. McManus said there were no current plans for that but that, regardless, the occupancy

would not change. Attorney Ferrari reminded the Board about the Portabello's situation, saying that if outdoor seating is not on the application, it should not be allowed.

Baker asked if a manager would be on-site. McManus said there was no change to that answer nor to the restaurant hours of operation approved in 2014.

Darryl Szarpa questioned the estimate of 3,500 gallons per day of water usage. McManus noted that the site once was proposed for a wastewater treatment plant, which would have used much more water.

Szarpa asked about noise levels, particularly if bands would be employed. McManus said that there are laws governing ambient noise levels.

Tom Huntsman expressed concerns about the intent of this project, calling it a "clever scheme" and "creative trickery" to pick parts of the *Land Use Law* which support it and ignore others which don't. Huntsman discussed previous Town approvals and the intent of the 2000 use variance. He read from the "Heirloom Barn" guidelines in Section 3.15 of the *Land Use Law*, which specifies "protection of the historic external appearance and minimum impact on neighbors." Huntsman noted that SHPO said the project "may have serious impacts on this historic resource." He said the Board may have made an error in granting the 2014 approval, but that should have no bearing on the current application.

Ed Hobbie also read from Section 3.15, saying that the project does not meet it. Hobbie also said that the enclosed porch was not in the 2014 approved site plan.

McManus said that he thinks the current plan is better than the one approved in 2014, representing a reduction in use. He said that they could have submitted this as a site plan modification.

Szarpa echoed neighbors' concerns about aesthetics, noting that there was not a single member of the public to express support of the project.

Rosemary Craig asked how the Board can define the character of a neighborhood. She thinks the neighbors define that. Baker noted that the Town's Comprehensive Plan states that the environment should be peaceful and safe. Attorney Ferrari urged the Board members to read Section 8.05 (2) of the *Land Use Law*, which answers Craig's question.

Chairman Phillips said that the Board is listening to the neighbors, but has to apply the law. He said they can't undo the 2014 approval, nor the 2000 use variance, which goes with the property, but they can make modifications to an application. Attorney Ferrari agreed that the use variance goes with the parcel.

Steve Purcell noted that denying the application could be a "gamble." The applicant could bulldoze the building rather than preserve it, if they chose.

Fire Chief Jim Tallman wanted to ask questions of McManus, and Chairman Phillips allowed it. Tallman asked for more information about the sprinkler system, and McManus said he would supply him with the information.

Throughout the process, members of the audience interrupted with private conversation, comments, questions, outbursts, snorts, and applause. There were numerous requests from the Board members and clerk for them to quiet down.

Attorney Brennan suggested that the Board table further discussion until next month, and the Board agreed. McManus reiterated that they were waiving the 62-day "clock" for the Board to make a decision.

Jeffrey Wait – Site plan review, replacement of structure within 100 feet of Otsego Lake – 6793 State Highway 80 (#69.52-1-11.00)

Applicant Jeffrey Wait was present. Wait had received site plan approval from the Planning Board in February, 2006, but their attorney had noted that, if Wait did not raze the residence within 100 feet of Otsego Lake, he would have two principal buildings on the same lot, thus be in violation of the *Land Use Law*. Wait had not razed that building before he went before the ZBA on April 19.

Bill Deane read aloud from the minutes (not yet approved) of the April 19 ZBA meeting, during which Wait explained that he wants to replace the building in question with a garage in the same footprint. This would remove the violation, since it would not be a principal building. However, Wait was afraid if he razed the existing building before getting approval, he would lose his right to replace it in kind. He gave his recollection of the “horse trading” involved in the 2006 application, along with conversations he had had with Town personnel in the meantime. He said mistakes had been made in the past, but he is “trying to make it right” now. After discussion, the ZBA approved a motion that, “based on *Land Use Law* Section 4.04, which states ‘All building replacements/repairs shall be limited to the building footprint,’ this proposed project does not require a variance from the Zoning Board of Appeals.”

Wait said he had since razed the building, and Ed Hobbie verified this. Hobbie read aloud from the February, 2006 Planning Board minutes. It was noted that a garage was not part of that approval. Wait explained the financial situation which forced some of his 2006 decisions, and said that there was no demolition permit issued, and that a certificate of occupancy was issued for the new building in 2007.

Tom Huntsman said that the building in question theoretically didn’t exist since 2006, and wondered if Wait should be sent back to the ZBA for an area variance. The Board discussed recommendations they could make to the ZBA. Deane reminded them that the ZBA had sent Wait to the Planning Board.

After considerable discussion, Hobbie moved that the proposed garage be treated as a replacement-in-kind. Steve Purcell seconded the motion and it was approved, 7-0.

Huntsman left the meeting at 10:51, and was replaced by alternate member Paul Russo.

Chairman Phillips went through the site plan requirements in Section 8.04 of the *Land Use Law*. The consensus was that Wait had submitted everything necessary. Attorney Ferrari noted that SEQR is not needed on unlisted actions.

Scottie Baker moved to deem the application complete and schedule a public hearing for June 7. Hobbie seconded the motion and it was approved, 7-0.

Cliff Foreman (David Tillapaugh/Jon McManus) – Site plan review, alteration of residence within 100 feet of Otsego Lake – 6820 State Highway 80 (#69.52-1-5.00)

This application was added to the agenda at the discretion of Chairman Phillips. David Tillapaugh of Tillapaugh Construction explained the situation involving applicant Cliff Foreman, submitting a letter of representation from Foreman. Tillapaugh was repairing/replacing the roof of Foreman’s house within 100 feet of Otsego Lake, when he was served by the County with a “stop-work” order (precipitated by a complaint by Addison Bissell), which could be remedied only by

Planning Board approval. At this point, the residence was protected by only a tarp, and could have been ruined by inclement weather.

Attorney Ferrari said this would not constitute replacement-in-kind, which would require site plan review. Representative Jon McManus said there would be no change to the building's footprint and, if deemed a Type II action, would not require SEQR.

The Board reviewed various sections of the *Land Use Law*, particularly Sections 4.04 (Lakeshore protection) and 8.05 (Site Plan Review), and the definitions of "construction" and "repairs." They also consulted SEQR Type I actions, #9, and unlisted actions.

After discussion, Chairman Phillips moved to waive site plan requirements and a public hearing, allowing completion of the roof repair/replacement, due to the emergency situation. Ed Hobbie seconded the motion and it was approved, 7-0. Zoning Enforcement Officer Monroe said she would give Tillapaugh something in writing so he could resolve the stop-work order.

Paul Belmonte (Jon McManus) – Site plan review, addition to existing residence within 500 feet of Otsego Lake – 6731 State Highway 80 (#69.68-1-8.00)

This item was mistakenly listed on the agenda with the details of another proposed project by the same applicant. Applicant Paul Belmonte wants to "square off" a corner of his house within 500 feet of Otsego Lake, adding a 7x7½' section. He submitted a site plan, which the Board reviewed.

After brief discussion, Steve Purcell moved to deem the application complete and waive a public hearing due to minimal increase (52.5') in square footage. Ed Hobbie seconded the motion and it was approved, 7-0.

Rosemary Craig moved to approve the site plan. Purcell seconded the motion and it was approved, 7-0. Chairman Phillips stamped the site plan "approved" and signed it.

OTHER BUSINESS

Barbara Monroe distributed copies of her May 3 Zoning Enforcement Officer report (filed). Chairman Phillips asked for a volunteer to serve as Planning Board liaison for the May 11 Town Board meeting. Ed Hobbie volunteered.

Chairman Phillips said he had some "member & employee discussion" items, but would postpone them to the June meeting due to the lateness of the hour.

Deane discussed the June 7 agenda. Chokgyur Lingpa Foundation (public hearing), Jeffrey Wait (public hearing), and Blackbird Hollow will be returning, and Joe Siracusa will have a sketch plan conference as mentioned during "correspondence."

With no further business, at 11:26, Scottie Baker moved to adjourn the meeting.

Respectfully submitted,
Bill Deane, Planning Board Clerk