

TOWN OF FARMINGTON PLANNING BOARD

March 18, 2009

APPROVED MINUTES

The following minutes are written as a summary of the main points that were made and the actions taken at the Town of Farmington’s Planning Board Meeting. .

MEMBERS:

- David Degear, Chair
- Ron Herendeen
- Robert Kleman
- Scott Makin
- Excused: Meg Godly

Also present: Town of Farmington Director of Development and Planning Ron Brand; Town of Farmington Engineer Lance Brabant, MRB Group, P.C.; Karl Essler, Fix Spindelman Brovitz & Goldman, P.C.; Kevin Morgan, Morgan Management; Jason Markel, New York Pizzeria; Jess Sudol, Passero Associates; Town of Farmington Zoning Board of Appeals Chairman Edward Hemminger; Town of Farmington Board member Peter Ingalsbe

Excused: Town of Farmington Code Enforcement Officer, Floyd Kofahl

OPEN MEETING:

The meeting was called to order at 7:00 p.m. After everyone recited the Pledge of Allegiance, Chairman Degear made the introductions of Planning Board members and staff. He explained the emergency evacuation procedures to those present and said that copies of the evening’s agenda and legal notices are available on a table by the door. Mr. Degear also asked that all present set their cell phones on vibrate.

APPROVAL OF THE MINUTES OF THE MARCH 4, 2009 MEETING:

Mr. Makin moved to approve the Minutes without changes. Mr. Herendeen seconded his motion. In a voice vote, all four Board members present voted aye.

LEGAL NOTICES:

At the Chairman’s request, the Clerk read aloud the legal notices which were published in the March 11, 2009 Daily Messenger.

PUBLIC HEARINGS:

PB0304-09, SPECIAL USE PERMIT

NAME: JASON MARKEL, 1956 STABLEGATE DR, CANANDAIGUA, NY 14424:

LOCATION: 6081 ST RTE 96

ZONING DISTRICT: GENERAL BUSINESS DISTRICT.

REQUEST: Request a special use permit to allow a fast food/take-out restaurant according to Article IV Chapter 165- 28 D (12) and 165-69 of the Town of Farmington

Codes.

Chairman Degear read the applicant's letter of application into the record:

"My name is Jason Markel and my wife's name is Joann. We are the owners of New York Pizzeria and would like the opportunity to bring our homemade Italian food to your town. We serve homemade pizza, subs, wings, lasagna etc. Our sauces are homemade and shop is family owned and operated. The shop serves take out, but we also have six tables and television for the public to enjoy. Thank you for your time and my family thanks you also."

Mr. and Mrs. Markel were present to speak for their application. He stressed that all food will be homemade. Mrs. Markel learned the recipes from her Sicilian parents who will be helping out in the store.

When the applicant finished speaking, the Chairman asked for the hours of operation. Mr. Markel said they are not yet firm but they estimate opening from Monday through Thursday from 11 a.m. to 9 p.m., Friday and Saturday 11 a.m. to 10 p.m., and Sunday perhaps noon to 9 p.m. All employees will be family members.

Next, Chairman Degear asked for staff comments.

The Development Director said this application requires a Type II Action SEQR since the only changes will be to the interior of the building. The use fits the Code. He recommended a two year term for the Special Use Permit (SUP).

The Town Engineer had no comments.

Chairman Degear announced that this is a public hearing and asked if there is anyone present who wishes to speak for or against this application. No one replied. He then repeated his question and, again, no one replied. Next, the Chairman asked for a motion to close the public hearing. The motion was made by Mr. Herendeen and seconded by Mr. Kleman. In a voice vote, all Board members present voted aye to close the public hearing at 7:09 p.m.

The Chairman asked for Board comments.

Mr. Makin said this is a good application.

Mr. Herendeen asked about pizza delivery. The applicant explained that this is a business only, not a delivery place. He wants to get to know his customers face-to-face.

Mr. Kleman asked when they plan to open. Mr. Markel said on Saturday, March 28th.

Mr. Makin made a motion to waive the reading of the Type II Action SEQR with Mr. Herendeen seconding his motion. Next, Mr. Makin moved to approve the SEQR. Mr. Kleman seconded. The Clerk recorded the following roll call vote:

Ronald Herendeen—aye

Robert Kleman—aye

Scott Makin—aye

David Degear—aye

The SEQR was unanimously approved.

At the Chairman's request, Clerk O'Malley read aloud a draft Special Use Permit resolution with the following conditions:

1. *The application has been determined to be consistent with the provisions of Chapter 165, Article VI, Section 69 of the Farmington Town Code.*
2. *The Special Use Permit is for a fast food/take out restaurant, to be known as New York Pizzeria and is valid for a period of 2 years and must be renewed on or before March 18, 2011 or prior to any change in either use or site plan components.*
3. *All site lighting shall comply with the provisions of Chapter 165, Article V, Section 64 of the Farmington Town Code.*

Mr. Markel said he understood and agreed to the conditions. Mr. Herendeen moved to approve the SUP with the conditions. Mr. Kleman seconded the motion. The Clerk recorded the following roll call vote:

Ronald Herendeen—aye

Robert Kleman—aye

Scott Makin—aye

David Degear—aye

The Special Use Permit was unanimously approved. The applicants thanked the Board members.

PB 0302 -09 PRELIMINARY 63 LOT SUBDIVISION APPLICATION

NAME: A & D DEVELOPMENT, 22 WHITESTONE LANE, ROCHESTER, NY 14618

LOCATION: ESTATE OF BEAVER CREEK. EAST SIDE OF NEW MICHIGAN ROAD AND ON THE NORTH SIDE OF TOWNLINE RD

ZONING DISTRICT: RR-80 DISTRICT.

REQUEST: Request a 63 lot subdivision approval for the purpose of cluster development (TL278)) for single family homes.

Development Director Brand explained that the SEQR resolution to declare lead agency status for a coordinated review had been overlooked at the last Board meeting. If this is done tonight, action can be taken at one of the May Board meetings. Mr. Makin moved the draft resolution with Mr. Herendeen seconding. The Clerk recorded the following roll call vote:

Ronald Herendeen—aye

Robert Kleman—aye

Scott Makin—aye

David Degear—aye

The motion was passed unanimously.

PB 0306 -09, 3 LOT PRELIMINARY SUBDIVISION APPLICATION

NAME: MORGAN PLASTER MILL, LLC, 1170 PITTSFORD VICTOR ROAD, PITTSFORD, NY 14534

LOCATION: LOCATED AT THE NORTHWEST CORNER OF PLASTER MILL RD AND GATEWAY DR

ZONING DISTRICT: RESIDENTIAL MULTI-FAMILY DISTRICT.

REQUEST: Request a three lot subdivision approval of Saratoga Crossing Subdivision to create lot #1 consisting of 15.121 acres, lot #2 consisting of 10.096 acres, and lot #3 will consist of 12.134 acres.

This project's landowner, Kevin Morgan, his attorney, Karl Essler, and the project engineer, Jess Sudol, were all present.

Mr. Essler began by saying that this subdivision was already approved by the Planning Board as a rental townhouse project. The only thing that has changed is the economic circumstances. In our present economic climate, he explained, banks are unwilling to back a project of this magnitude. The applicants can only arrange for a construction loan for Phase 1 of the three planned phases. In order to avoid a lien on the entire property by this lender with no guarantee of future funding, the applicants wish to divide the property along the original phase lines. The attorney stressed that nothing else has changed and that Mr. Morgan intends to develop all three lots.

Since the Board members expressed concern about the future development of Lots 2 and 3, possibly by other owners, Mr. Morgan explained that he would like to have one bank finance all three phases but he cannot find one right now. He has found a bank to grant a construction loan for Phase 1 but they want to mortgage all three lots. To avoid this, he is seeking to divide the property into three lots. Mr. Essler added that the original phase lines would become lot lines. Unfortunately, this means that variances will be required for setbacks for some of the buildings.

In response to a request from Chairman Degear to try to reduce the number of variances required, Mr. Sudol explained that the original phase lines were placed to maximize profitability and ease of construction. He said he revised the plans and any other change is not feasible. In fact, more variances would be required.

Mr. Degear pointed out that the Planning Board has a responsibility to try to avoid the need for variances.

Mr. Essler returned to the Board's concerns about the future of the development. He said that a reciprocal easement agreement can be drawn up requiring all common areas (roads, utilities, detention ponds) to be done as approved no matter who the owner is.

Mr. Herendeen said that maintenance of the three lots is also a concern, too.

Mr. Essler expressed willingness to have the Town Attorney go over the reciprocal agreement and make changes. He claimed that the odds of anyone buying and developing just one lot are very slight. Even if Morgan Management ceased to own the property, another developer would just take over.

Mr. Makin pointed out that three different owners might have three standards of maintenance.

Mr. Essler commented that the Ontario County Planning Board (OCPB) suggested that they reconsolidate back into one lot at the end of construction. However, since the applicants do not know the funding, this may not be possible. The mortgages might have different terms or pre-payment penalties. Perhaps the Board might make a condition to final approval that they make a "best effort" to do this.

Mr. Essler continued with the comments by the OCPB. Since this many variances would set a bad precedent for the Town, they suggested Incentive Zoning. The attorney said that this would not make any difference. In response to a concern about different homeowners' associations, he explained that this is a rental community and there are no plans to change it.

The County Planning Board also expressed concern about the site water detention facilities. Mr. Essler pointed out that these are on Lot 1 for Lots 1 and 2. Lot 3 has its own facilities due to the topography.

The OCPB's final concern was turnarounds. These are already on the plans for the phasing.

When the applicants finished their presentations, Chairman Degear asked for staff comments.

Mr. Brand pointed out that Mr. Essler had described "our recent economic circumstances" as the reason for the change. For the record, does this mean Morgan Management is having financial difficulties? Mr. Essler assured him this was not the case. He was only referring to the present world financial crisis.

The Development Director asked Mr. Sudol if there need to have any adjustments to the phases when they become lots. The engineer replied no, the water line will go through Lot 2 and storm water drainage will be on Lot 1 for both Lots 1 and 2.

Mr. Brand also asked about haul roads in Lots 2 and 3. Mr. Sudol said that the haul road for lots 1 and 2 will be off Gateway Drive. The haul road for lot 3 will be on lot 2 very briefly.

The applicants reminded the Board members that a major commitment to the project will be made in Lot 1 with a pool, clubhouse, detention ponds, and the largest lot of the three. However, the project cannot move forward without approval for the variances.

The applicants were asked about a sidewalk in Phase 1. They responded that there will be a sidewalk to Gateway Drive and to Phase 2. The sidewalk will be finished before Phase 3 is done.

The applicants also explained that there are no lot lines within each lot because these are rental properties, not condos.

Mr. Essler noted that Incentive Zoning would not apply to this development since it is a residential, multi-family project. The site's zoning has already been changed for this use. Mr. Brand added that this change was recommended in the Comprehensive Plan.

Mr. Brand then explained the procedures that need to be followed. The SEQR must be supplemented with a short EAF. The Board needs to make a determination about the subdivision of the land. There is no impact on the environment from drawing lines on a tax map. He recommended that the Planning Board might want to continue this application so that the Zoning Board of Appeals (ZBA) can act. If all is approved, the Planning Board may want to have a condition that all variances granted be shown on the map.

The Development Director said that, under New York State Town Law, the ZBA requests a recommendation from the Planning Board. He said that he checked with the Town Attorney today about these procedures.

The Town Engineer spoke next. He referred to his letter of March 11, saying most of his comments were general in nature. However, the maintenance information and easements need to be shown on the plans. The NYS Department of Health (DOH) must also be on board.

Mr. Sudol responded that comments #1-8 are general and he is working on a response to them. The original utilities are to be dedicated and they will have their own easements. As for the DOH, the concern about designing one private water authority is not feasible. The engineer must do some additional designing. He suggested a meeting of all staff and Board concerned.

Mr. Brand pointed out that if the Board continues the public hearing to send the application to the ZBA, the applicants need to prepare a map with **all** 27 variances. Mr. Essler and Mr. Sudol offered to prepare a table of the variances to put on the map. Mr. Brand asked them to make it easy to read.

Chairman Degear announced that this is a public hearing and asked if there is anyone present who wishes to speak for or against this application. Mr. Hemminger, Chairman of the ZBA, reminded the Planning Board that they will have to make a recommendation to the ZBA in order to fulfill the requirements of NYS Town Law. He also spoke as a private citizen and Town resident, asking if all three lots have sufficient footage and access to the public road. The applicants replied yes.

Mr. Hemminger also asked who would enforce the reciprocal agreements. Mr. Essler suggested the Town but Mr. Hemminger said this would not happen. Mr. Essler said the owners of the other lots could go to court. Mr. Hemminger then inquired what would happen to the agreement in case of a bankruptcy. Mr. Essler said the requirement to follow what was approved by the Planning Board will be part of the recorded deed and must be followed by any new owner.

Mr. Hemminger then asked what would happen if a new owner did not want to build rental units. Mr. Essler pointed out that the Town retains the authority to approve or deny a new application.

Mr. Hemminger advised the applicants to install fiber or at least a conduit for it into the buildings.

Mr. Makin made a motion to waive the reading of the Unlisted Action SEQR with a determination of non-significance. Mr. Herendeen seconded Mr. Makin's motion. In a voice vote, all four Board members voted aye. Next, Mr. Makin moved to approve the SEQR with Mr. Kleman seconding. Clerk O'Malley recorded a roll call vote:

Ronald Herendeen—aye

Robert Kleman—aye

Scott Makin—aye

David Degear—aye

The resolution was adopted by a unanimous aye vote of all four Board members.

Next, the Chairman asked for a motion to continue the public hearing until the April 15, 2009 Board meeting at 7 p.m. at the Town Hall. He pointed out that it might need to be continued again if the ZBA did not make a decision at their March 23rd meeting. The motion to continue was made by Mr. Kleman and seconded by Mr. Herendeen. In voice vote, all four Board members voted aye to continue the public hearing.

Mr. Brand said that the Board should consider recommending this application to the ZBA since the phase lines are unchanged. They are just becoming lot lines. Chairman Degear expressed extreme reluctance to send something needing so many variances to the ZBA. Mr. Brand responded that the ZBA does not have to consider the Planning Board's recommendation.

At this point in the meeting, 8:20 p.m., the Board took a short recess and the tape recorder was turned off. Chairman Degear reconvened the meeting at 8:25 p.m. and the tape recorder was turned back on.

Chairman Degear asked for Board comments.

Mr. Makin said he has concerns about referring this to the ZBA.

Mr. Herendeen said it has to go to the ZBA because of the variance issue but he would like to see the reciprocal agreement.

Mr. Kleman pointed out the Planning Board still has the right to approve or reject the application.

Chairman Degear said he would prefer making a referral, not a recommendation, since this is a new situation for the Planning Board. He wanted to wait and see the reciprocal agreement and to make sure it is iron-clad. The Town Attorney and the Planning Board need more time to review it. The Planning Board does not normally send something with this many variances to the ZBA. He also wanted to make sure that this unique situation does not create a precedent. He has never seen phasing lines become property lines, the Chairman concluded.

The Development Director told him that NYS Town Law requires a recommendation, not a referral.

Chairman Degear asked if the Planning Board's comments could be added. Mr. Brand read aloud the following draft resolution:

WHEREAS, the Town of Farmington Planning Board (hereinafter referred to as Planning Board) has scheduled a public hearing for the above referenced application for tonight's Planning Board Meeting; and

WHEREAS, the Planning Board has discussed with the applicant and the public, the merits of the proposed three lot preliminary plat subdivision referenced above; and

WHEREAS, the Planning Board has reviewed the Ontario County Planning Board's Referral #31-2009 on said application; and

WHEREAS, the Planning Board understands that in accordance with the provisions of Section 277 of New York State Town Law, Subsection 6, the Board must provide a written recommendation concerning proposed variances associated with Lots #1, #2 and #3 of the proposed Preliminary Plat Subdivision; and

WHEREAS, the Planning Board has granted overall Preliminary Site Plan approval to this project with a phasing plan that coincides with the proposed property boundaries for Lots #1, #2 and #3; and

WHEREAS, the Planning Board has granted Final Site Plan Approval for Phase 1 of the Saratoga Crossing Project, which depicts the proposed layout for said Phase, including the placement of buildings, roads and utilities consistent with the said final site plan.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby recommend to the Zoning Board of Appeals, the granting of the requested area variances for proposed Lots #1, #2 and #3 to enable the overall development of this site consistent with the overall Preliminary Site Plan Approval granted by the Planning Board.

WHEREAS, the Town of Farmington Planning Board (hereinafter referred to as Planning Board) has scheduled a public hearing for the above referenced application for tonight's Planning Board Meeting; and

WHEREAS, the Planning Board has discussed with the applicant and the public, the merits of the proposed three lot preliminary plat subdivision referenced above; and

WHEREAS, the Planning Board has reviewed the Ontario County Planning Board's Referral #31-2009 on said application; and

WHEREAS, the Planning Board understands that in accordance with the provisions of Section 277 of New York State Town Law, Subsection 6, the Board must provide a written recommendation concerning proposed variances associated with Lots #1, #2 and #3 of the proposed Preliminary Plat Subdivision; and

WHEREAS, the Planning Board has granted overall Preliminary Site Plan approval to this project with a phasing plan that coincides with the proposed property boundaries for Lots #1, #2 and #3; and

WHEREAS, the Planning Board has granted Final Site Plan Approval for Phase 1 of the Saratoga Crossing Project, which depicts the proposed layout for said Phase, including the placement of buildings, roads and utilities consistent with the said final site plan.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby recommend to the Zoning Board of Appeals, the granting of the requested area variances for proposed Lots #1, #2 and #3 to enable the overall development of this site consistent with the overall Preliminary Site Plan Approval granted by the Planning Board.

Mr. Degear asked Mr. Hemminger to convey his concerns to the Zoning Board of Appeals. He said that he wants this to be an exception, not the rule for going forward. Mr. Makin added, for the record, that the Planning Board exercised due diligence on this application.

Mr. Making then moved the resolution with Mr. Kleman seconding it. The following roll call vote was taken and recorded:

Ronald Herendeen—aye

Robert Kleman—aye

Scott Makin—aye

David Degear—aye

The resolution was adopted by a unanimous aye vote of all four Board members.

TOWN OF FARMINGTON PLANNING BOARD RESOLUTION

LETTER OF CREDIT RELEASE NO. 10 – AUBURN MEADOWS SUBDIVISION SECTION 2

Before acting on this release, the Chairman said he has some issues about the haul road. He asked the Town Engineer for more information.

Mr. Brabant explained that there is a separate Letter of Credit for the haul road so this release does not affect it. He agreed that he also has issues about the haul road and that other Department Heads are aware of these issues.

Chairman Degear asked Town Board member Ingalsbe to convey his concerns about the haul road to the Town Board. He added that he has discussed his concerns with the Code Enforcement Officer, too. His main concern is having a haul road over a utility line.

Mr. Brabant said that entrances to the haul road are future issues since these phases of the development have not yet been built. Mr. Degear asked him to watch how these connections to the haul road are built. The Town Engineer replied that there is a difference between a construction access point and a haul road which will have a new access point for the next phases being built. MRB has requested a master plan from the developer. Chairman Degear pointed out that we need enforcement too. This is an important point, he stressed.

At the Chairman’s request, the Clerk read aloud a draft resolution for the release. Mr. Makin moved to recommend to the Town Board to approve the release of \$45,271.07. Mr. Herendeen seconded the motion. The following roll call vote was taken and recorded:

Ronald Herendeen—aye

Robert Kleman—aye

Scott Makin—aye

David Degear—aye

Letter of Credit Release #10 for the Auburn Meadows Subdivision was unanimously approved.

OPEN DISCUSSION

Report: Director of Development

Mr. Brand reminded Chairman Degear that he has the final plans for Aldi’s to sign tonight. They anticipate starting work in June.

The Director of Development commented that tonight’s action regarding Saratoga Crossing was not a first. The only thing new was that it was for a rental community. He has received a comment from the Town Attorney pointing out that final approval has only been given for Phase 1 although the other two phases are certainly connected.

Mr. Brand reminded the Board members that there is training in Bushnell’s Basin in May. Mr. Degear commented that Mr. Herendeen and Mr. Makin will be attending training in Monroe County.

The Development Director concluded his report by saying that RG&E want an easement on the north side of Town Line Road for the new Fire Hall. He is working with the Town Attorney on this.

PUBLIC COMMENTS

Mr. Hemminger provided an update to the Board on the Ring of Fire. He asked the Planning Board to let developers know to install fibers and conduits. This project has received national and state recognition as a model project.

Mr. Brand added that they are considering adding the mapping for this in the revisions to the Comprehensive Plan.

Mr. Hemminger promised to update the Planning Board members in future months. Chairman Degear thanked him.

ADJOURNMENT OF MEETING

Next Meeting Date: April 1, 2009

Mr. Makin made a motion to adjourn at 8:57 p.m. Mr. Herendeen seconded his motion. In a voice vote, all four Board members voted aye to adjourn

These minutes were taken and respectfully submitted by

Leslie C. O'Malley, Ph.D.
Clerk of the Board