

Planning Board

TOWN OF BRUNSWICK
336 Town Office Road
Troy, New York 12180

MINUTES OF THE PLANNING BOARD MEETING HELD MARCH 2, 2023

PRESENT were RUSSELL OSTER, CHAIRMAN, DONALD HENDERSON, J. EMIL KREIGER, LINDA STANCLIFFE, DAVID TARBOX, KEVIN MAINELLO and ANDREW PETERSEN.

ALSO PRESENT were CHARLES GOLDEN, Brunswick Building Department, and WAYNE BONESTEEL, P.E., Review Engineer to the Planning Board.

Chairman Oster reviewed the agenda for the meeting, as posted on the Town sign board and Town website.

The draft minutes of the February 16, 2023 regular meeting were reviewed. Member Stancliffe noted one correction: on page 4, line 11, the sentence beginning “Mr. Freitag reviewed,” appeared to be a run-on sentence. Attorney Gilchrist noted that the sentence was listing what Mr. Freitag reviewed in the project’s concept plan. Attorney Gilchrist then suggested the points that were listed in that sentence be separated by semicolons instead of commas. Chairman Oster made a motion to approve the minutes of the February 16, 2023 regular meeting subject to the noted change, which was seconded by Member Henderson. The motion was unanimously approved, and the minutes of the February 16, 2023 regular meeting were approved subject to the noted change.

The first item of business on the agenda was a waiver of subdivision application submitted by Stefan Rau for property located at 14 Ridge Road. Daniel Peeters, PLS, Land Surveyor at Capital District Land Surveying, was present for the applicant. Chairman Oster stated that there

had been a question at the last Planning Board meeting on February 16 as to the current number of lots on Ridge Road. Mr. Golden stated that according to the definition of “dead-end street or cul-de-sac” in the Town Subdivision Regulations, there are currently 16 lots on Ridge Road and Fox Hollow Road, both with single access to the Crossways. Chairman Oster noted that a maximum of 12 lots is allowed on a cul-de-sac road, which means that there are existing lots above that maximum, and the applicant would require a waiver from the Town Board in order to create an additional building lot. Mr. Golden also stated that if the lots along Fox Hollow Road, which connects to Ridge Road, are excluded, then there are 10 lots along Ridge Road. Mr. Golden then reiterated that starting from the Crossways off Pinewoods Avenue, there are 16 lots on Ridge Road and Fox Hollow Road, with only one access connecting to the Crossways. Attorney Gilchrist reviewed the definition of a “dead-end street or cul-de-sac” in the Town Subdivision Regulations, which state that the total number of lots is limited to 12 lots unless a Town Board waiver is granted. Mr. Golden stated that he would further investigate the matter, specifically reviewing if the Town Board had ever previously approved a waiver for any lots on Ridge Road. Chairman Oster stated that if the Building Department determines that there are in excess of 12 lots on this dead-end road system, then the applicant would need to apply to the Town Board for a waiver, and the Planning Board would need to make a recommendation to the Town Board on the matter. Attorney Gilchrist stated that the Planning Board should wait until the complete record is before the Planning Board before discussing a possible recommendation to the Town Board. Member Stancliffe stated that another question had been raised at the February 16 meeting as to how much of Ridge Road is paved and cleared of snow by the Town. The Planning Board discussed Ridge Road and determined that the Town Highway Department maintains Ridge Road to a cul-de-sac/turnaround as shown on the site map as marked by the Town Highway Department. The Planning Board also

confirmed that each resulting lot proposed by the applicant would have frontage on Ridge Road. Mr. Golden stated that another issue raised at the February 16 meeting was an encroachment issue, specifically that the existing driveway to the home on the applicant's property is located on a small part of the adjacent lot. Mr. Peeters stated that only about five feet of the driveway is encroaching on the adjacent lot and that the owner of the adjacent lot has never raised an issue over the encroachment before. Chairman Oster asked if the encroaching section of the driveway could be moved if the Planning Board required it. Mr. Peeters stated that the driveway is located on a slope, and that while it would be difficult because of that, moving the encroaching section of the driveway would technically be possible. Attorney Gilchrist stated that this encroachment issue differed from another encroachment issue recently before the Planning Board in that this encroachment issue has existed for many years and the proposed subdivision would not change any lot line in the area of the encroachment, and that the existing encroachment would not impact the proposed new lot and does not impact the current waiver of subdivision application. Mr. Peeters asked if conditional approval would be possible at this point. Attorney Gilchrist stated that the full record should be before the Planning Board before any action is taken, as the subdivision would be illegal if it exceeded the maximum number of lots on a dead-end road. Mr. Golden stated that he would research the prior lot approvals along Ridge Road and Fox Hollow Road as part of his determination on the total lot count along the cul-de-sac/dead-end road. This matter is placed on the March 16, 2023 agenda for further deliberation.

The second item of business on the agenda was a waiver of subdivision application submitted by Henry Reiser for property located at 10 Plante Lane. Henry Reiser was present to review the application. Chairman Oster stated that there had been a question at the last Planning Board meeting on February 16 as to whether the application should be treated as a waiver or as an

amendment to the prior subdivision plat. Mr. Reiser stated that the previous subdivision was approved in 2016, and that this current application was more in the nature of a lot line adjustment, reducing Lot 12 on the prior major subdivision plan from 71 acres to 17 acres, with the remainder land being merged into the surrounding acreage, which would increase from 251 acres to 305 acres. Chairman Oster asked if the 305-acre remainder parcel would have access to a road. Mr. Reiser confirmed that the remainder land would have access to a road, continuing to use the same road access it currently does, and pointed out the road access on the site map. The Planning Board then discussed the form of application and whether a full revised major subdivision plat with all lots must be shown. Mr. Bonesteel stated that all 12 lots of the subdivision should be shown. Mr. Reiser stated that the project surveyor was planning on preparing a plat showing all 12 lots. Attorney Gilchrist noted that the action would be amending an existing plat, not replacing it. Chairman Oster asked if the Planning Board could take action at the current meeting. Attorney Gilchrist stated that the Planning Board should have all information and materials submitted to the Board before taking action, but that the Planning Board could discuss the application at this current meeting in the event there were any other issues or concerns. Mr. Bonesteel asked if a new application needed to be submitted due to the changes. Mr. Golden stated that the current application could be processed with minor edits. Mr. Bonesteel stated that he would work with the applicant's surveyor on the plat preparation and that an updated application would be filed. This matter is placed on the March 16, 2023 agenda for further deliberation.

The Planning Board discussed two items of new business.

The first item of new business was a minor subdivision application submitted by Anthony Grab for property located along Lockrow Road. Anthony Grab was present to review the application. Chairman Oster asked why the application was a minor subdivision and not a waiver

of subdivision. Mr. Golden stated that there had been a previous waiver of subdivision on the property four years ago. Member Stancliffe and Member Tarbox stated that they were related to the applicant, and Member Kreiger stated that he was an adjoining landowner, and all three asked if they needed to recuse themselves. Attorney Gilchrist stated that there was no legal requirement for any of them to be recused, but stated that they could recuse themselves if they determined that they could not objectively review the application. Members Stancliffe, Tarbox, and Kreiger stated they could and would objectively review the application. Mr. Grab stated that he was seeking to create one new 11-acre lot. Chairman Oster asked if he planned to build a structure on the new lot. Mr. Grab confirmed that he planned to build a house on the new lot. Attorney Gilchrist noted that the subdivision constitutes a nonreality subdivision, so no approvals from the Rensselaer County Health Department would be necessary at this time. Mr. Bonesteel asked about the topography of the parcel, and Mr. Grab described the topography. Mr. Bonesteel stated that the topography must be added to the plat, as well as sight distances from the driveway to the road. Chairman Oster asked if a public hearing could be scheduled. Attorney Gilchrist stated that since additional information has been requested by Mr. Bonesteel, the application is not complete and a public hearing should not be scheduled. Attorney Gilchrist also stated that if the additional information was submitted by the next meeting, then a public hearing could be scheduled for the first Planning Board meeting in April. Member Tarbox stated that the Agricultural Data Statement submitted with the application needed to be updated to add additional farms. This matter is placed on the March 16, 2023 agenda for further deliberation.

The second item of new business was an amendment to a site plan and special use permit submitted by Blue Sky Towers for property off Creek Road. Jared Lusk, Esq. and Jeff Twitty, Esq., from Nixon Peabody, LLP, were present for the applicant. Mr. Lusk stated that the applicant

previously went through an extensive review and approval process for a cell tower off Creek Road. Mr. Lusk stated that AT&T is seeking to add a co-location to the tower that would extend the height of the tower from 85 feet to 105 feet, and that the full application had been submitted to the town on February 28, 2023. Mr. Lusk briefly reviewed Tab I of the application, which showed photo simulations of the existing cell tower and the proposed extension. Mr. Lusk then noted that this application constitutes an “eligible facilities request” under Section 6409(a) of the Spectrum Act of 2012, a federal law, which allows for an existing cell tower to obtain a 20-foot height extension within 60 days of submitting an application as long as all qualifications are met. Mr. Bonesteel asked if the 60-day extension could be extended further if the Planning Board requires more information. Mr. Lusk confirmed that the 60-day period could be extended, but that the Planning Board can only ask for information necessary to determine if the application meets the requirements for an eligible facility, according to the federal law. Mr. Lusk also stated that he understood the extensive review and approval process the cell tower previously went through and that the applicant is willing to work with the Town, but that the Town must be mindful of the federal law requirements. Chairman Oster asked when the federal law Mr. Lusk cited was passed. Mr. Lusk stated that the federal law was passed in 2012. Chairman Oster asked why the applicant did not bring up this law and a requirement for an additional 20 feet of height when the application was first before the Planning Board a few years ago. Mr. Lusk stated that he did not represent the applicant during the initial review process, so he could not speak to that. Chairman Oster stated that had the Planning Board known an additional 20 feet of height was going to be sought, the review process likely would have gone differently, such as where the tower could go and how tall the tower could be. Chairman Oster then briefly reviewed the initial review process, including the extensive technical review of the tower and site, including drone footage and balloon testing to

observe potential maximum heights of the tower. Chairman Oster also stated that he recently drove by the cell tower and noted that it looks good now at a height of 85 feet, and was not sure if it would still look good at 105 feet, or if it would stick out from the surrounding trees. Member Tarbox asked if the applicant could only apply for a 20-foot height extension once. Mr. Lusk confirmed that under the federal law, only one height extension can be automatically approved if the requirements are met. Mr. Lusk also discussed the federal law requirements, which provide that the municipality must approve the application as long as it qualifies as an eligible facilities request for modification. Member Mainello asked why the applicant was even applying to the Planning Board for approval of the height extension if the request must be approved under federal law. Attorney Gilchrist stated that the federal law requires applicants to apply for and obtain local approval for the extension, and confirmed that if the application meets all requirements for an eligible facility, then the local Planning Board must approve the extension. Member Stancliffe asked if the additional 20 feet of height would cause structural problems for the cell tower, specifically at the base. Mr. Lusk stated that there would be no structural issues as the cell tower was constructed to allow for an additional 20 feet of height in the future, and that this information was included with the structural report submitted with the application. Member Stancliffe asked about the visual impact of the cell tower, specifically in terms of tapering. Mr. Lusk stated that the visual impact is addressed in the application and that what the applicant is requesting complies with the federal law. Chairman Oster asked when the 60-day period starts. Mr. Lusk stated that the 60-day period began on February 28, as that was when the application was received and stamped by the Building Department. Chairman Oster asked if a public hearing was required, and Attorney Gilchrist confirmed that it was. Attorney Gilchrist raised an issue in regards to SEQRA, as the SEQRA review had been done for an 85-foot-tall tower, and stated that he would review the issue

with Mr. Bonesteel. The Planning Board then discussed the application requirements and applicable timeframes. This matter is placed on the March 16, 2023 agenda for further deliberation.

The index for the March 2, 2023 regular meeting is as follows:

1. Rau – waiver of subdivision (March 16, 2023).
2. Reiser – waiver of subdivision (March 16, 2023).
3. Grab – minor subdivision (March 16, 2023).
4. Blue Sky Towers – amendment to site plan and special use permit (March 16, 2023).

The proposed agenda for the March 16, 2023 regular meeting is currently as follows:

1. Rau – waiver of subdivision.
2. Reiser – waiver of subdivision.
3. Grab – minor subdivision.
4. Blue Sky Towers – amendment to site plan and special use permit.