

**TOWN OF DRYDEN
PLANNING BOARD
October 23, 2019**

Present: John Kiefer, Chair, David Weinstein, Craig Anderson, Martin Hatch, Thomas Hatfield, Tony Salerno, Joe Wilson (late), James Skaley (alternate) Dan Bussmann (alternate)

Staff: Ray Burger, Planning Director

Liaisons: Dan Lamb (Town Board), Alice Green (Town Board), Craig Schutt (Conservation Board)

Chair Kiefer called the meeting to order at 6:03 p.m.

Public Comment

None.

Dan Bussmann was given voting privileges in the absence of Joe Wilson.

Approval of Minutes

D Weinstein moved to approve the minutes of September 25, 2019, seconded by C Anderson.
All in favor - approved

**SITE PLAN REVIEW
EMMY'S ORGANICS
15 ROYAL ROAD**

R Burger explained this is a change in use of warehousing/office space at 15 Royal Road. A kitchen will now be added which makes is light manufacturing. (Joe Wilson arrived.) This is a SEQR Type II action.

Applicant Ian Gaffney, 629 West Buffalo St, said they have been in business for about ten years. The business was started by him and his wife in a home kitchen. They have grown organically since and now distribute in 20,000 stores across the country. They have a staff of about 20 people in manufacturing, and about 8-10 in the office. All the products made are organic and allergen friendly. The building uses wind and solar power. They are a living wage certified employer and woman-owned business. The base pay for the manufacturing crew starts at \$15.37/hour and increases from there. They are thrilled to move the business into a real manufacturing space. They are currently spread out in two buildings and a house office and they lease a warehouse. They closed last Wednesday on 15 Royal Road and have been talking with Planning Department staff about their plans.

This is a Type II action so no SEQR is required.

Comments/statements during discussion:

- This is strictly manufacturing; no retail sales on site.

- There are 20 delineated parking spaces.
- Not all employees drive; some carpool.
- There are auxiliary parking spaces on the property.
- There is no effluent from the manufacturing process that needs to be disposed of.
- They will not encroach on to the wetland at all.
- There are two dumpsters on the property; there will be some trash & plastic to dispose of.
- The dumpsters can be locked; they are not screened.
- There will be deliveries (probably 1 per day) that will enter/exit via Route 13.
- Over the next 5 years they will likely hire 8 people.
- The gravel lot may be paved for parking expansion.
- The dumpsters are not visible to the public at the south end of the lot; no need to screen.
- A bike rack will be moved from their current.
- Lighting will be restricted to wall-pack base lighting.

County 239 review determines no negative inter-community or county-wide impacts.

RESOLUTION #21 (2019) – APPROVE SKETCH PLAN – 15 ROYAL ROAD

T Hatfield offered the following resolution and asked for its adoption:

RESOLVED, that the Town of Dryden Planning Board hereby approves the sketch plan for a change of use at 15 Royal Road and waives further site plan review subject to the following conditions:

1. Owner will provide all employee parking on the site.
2. There will be no occupation of or disturbance in the wetlands on the site.
3. There will be no retail sales on the site.
4. Dumpsters will be maintained at the south end of the site.
5. Owner will provide a bike rack for employees.
6. Standard Conditions of Approval (8-14-2008).

2nd M Hatch – all in favor

SITE PLAN REVIEW 2249 HANSHAW ROAD 2 Duplexes on One Lot

R Burger explained that a site plan review is required when multiple dwellings are being constructed on the same lot (Zoning Law Section 606). In this case it is two duplexes totaling four dwelling units proposed for the lot. It is based on the determination that the lot, if subdivided, could be divided into one parent lot and two flag lots. That would allow up to three dwellings.

Applicant has prepared a short EAF. County 239 review determined that there were no inter-community or county-wide impacts. County Highway did note a concern with the limited sight distance due to the proposed plantings along Hanshaw Road. Applicant states he will not put plantings near the driveway, though they are shown on the drawings.

Comments/statements during discussion:

- There will be one well to serve both dwellings.
- Applicant is concerned that science is not good enough on heat pumps, particularly in hard winters.
- He would like to use radiant heat.
- HeatSmart Tompkins can provide consultation and guidance.
- Applicant will do as much as he can to build green; project will be total electric.
- Is one well adequate? Applicant states previous similar project was served adequately with one well.
- Everything was done with an engineer.
- There will be vegetation around the dumpster.
- Emergency vehicle access is adequate.

SEQR review

Clarification on Part 1 #9 – If applicant intends to exceed the state energy code requirements, it should be explained. Applicant will use more insulation, will do a heat pump hot water heater, solar panels on the house or in the field. There will be underground electric services.

The board reviewed Part 2 of the short EAF and responded as follows:

- 1 – No
- 2 – No or small impact
- 3 – No or small impact
- 4 – No
- 5 – No or small impact
- 6 – No or small impact
- 7 – No
- 8 – No
- 9 – No
- 10 – No
- 11 – No

RESOLUTION #22 (2019) NEG SEQR DEC – 2249 Hanshaw Road

D Weinstein offered the following resolution and asked for its adoption:

- A. The proposed action involves site plan review for construction of two duplexes (2 units each) on a single lot at 2249 Hanshaw Road (TM #31.-1-21.324) that could have potentially been subdivided into three building lots.
- B. The proposed action is an Unlisted Action for which the Planning Board of the Town of Dryden is the lead agency for the purpose of uncoordinated environmental review.
- C. The Planning Board of the Town of Dryden, in performing the lead agency function for its independent and uncoordinated environmental review in accordance with Article 8 of the New York State Environmental Conservation Law – the State Environmental Quality Review Act “(SEQR)”, (i) thoroughly reviewed the short Environmental Assessment Form, Part 1, and any and all other documents prepared and submitted with respect to this proposed action and its

environmental review,(ii) thoroughly analyzed the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

- 1) The Planning Board of the Town of Dryden, based upon its thorough review of the short EAF, Part 1, and its thorough review of the potential relevant areas of environmental concern has determined that the proposed action will have no significant adverse impact on the environment in accordance with SEQR, and
- 2) John Kiefer is hereby authorized and directed to complete and sign as required the determination of significance, confirming the foregoing Negative Declaration.

2nd J Kiefer

Aye – J Kiefer, J Wilson, D Weinstein, M Hatch, C Anderson, T Salerno

Abstain – T Hatfield

RESOLUTION #23 (2019) – APPROVE SKETCH PLAN – 2249 HANSHAW ROAD

M Hatch offered the following resolution and asked for its adoption:

RESOLVED, that the Town of Dryden Planning Board hereby waives further site plan review and approves the sketch plan for construction of two duplexes (2 units each) on a single lot at 2249 Hanshaw Road (TM #31.-1-21.324) that could have potentially been subdivided into three building lots and waives further site plan review subject to the following conditions:

1. Dumpsters will be screened.
2. Roadside plantings will be minimized so as not to impair sight distance from the driveway.
3. The Planning Director will provide a determination with respect to the number of lots that could potentially be created from this tax parcel. That document is to be recorded in the Tompkins County Clerks Office and indexed to this parcel.
4. Standard Conditions of Approval (8-14-2008).

2nd D Weinstein

Aye – J Kiefer, J Wilson, D Weinstein, M Hatch, C Anderson, T Salerno

Abstain – T Hatfield

T Hatfield noted that he abstained because the applicant is a client of his business.

BLUEBIRD SUBDIVISION

R Burger explained that on the lot at 438 Lake Road a home was recently constructed and most of it was constructed within the area labeled conservation easement. The landowner applied to the ZBA for an area variance and was denied for a lack of jurisdiction without prejudice to the applicant's right to convert the application into an application to the Planning Board to modify the conditions of the Bluebird Subdivision as they may apply to the property. There has been no subsequent application from those ZBA applicants.

The matter came to light when the property owner had an as-built survey prepared. The town attorney gave an opinion on the day of the ZBA hearing.

J Kiefer said he put this on the agenda because the board should consider and talk about the nature of the words that it is using. There is no formal conservation easement between the town and any property owner in this subdivision; a document like that does not exist. The developer used the words conservation easement and may have been referring to covenants.

Discussion/comments by the board and others present:

- This was approved as a conservation subdivision and by definition sets aside some amount of the property for conservation.
- It is unclear that the town has any jurisdiction to enforce any the covenants written on the plat.
- The board needs to consider how it protects wetlands and things that are important to it.
- If the deed restrictions that show up on the plat are not enforceable by the town, then that probably needs to be reconsidered and a better way developed.
- The plat is in essence a site plan for each of the individual lots.
- Town Attorney has offered to come to a meeting of the Planning Board to discuss options.
- There is no executed document with the property owner in this instance.
- It appears adjacent property owners may be in a position to take action.
- There was no distance listed on the plat for this easement.
- Properties owners need to be aware of covenants and restrictions.
- A resolution was presented for consideration asking that the town board consider a moratorium on future conservation subdivisions until there is decision about how to enforce in cases like this.
- Enforceability and who has authority is the problem.
- We need to ensure that what we intend actually come to pass.
- A deed restriction doesn't appear to be a way to permanently protect open space.
- It was clear that the intent was that nothing be built in the conservation easement; why can't the town enforce that?
- Should a building permit be denied if someone is building in an area they aren't supposed to?
- A lot of options may come in to play when we get counsel from the attorney.
- The current instance meets the standard zoning; the conservation easement area is greater than the setback required by zoning.
- The covenants are listed on the deed; it doesn't appear the town can enforce that.
- The subdivision was approved based on a 250' restriction.
- The developer should site the house.

The Planning Board would like the town attorney to answer:

What ability or responsibility does the town have to enforce the covenants written on the plan?

Given what has occurred, what is the town's ability and the Planning Board's to do anything in response to it?

How is the board able to do what it intends to do? (This is the second time in this area a condition has been ignored.)

Can the building permit be revoked?

- There are various ways to preserve open space; board needs to use the most effective.

- There are potentially other violations coming down the pike.
- The proposed resolution may be a good idea until we figure out where the enforcement lies.
- To be clear, the problem is with the restrictions in a conservation subdivision and how to enforce those restrictions.
- Town Board would need to do adopt the moratorium.
- Town Board has discussed and believes the building permit application should be checked against the covenants and the deed restrictions and that should perhaps be a new policy.
- The moratorium will not solve the current situation; it may need to be settled in the courts.
- The town's law that lists restrictive covenants as a means of preserving open space should be removed because they don't work.
- There needs to be a mechanism to deal with the potential future violations in this particular subdivision.
- It seems that the enforcement is stopping it before the building gets built.
- We are developing a culture where it is easier to ask forgiveness than to ask permission.
- Can the Planning Department ask the builder/developer in a conservation subdivision to attest that all the covenants have been met; put the burden on the builder?

RESOLUTION #24 (2019) – RECOMMENDING THE DRYDEN TOWN BOARD ESTABLISH AND ADOPT A SIX-MONTH MORATORIUM ON RECEIVING OR PROCESSING CONSERVATION SUBDIVISION APPLICATIONS WHICH USE “RESTRICTIVE COVENANTS” AS A FORM OF OPEN SPACE PROTECTION

M Hatch offered the following resolution and asked for its adoption:

WHEREAS, the Planning Board finds that Section 902 of the Town Subdivision Law allows the use of a Restrictive Covenant to permanently protect Open Space and,

WHEREAS, the Planning Board now finds that the current use of a Restrictive Covenant is not a reliable or suitable arrangement to permanently protect open space and,

WHEREAS, the Planning Board finds that a certain amount of time will be required to review and amend Section 902 of the Town Subdivision Law and,

WHEREAS, The Planning Board finds there is an urgency to this matter and that such a moratorium should be effective immediately;

THEREFORE, BE IT RESOLVED by the Dryden Planning Board:

That the Dryden Town Board impose an immediate six-month moratorium on processing Applications for Conservation Subdivisions that use "Restrictive Covenants" as a mechanism to protect Open Space.

2nd C - Anderson all in favor

Mahlon Perkins said if the building permit should never have been issued, then why don't they revoke the building permit and put the burden on the homeowner to solve the problem. He believes the town has jurisdiction. If you approve a subdivision which provided for a certain type of building, and a person got a permit to do it, and then built something different, it is the same thing. You do have jurisdiction on that part of it - the particular violation.

C Anderson suggested the attorney be given the list of questions in advance.

Members of the board would like the questions in writing by the attorney, rather than in a meeting environment.

Varna Zoning Committee

D Weinstein presented a list of questions from the last meeting and his responses to those (attached). Where proposed revisions needed to be altered based on discussion, that was done. The updated revisions for Articles 3, 4 and 7 were provided to board members (attached). The body of the resolution originally proposed would remain the same.

The goal is to bring the projected allowable density into line with the Varna Community Plan. They didn't get all the way there, but it is substantially closer to what the Varna Community Plan set as a goal. They felt this could be accomplished by more precisely defining the purpose and goals for each district, by changing what development types would be allowed in each district to promote the goals of that district, to improve the definitions of those development types and to reduce the allowable development units per acre in each of those types for each district. They believe the subcommittee has achieved that. These proposed changes should result in a larger mix of housing types that current zoning doesn't promote.

D Weinstein explained these changes are the result of the last Planning Board meeting when this topic was discussed. Subcommittee members J Skaley and M Hatch agree with the changes. C Anderson said he has things he would like to be incorporated; the committee has not met again.

Why is there a definition for story? It is not in the current zoning law. It is referred to in the Varna design guidelines. R Burger presented the following:

Definition from the 2015 Uniform Fire Prevention Building Code as Adopted by New York State (Uniform Code):

STORY above grade plane – Any story having its finished floor surface entirely above grade plane, or in which the finished surface of the next floor above is:

- 1. More than 6 feet above grade plane; or*
- 2. More than 12 feet above the finished ground level at any point.*

Definition from Ithaca (C) Chapter 325 Zoning -Article 1 General Provisions:

STORY - The portion of a building which is between one floor level and the next higher floor level or the roof. A mezzanine, as defined in the New York State Uniform Fire Prevention and Building Code, is not a story. A basement shall be deemed to be a story when its ceiling is six or more feet above the finished grade. A cellar shall not be deemed a story. An attic shall not be deemed to be a story if unfinished and without human occupancy.

Is a basement a living space? R Burger said defined in code it is when part of the level is below the ground; further refinement of that is if 6' or more is exposed it then becomes a story.

- Using the Varna guidelines, the intent was to have three stories in Varna.
- What about a walk-out basement?
- You can have a bedroom in the basement as long as it meets egress.
- It's different if you go up the steps and out, or you just go straight out.
- There is confusion with walkout on one side in determining whether they are three or four stories.
- 40' is the highest building height in Varna.
- This needs to be looked at carefully for the future.
- We need to be clear about "story" and consistent in how it is used.
- No need to do something completely different than what is done in other towns.
- More definitions could be gathered.
- The intention is to maintain the hamlet districts, limiting the building heights so that we have form related relationships between the structures in the hamlet.
- The 40' limit was to accommodate things such as steeples.
- This is a form characteristic and was the intention of the plan.
- Using the dictionary definition could result in multiple levels underground.
- This definition will apply across the town.
- Suggest clarifying by adding "in relation to the ground plane."
- In some instances, a building can look like 3 stories from one side and 4 stories from the other.

The board took a straw poll on use of the definition of story in the 2015 Uniform Fire Prevention Building Code. Yes – J Kiefer, C Anderson, T Hatfield, T Salerno No – M Hatch, D Weinstein, J Wilson

Planning board members need time to review material. D Weinstein asked if there something else he can do that would make it more understandable. J Wilson said questions can be asked via email, but taking action must be avoided. J Skaley suggested questions be submitted to the full board and those questions could be handled in a systematic way at a meeting. Should there be a special meeting to deal only with this topic? After discussion, the board decided to hold a special meeting for this topic only on October 29, 2019, at 6:00 p.m. at the DPW building.

Short Term Rentals

T Salerno said there are two parts to this: short-term rentals in general and the specific example of a property being used for this purpose on Mineah Road. There is the distinction of a property that is owner occupied and they are renting a room or auxiliary building or a situation where the owner does not live there and the property is used exclusively for short-term rental. According to the zoning law if a building is used only for short-term rental and is big enough for more than three people, it falls under the boarding house definition. Boarding houses are not permitted in most zones. It seems the property on Mineah Road is already in violation of current zoning.

Cayuga Heights and other municipalities have allowed short-term rentals, but with limitations. In some, when the owner is not present during rental, they are limited to 30 nights per year and the property has to be registered with the municipality. If the owner is present the limit is something like 45 nights per

year. The problem is what the impact of short-term rentals has on communities. It is hard to determine just how many people are doing this in the town.

Comments during discussion:

- Cayuga Heights has different rules for properties in closer proximity to Cornell.
- How does a trade of homes for vacation purposes fall in to this?
- You need to pass legislation that is enforceable and can be implemented.
- How to determine whether homeowners are in compliance or how many nights it is rented.
- Fines for violation would need to be large enough to make a difference.
- Generally laws and rules are enforced after a complaint.
- Does the town have resources to verify whether each house is doing short-term rental?
- We don't want to affect standard rental properties.
- There is an impact on water and septic.
- Septic is a health department issue.
- Should a water test be required?
- A permit process could trigger health department involvement.

J Kiefer asked that T Salerno and D Bussmann provide written recommendations based on their reading of other regulations and include definitions. D Bussmann said they could provide a bullet list of things that could be incorporated into regulations. M Hatch suggested that they incorporate flexibility and be broad in thinking about the future. Things are changing.

Planning Department Staffing Needs

R Burger presented a list of department activity for 2019 year to date (attached). The department consists of himself (Planning Director), two code enforcement officers and admin support. He presented numbers compiled by the Ithaca Voice of neighboring municipalities. Most complaints are resolved without having to do a real enforcement action. There is a history of notices of violations being turned over to the court and the court doesn't want to act unless is a pretty significant record and an attorney present (a significant expense to the town). They try to avoid getting to the point of having the court involved. He anticipates more instances of enforcement of conservation easements.

- Can the Town Board take some action to make conservation easements more enforceable?
- We need to use a better document for open space preservation.
- The Conservation Board has agreed to take on the stewardship tasks for conservation easements.
- A larger fee could be charged for conservation subdivision.
- There would need to be more revenue to cover expenses of enforcement.
- How much department time is spent on site plan review, special use permit review, subdivision reviews? *Some are a few hours, some are hundreds of hours.*
- A department activity comparison to previous years would be helpful.
- There is a contractors yard and spools of wire on Royal Road/Hanshaw Road that is not being addressed. Because of lack of staff? There was a letter written, but it has not been pursued.
- Is there a lack of legal resources to fight these issues?
- There a dozen or so problem sites and each gets a little attention as CEOs can budget the time.
- What is the impact of this on quality of life in the community?
- Would an increase in more staff time help cure the situation?

- It may be difficult to ask for funding for more staff when the Town Board has asked the Highway Department to reduce their budget substantially this year.
- If the town is promoting more economic development and more building, it puts more stress on the Planning Department and Code Enforcement.

RESOLUTION #25 (2019) – REQUEST THAT TOWN BOARD REVIEW PLANNING DEPARTMENT RESOURCES AND TAKE ACTION

RESOLVED, that the Town of Dryden Planning Board hereby requests that the Town Board consider:

- Revisiting and revising fees charged by the Planning Department;
- Establishing a legal reserve fund in the budget process to accumulate funds be used for enforcement of the town Zoning Law and prosecuting violators, and contribute to it annually; and
- Review staffing in the Planning Department to determine whether those resources are adequate to properly enforce the laws and codes they are charged with enforcing.

2nd M Hatch – all in favor

There being no further business, on motion made, seconded and unanimously carried, the meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Bambi L. Avery

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