

# Town of New Scotland Planning Board Minutes

**January 5, 2016**

Charles Voss, *Chairman*

*Planning Board Members:*

Jo Ann Davies, Laura Ten Eyck, Thomas Hart, Dan Leinun

Justin Perry (Alternate)

Lori Saba, *Planning Board Secretary*, Jeremy Cramer, *Building Inspector*,

Jeffrey Baker, *Planning Board Attorney*, Dave Hansen, *Town Engineer (Stantec Engineering)*

*Absent:* Laura Ten Eyck

**PLEASE NOTE:** All developers, consultants and members of the public wishing to address the Board during the meeting must sign in on the “Sign In Sheet” located on the back table.

**Public hearings: 7:00 pm:**

- 1) **Continuation: Special Use Permit Application # 574:** Application submitted by Cynthia Elliot on behalf of Triple S Farm. They are recreating the Christmas tree farm formally known as Scotch Hill Acres and are requesting a special use permit to allow the tree farm pavilion on site, which will sell wreaths, trees, roping and boughs during the winter season, to be utilized as a outdoor banquet facility for gatherings during the off season. The proposed site is owned by Cynthia Elliot, is located in the RA zoning district at 20 Brownrigg Road, and is identified as New Scotland tax parcel id # 107.-1-7.1. This application is for a permitted use as per Article II, Section 190-12 (D)(17) of the Town of New Scotland’s Zoning Law.

Ms. Elliot explained to the Board that she would like to have a seasonal Christmas tree farm business from October to December. Also is interested in running an event/banquet facility on her property during the off season from the tree farm business, Mid-April to mid-October. These events would be limited to 15 per year in the season. These events will not run past midnight. She submitted to the Board additional information tonight. The site plan has a couple of changes. Albany County had a meeting and suggested these changes. Albany County approved with the following recommendations:

- To confirm and talk over with the highway superintendent Mr. Guyer the status of Brownrigg Road whether or not the highway or the county wanted to change or do anything skirting at the intersection of 308.
- Also would like Ms. Elliot to talk to the Onesquethaw Fire Department to ensure that I was able to be able to bring people in and out with the fire truck.
- There are conditions in a narrative that we have done and placed on the site plan.

Ms. Elliot submitted three letters; first letter from herself, which states when she had met Mr. Salisbury at the fire department, Mr. Salisbury had no difficulty with the ingress and egress. Ambulance was able to get in and out as well. We discussed to having a dry hydrant, I agreed to do that, because I think it’s the right thing. Location of the hydrant will be on the south side of the big pond. Also, changed on the site plan is the two areas next to the driveway with the driveway reconstruction I have put topography lines on it. I have done 2-foot contours because we will be doing some berming in order to alleviate any thought that the next door neighbors across the street on Brownrigg might see any lights coming from cars exiting. The parking spaces are shown on the site plan. I can easily park 250 cars here, that is not the intent, because that gives you the impression that there is going to be many more cars than

what will actually be there. By looking at your Code 190-12(D)(17) --that is restaurants and taverns--which is what this is going under. If you look at 190-23 it will tell you that for in a restaurant you need one space for every three. If I have a maximum 200, which is what I have stated the maximum of attendees can be, that means I would need 67 parking spaces. I took away the additional parking spaces that were shown because they are not necessary, they are not applicable. I have now shown you 75 parking spaces with adequate turn around. That is what is different on the site plan. I have also added three additional solar light posts.

Ms. Elliot addressed two of the letters that were sent in:

- Mr. McCan's letter and Mr. VanAlstyne's letter, third paragraph, there are no approved business operating on either road, meaning 308 or Brownrigg Road. That is not actually factual. There has been a Christmas tree farm for 30 years. It then was defunct after my mother passed. I have a home occupation land surveying business there for 50 years. Mr. Whitbeck has had a food service/restaurant supply business for 20 years. Across the street from McCan we have a site development business.
- They also addressed a couple of other things such as traffic, which shows a 100 plus cars. I think I dealt with that. I said I can have parking for that, but realistically that is not the number of cars. If we look at the county, the county has indicated that 308 has no trouble with the traffic. It is under the capacity of what it could have. Additionally, Mr. Guyer (ToNS Highway Superintendent) and I have been out there we measured the driving surface there is 18 to 19 feet pressure run driver surface on Brownrigg, we would be using 500-feet coming up to my driveway. Mr. Guyer indicated that it is a low usage rural road and as per the code for that it would be designed and able to accommodate 400 trips per day. Mr. Guyer indicated that no additional work will be needed on the road.
- Excessive lighting – I would like to show on the aerial here that the lighting will not be an issue. There has been trees and brush removed so the VanAlstyne's may see some lights, because of tree removal and no leaves on the trees at this time. During the event season there will be more brush and more leaves on the trees which will conceal the lights on the property. I have addressed this issue, which shows on the site plan, it will be completed bermed.
- There has been some talk of the intended use of this permit to be attached to the property deed. I know that special use permits run with the land; 190-47 (c) that says that will run with the land. I will always be here to monitor this. I can say as a condition that those items will never subdivide. That doesn't mean my 60-acre piece won't subdivide, but certainly I will not separate these two items. Another condition, we have put this under restaurant and tavern and I do not want any of the neighbors to feel that we are now going to have a full-time restaurant and a full-time tavern. That is not it. It needs to fit in, this is a banquet facility. I don't know if anyone wants to come here, but they may, and I don't want it to be full time, so it could be conditioned that it would not exceed what is proposed.
- I am giving you a proposed contract that will give some conditions. This contract will adhere to some conditions regarding; alcohol, catering, out by midnight, no music past 11 p.m., to be able to adhere to the 2006 noise ordinance, so by having a contract with

a security deposit you certainly have a sit down with somebody to say what it is they are planning to do.

Mr. Voss opened up the meeting to the public:

- Mr. Peter Ferrill, lives next door: no objections. Never heard noise from before. I am in favor of this business.
- Mr. Bill Gregory, 270 Waldenmeir Rd: opposes this variance application; concerned with traffic and drunk driving; does not fit the definition of residential
- Ms. Patricia VanAlstyne, 191 Brownrigg Rd: we did not have trees taken down, we did remove brush and we are one of the closer neighbors. Opposes application.
- Mr. Greg Blanchard, 1243 Delaware Turnpike: I live behind Cindy. Concerned with the noise level and the traffic with drunk people at these events. Noise at 120 – 140 decibels is like a jet engine 100’ away. Wind direction and air density come into play. Why is it for 7 days a week? Sunset Park was similar and had many issues with noise and drunk drivers. Has some concerns and is not in favor of this application.
- Mr. Tony Tory, Brownrigg Road: Immediate neighbor, in favor of this application.
- Mr. Howard Amsler: Business owner in the community. In favor of this application.
- Ms. Katie Armani: Neighbor; in favor of this application; opposed to snowmobiles and ATV’s
- Mr. Don Haskel: neighbor; question if use continues if property is sold; in favor of this application.
- Mr. Tim Stanton, Onesquethaw Creek Rd., Feura Bush: supports small business, in favor of this application.
- Ms. Valarie Newell, 302 Unionville Feura Bush Rd.: neighbor; submitted a letter in favor of this application; in support of small businesses.
- Mr. McCann, neighbor, directly opposite Cindy’s property: opposes this application, concerns with traffic, impact on gravel road, no street lights, noise level, and the drinking at these events.
- Ms. Stephanie Hoffstedler, Brownrigg Road: addressed the noise level issue; noise level is being exaggerated, in favor of this application.
- Ms. Gabrielle Tori, neighbor: has been to a wedding at location and feels the music was not loud at all; she knows Cindy would not allow someone to leave drunk.
- Mr. Bob Cutie, New Baltimore: may be buying a home in the area (Whitbeck property), opposes this application, would not purchase property if approved
- Board addressed Wayne LaChapelle’s letter, 200 Unionville Feura Bush Rd.: opposing banquet facility, but is in favor of the tree farm, concerned with possible increased traffic, dust, DUI’s, crime
- Ms. Robinson, Koonz Road: wanted to clarify to the members of the audience that this is not a variance application; it is a special use permit. This is a permitted use in this area with conditions.
- Board concerned with where the Band will be set up. Ms. Elliott showed the Board on the site plan that the band will be set up in an enclosed area in the pavilion.

- Ms. Elliott response to some comments: the pavilion is 1700-feet from Whitbeck's house, it is enclosed; the Blanchard property is approximately 3400 feet away; there will be directional speakers; an umbrella policy will be in place along with an event policy; it is secluded and personal
- Mr. Jim Faragone, 1385 Indian Fields Road: concerned with the traffic.
- Mr. Joseph Battalato, Heldeberg Ridge Runners: regarding snowmobiles the club uses trails that are maintained by the club and sleds must have muffler
- Ms. Barbara Tori, neighbor: questioned issue with snowmobiles, it is private property and the snowmobilers should not be on private property.
- Mr. Perry had a question regarding the porta-potti, and where they will be located. Ms. Elliott showed him on the site plan where they will be located. There is a shed that is used as a unisex bathroom on the property. It is very nice. It is not handicapped accessible, but we do have a bathroom on the first floor of the house that can be used by those with a wheelchair. If there are more than 75 attendees we will utilize Royal Flush (private portable contained bathroom)

Ms. Davies questioned about the cars leaving the event will the lights disturb any of the houses. Ms. Elliott stated no there will be a berm so that will eliminate that issue.

Mr. Voss stated that the Board still needs to review the Albany County determination. The Board asked the applicant for more information on the following issues regarding this application:

- Do a sound study. Not a full blown study, but a generalized overview of the sound coming off the property.
- Tie the pavilion to every property line and show that on the site plan.
- One event per weekend.
- Traffic study. Our town engineer will look into the traffic.
- What will be the maximum band volume
- Need to verify the bathroom in the home meets health requirements as handicap accessible

Mr. Hart had two concerns regarding the noise analysis. Please look at that you aren't basically doing the same sort of outdoor arrangement that they have at several different times of the year, so I'm just giving you that as a measure. I doubt you are coming anywhere near the noise of that sort of band that is played at the firehouse on July 4<sup>th</sup> or the harvest ball. What is your maximum band volume might be? That would be good to know. You stated that you are looking at a three hour contract in terms of music. The second issue is lights from your driveway going across your street, even putting berms in there you still have a direct area. Please think about other ways of blocking that as you make a turn onto the roadway.

Ms. Elliott explained that there are 27 large trees between the chain linked fence and the edge of Brownrigg Road from my driveway to the top of the hill, they are in 6 inches to 12 inches there are

no evergreens, but there are large hard woods that are between those two items. Does that help you a little bit?

Mr. Hart, okay, thank you!

Mr. Voss gave Mr. Baker the draft contract for his review.

Mr. Voss moved to keep the public hearing open until we get the results of the additional information that the Board is asking from the applicant. Mr. Hart seconded the motion; all in favor; motion so carried.

**2) Site plan Application # 110:** Application submitted by Michael Tuzzolo to request a site plan approval to allow for a section of one of his barns to be used as a sales office for auto parts that are currently on site as an expansion of existing uses currently allowed by Use Variance # 228. The proposed site is owned by Michael Tuzzolo, is located in the RA zone at 92 Martin Road, and is identified as New Scotland Tax I.D. # 71.-2-24. This application is for an expansion of a permitted use as per Article III, Section 190-30 (C)(2)(d) of the Town of New Scotland's Zoning Law.

Mr. Tuzzolo explained that he would like to clean up his property and sell parts and antiques that he has had for years in his barns. He would like to display some in a barn and also is selling these items over the internet.

Mr. Voss asked if they will be bringing in new items.

Mr. Tuzzolo stated no new inventory, just what we have on the property. Hours of operation would be last week of March to the last week of October, Monday – Saturday 9:00 a.m. – 5:00 p.m. It would be seasonal.

Ms. Davies had concerns with the large equipment when you enter the driveway.

Mr. Tuzzolo – moved the equipment behind the fence, gave pictures to the Board.

The Board has concerns regarding:

- How to monitor your business to not bring any new items onto this site for re -sale.
- Enforcing you are only able to sell what you have on the property currently.

Mr. Cramer reviewed with the Board what the original use variance for this property allowed:

- Trucking
- Excavating
- Auto wrecking
- Parts storage; vehicle equipment; maintenance area for the equipment
- Sales office is for the trucking/excavating business

Mr. Voss opened up the public hearing.

Mr. Justin Corcoran, representing his parents who are neighbors to this property: opposes this application, concerned with the fill that is being dumped on the property. There is now an antique business on the property existing, which I do not see approval for, it is not permitted

from previous approvals; used auto sales also not listed as permitted in the 1998 application; retail use is not proper.

Mr. John Orsini, 122 Martin Road: in favor of him cleaning up his property. Is concerned with the fill that is being dumped on the property. The fill is not clean. What is being proposed will affect property values.

Mr. Tuzzolo mentioned that they do not know who is dumping the fill. They are also trying to figure out who is doing the dumping.

Mr. Voss moved to keep the public hearing open. Also, refer this application to the ZBA to determine the scope of the existing use variance and whether a modification of the use variance is required to undertake the retail sale that is being proposed. Ms. Davies seconded the motion; all in favor; motion so carried.

- 3) Continuation: Major Subdivision Application # 573:** Application submitted by Frank Burnett to divide his land into three parcels. The parcel identified as tax id # 84.-2-55.20 consists of 11.8+/- acres and is located within the MDR Zoning District at 22 Toby Lane. The scope of this subdivision is defined in Article II, section 164-6 and is subject to the major subdivision review procedures as described and made pursuant to Article III, Section 164-19 of the subdivision law.

Mr. Michael Burnett, representing his mother, submitted a map. My mother sits in the back of the parcel. We would like to have two proposed lots which will front on Mason Lane.

Mr. Hansen, explained that Mr. Dempf (Stantec) was concerned with the property that was dedicated from the parcel across the street. After reviewing he has no longer any concern. The right of way has been dedicated. That issue has been resolved. There may be a water issue, but there are no other issues as of now. We sent a report to Bethlehem request water that is needed for certain properties in the town and these two taps are on that request to Bethlehem.

Mr. Voss opened up the meeting to the public.

Ms. Joanne Criscone, 48 Mason Lane: opposes sub-division, there are drainage issues on Mason Lane; opposes loss of view from the rear of her home; will negatively affect her property value.

Mr. Voss said they would look into the drainage issue.

Mr. Stanton, Onesquethaw Creek Rd: landowners should be able to do what they want with their land.

Albany County recommendations:

- Modify local approval to include review by Albany County Department of Health for water supply, waste water discharge. That's typical we do that with every application.
- The owner of the subdivision should notify purchasers of the lots that they must prepare a SWPP for erosion and sediment control if construction will disturb more than an acre of land, which is also typical.

SEQRA determination:

- An unlisted action
- Mr. Voss is concerned about the drainage.
  - Need to get history from Mr. Dempf regarding Mason Lane.
  - The water will run off the two properties in a southerly direction.
  - These two lots will not impact Ms. Criscone's property.
- I do not see any negative impacts of these two proposed lots.

Mr. Voss moved to make a negative declaration for the purpose of SEQRA for this proposed three lot subdivision. Mr. Perry seconded the motion; all in favor; motion so carried.

Mr. Crisafulli, representing his father, Mason Lane, just want to make sure nobody is bank rolling this subdivision, we had nothing to do with this.

Mr. Voss closed the public hearing and Mr. Hart seconded the motion; all in favor; motion so carried.

Mr. Voss moved to approve the preliminary approval with the following conditions:

- Sewer and water approval from Bethlehem.
- On the final plat to show a building envelope for lot #1 that extends no farther than 235-foot contour line and for lot #2 no farther than the 237-foot contour line (the contour line closest to Mason Lane). The house can be placed anywhere within that limit of disturbance and and meets all the setbacks. This would be in compliance with setbacks. Both lots will have shorter driveways.
- Subdivision map has to label the parcels.
- Driveway permit from Mr. Guyer. He may require a culvert if necessary.

Ms. Davies seconded the motion; all in favor; motion so carried.

**Old Business/Discussion items:**

- 1) **Special Use Permit Application # 575:** Application submitted by Nixon Peabody on behalf of Cellco Partnership d/b/a Verizon Wireless for a use variance to allow for the construction of a 124 foot communications monopole and related facilities. The facilities requested include up to 12 antennas at 116 feet, a backup generator, and other related items on an equipment platform. The proposed site is owned by Robert and Andy Appleby, is located in the RH Zone at 20 Stovepipe Road, is identified as tax parcel #105.-2-16.1. This request is for a variance to Article II, Section 190-15 of the Town of New Scotland Zoning Law.

Mr. Baker recused himself for this application.

Mr. Barber is not in attendance for this application.

Ms. Sarah Coleman, representing Nixon Peabody, did not realize we were on the agenda.

Mr. Voss explained that we need to take care of the SEQRA determination:

This Board has conducted a careful review to determine whether the granting of Verizon Wireless' application for a 124-foot high telecommunications monopine, including 12 antennas at 116 feet, a backup generator, and related equipment at 20 Stovepipe Road would have a significant adverse impact upon the environment.

In rendering this determination, this Board makes the following findings of fact:

1. Under Section 6 of the Town's Wireless Telecommunications Facilities Siting Law ("Local Law"), this Board has jurisdiction over the issuance of a Special Use Permit which, under Local Law §8, is a requirement for a telecommunications facility.
2. The Zoning Board of Appeals is considering a request for an Area Variance because the monopine's height exceeds 45 feet the maximum height allowed for a new tower under Local Law §11 and a request for a Use Variance because the tower is proposed for a Rural Hamlet District and Local Law §9 only permits towers in the Residential Forestry District.
3. This Board has determined to treat the proposed action as a "Type 1 Action" and declared itself Lead Agency under a coordinated review with the Zoning Board of Appeals.
4. This Board has taken a "hard look" at the visual impacts of the proposed monopine. The monopine, which is designed to appear as pine tree, will be located in an actively farmed area with no vegetation disturbance. The final design will be determined after a structural analysis of the approved monopine. Under Local Law §12(C), this Board will approve the final appearance, including the density of branches, to ensure that monopine's visual impact is mitigated to the maximum extent possible. The site plan also includes the planting of evergreen trees around the facility.
5. The Application includes a visual impact assessment SEQRA form and visual impact of the monopine from various locations. These assessments were useful in determining the monopine's potential "Zone of Visibility Map" required by Local Law §8(L).
6. Verizon also conducted a publically notice balloon test as required under Local Law §8(Y). The balloon test consisted of floating balloons at the proposed monopine height and additional

balloons to locate the site. Photographs were taken from key locations. This collective record shows that the monopine will be partially visible at certain locations and that the pine tree designs blends well with the surrounding environment.

7. The Federal Telecommunications Act expressly preempts state and local government regulation of the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions. FCC regulations categorically exclude environmental processing of facilities that meet exposure guidelines. Verizon's proposed facility falls within the exposure guidelines which preclude this Board's review of this issue.

8. Based upon this collective record, this Board declares:

(A) Parts 2 & 3 of the Full EAF have been reviewed and determined that there are no moderate or large impacts.

(B) The proposed action will not have a potential significant adverse environment impact.

(C) A Negative Declaration under SEORA should issue.

(D) Pursuant to Section 18 of the Town's Telecommunications Facilities Siting Law, a public hearing on the application for a Special Use Permit is scheduled for February 2, 2016.

Mr. Hart seconded the motion; all in favor; motion so carried.

### **Discussion/Action Items**

- 1) Minutes for December 1, 2015: Mr. Hart moved to approve the December 1, 2015 minutes with corrections and Ms. Davies seconded the motion; all in favor; motion so carried; Mr. Leinun abstained.
- 2) Mr. Hart has some concerns with lighting:
  - a. Sabre Technology (New Scotland Road) lights need to be looked at.
  - b. The medical office building on Route 85 seems to have too many light poles and the lighting needs to be reviewed.  
Need for sunset provision on some of the items we are approving, or have terms on permits rather than having them open ended.
- 3) Minor Subdivisions for the month of December 2015:
  - a. Two lot subdivision that required variances on Orchard Hill, both lots were bought by the same person and merged together.
  - b. Olsen did a two lot subdivision. His broke off a new lot that is where his mulch bins were and a 140-foot from the line of Stone Creek all back to the pond. It's about a 4-acre parcel.
  - c. Turner on Indian Fields Road went from three lots to two lots.

d. Hooses on Onesquethaw Creek did a two lot merger.

3) Schedule regular 2016 meeting dates: 2/2, 3/1, 4/5, 5/3, 6/7, 7/5, 8/2, 9/6, 10/4, 11/1, and 12/6.

Anything else that may come before the board -Open Discussion (2-minute limit per person)

Adjournment: At 11:10 p.m. Mr. Voss moved to adjourn and Ms. Davies seconded the motion; all in favor; motion so carried.

Respectfully submitted,

Lori Saba