

# Town of New Scotland Planning Board

## Minutes

January 2, 2018

Charles Voss, *Chairman*

*Planning Board Members:*

Amy Schallop, Thomas Hart, Peter Richards, Christine Galvin

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

Crystal Peck, *Planning Board Attorney*, Mark Dempf, *Town Engineer (Stantec Engineering)*

Alternate: Robert Davies

### Public Hearings:

- 1) **Modification of Subdivision #447:** Application submitted by Charles Carrow on behalf of Stone Creek Estates of NS, LLC requesting relief from condition item #5 & #12 of the Stone Creek Estates Restrictive Covenants approved by the Planning Board during the approval of the "Stone Creek Estates" subdivision, which requires that each lot shall not have an any fence/wall/enclosure on any lot and that no animal restraint devices are allowed on the exterior of the dwelling on the lots. The applicant is seeking relief for the covenants listed above for one lot located at 18 Stone Creek Ct. to allow for a fence to be constructed along the side of the house within the Front yard setback along Pebble Ct. to allow for an enclosed exercise area for a service dog.

Mr. Voss asked Mr. Cramer to give the Board an update.

Mr. Cramer, we received the site plan that was requested identifying the location of the swale within the time allotted to schedule the public hearing. We just received, tonight, a letter from the certified trainer for the dog and a few photos identifying the way the area looks right now. At the last meeting the site plan was the important one, to have it updated, to show where the swale was. We had asked for the applicant to reconsider the placement of the fence, so that it wasn't necessarily in the corner of front yard of two streets within that subdivision. My understanding is the applicant was pretty set on where they had proposed it.

Mr. Voss asked Ms. Peck to bring the Board up to speed on the deed data basically asserting that the conveyance had been lifted.

Ms. Peck, sure so these were actually not just part of the subdivision approval, but they were also deed restrictions, which meant that they were filed at the County Clerk's Office and the Board would not have jurisdiction to lift those deed restrictions. The Board asked the applicant to show that they are going through the process of lifting the deed restrictions there is a provision in there that I think it allows for 2/3 of the property owners to sign off to have them lifted. We received most of the signed agreements to release the deed restrictions, I do not know yet if anything has been filed with the County Clerk's Office or if the deed restriction actually have been lifted as of yet. I think the applicant will probably be able to advise the Board tonight, because there was a question as to whether the Board wanted to proceed while those deed restrictions were still on file or whether they wanted to see proof that the deed restrictions had been lifted before moving forward and modifying the subdivision.

Mr. Voss, any additional questions?

Mr. Hart, I was also aware of the discussion as to why the fence was desired to be on the side of the house and that was to allow entry for the dog to go into the garage so that when the dog is muddy and wet it would not be directly entering into the house. I just offered that for one small additional piece of information.

Mr. Zilgme, attorney representing applicant, I apologize that I was not here exactly at 7:00 p.m. at the last meeting, but I had a previous commitment. A couple of things, the site plan there was a concern about, as I understood it, when it came in that evening a little later it was related to me that you wanted the site plan, we produced that. There is also question as part of that as to whether the perspective property owner, Karen Sacooly, if she would want deck, and the answer to that is no. There will be no deck on the back of the house. Ms. Sachooly is here tonight with her sister and her attorney that is representing her in this purchase. As to why she wanted the side door as opposed to maybe the back door, which had been suggested, and it's primarily because of the fact when the dog comes in and it's muddy, you have a brand new house that you are paying a lot of money for, you want the dog to come in through the side door as opposed to coming in the back door. Realistically she would like the dog to come in through the garage so she has the opportunity to properly clean the dog before letting him into a brand new house. The restrictive covenant, that is a chicken and egg routine, as we knock on the doors for the neighbors we were essentially telling the neighbors that unless the Planning Board approves this we are not going to file the restrictive covenant, because we don't have the Planning Board approval. At this point we have 21 signatures, we have other people that have indicated that they will sign and quite honestly with the holidays, every door that we knocked on and asked for a signature the individual has signed. We have 21 lot owners that have said they are fine with the restrictive covenant. The restrictive covenant basically is being lifted specifically for Mrs. Sacooly, so this is not a circumstance where this fence gets to remain if she sells the property, if she sells the property, both the neighbors who would all get a copy of this restrictive covenant, if in fact we are going to get to a point where we will record it, they all know that if she sells it they are going to be asked to sign off again if the next person wants to keep the fence, in fact they would come back to the Planning Board for approval. That is specifically stated in the release of restrictive covenant so it be in the chain of title, anybody purchasing the property from Carolyn would see that in the chain of title and know that is an issue if they thought the fence could remain. Just for the new members this is an aluminum fence, it is black, and it blends in to the landscape. There is a fence all the way around the property that was required by the Board when this subdivision was approved. It is a fairly large fence maybe 8 feet of wood construction so it really sticks in your eye. This is going to be no more than 4 or 4 ½ feet tall, black aluminum and the key to the restrictive covenant release can't swap that out, it has to be that type of fence. Also, the photographs were provided by Carolyn's sister this evening, to give you some context as to slopes, the water will not get impeded on the drainage because these are aluminum stacks that are posts that go down and the rest of the fence does not touch the ground. There was also a question as to the dog making a mess how it will be cleaned up, when you have a specially trained dog, especially trained dog can be told where to go in the yard and

that's where he is going to go within that fenced area and Carolyn actually takes care of that issue afterwards depositing the remains and we have an individual who will help with landscaping and things that will also make sure that is not an issue. It is a bit of an overview. I will sit down and await the questions.

Mr. Voss opened up the meeting to the public.

Ms. Carolyn Sikule, I am going to purchase 18 Stone Creek Court and I do have a picture of the fence that is what it would look like. There is some vegetation. I would appreciate being able to put the dog out the garage door, that way I would be able open the garage door, right there is a little step down, if I needed to go out and open a gate or whatever to put her out into another fenced in area that would be a challenge for me especially with all the ice and the darkness at night, that would be a problem. I would prefer if I could just open the side door in the garage, have the area fenced and let Cozy out and just bring her back in, so that I would not have to physically go outside to let her out. She is really good, she just goes out, she does her business and comes back in. I have been training her to go in one particular space.

Mr. Hart, you don't have any need for the dog to towards the back of the house to be able to have access through your back doors at all?

Ms. Carolyn Sikule, I don't know, I want to leave that as, right now I've been focusing on the inside of the house and I've only been to the site once where we walked the outside of it to see. I don't know at this point. The most important thing is to be able to put her out the garage door.

Mr. Hart, once you have that as fenced in area outside of the garage there will probably have to be a gate on that fence too, so you can have an egress outside of the fenced in area.

Ms. Carolyn Sikule, I haven't decided where that will be right now, again I'm focusing on the inside right now. Again, the plan was to put some bushes on the outside of the fence to camouflage the fence, not tall just about my height or less.

Mr. Hart, I think that was one of the major concerns is because it is on the side of the house there that neighbors across the way would have the direct visual impact from that and so that's one thing we would want to listen to from the neighbors.

Ms. Carolyn Scahooly, we did talk to one of the neighbors across the street, she did not object to it, we told her there would be fence there. It was fine with her.

Mr. Voss, the location of the proposed fence it's not directly along the property line, its 4-feet inside the property line?

Mr. Cramer, yes.

Mr. Voss, so that wouldn't afford her enough space to put some landscaping along the fence.

Mr. Cramer, the swale on the back of the property up the corner the drainage from the side of the house would go to catch basins out on Pebble Court. You are about 4-feet from the property line and from the right of way. In the front corner you may get into sight distance, possible impacts, because you are right on that corner, but along the main area it's fine.

Mr. Voss, screening the fence to a certain degree would be helpful. Have you purchased the property yet?

Ms. Carolyn Sikule, no, I have a contract. I have not closed yet.

Ms. Galvin, I was just wondering if you have given any consideration to installing an invisible fence.

Ms. Sikule, earlier on that was asked and I asked my trainer and she said, oh, no, absolutely not. She said those are very dangerous for a service or guide dog.

Ms. Galvin, why is that?

Ms. Sikule, She said especially there if there were any bunnies there or whatever the natural instinct is for Cozy to go after them. She would totally recommend to not do that. She would go after them and then it would shock her and she is not use to that. She is basically supposed to be focused on me. She said please do not do that.

Ms. Kathryn Sikule, one of the things I've noticed in the neighborhood is when you drive around the side of the houses that are showing, where Carolyn's is, there is lots of utility, it's not very pretty, so I just wanted to point that out. By actually putting a fence and some small landscaping I think it will actually enhance the neighborhood. One of the reasons she is moving here it's because it's all on one floor.

Ms. Roz Robinson, real estate attorney for Carolyn Scahooly, just so that you know the contract is actually contingent upon this change to the covenant restrictions because it is important for her to deal with the access through the garage with a fence. It is a chicken and an egg thing when you talk about the covenant restrictions there is no need to go through that filing process and the cost of that if she is not going to buy the property. They could change it, but if no one is ever going to need it. Also, I want to make the Board aware, I think you are much more familiar with this kind of thing, but the disability issues, the Federal Housing Act requires that modification are reasonable things you can do to accommodate and it doesn't even have to be

for a service dog. I know with the Disability Act they kind stress the service animal, but even a therapy dog or a assistance dog for work where it will be in someone home for them to act on a day to day basis and particularly with Carolyn's house, at one point it was discussed, to go out the rear, that is the dining room and it is hardwood floors, so on top of the difficulty for her and also with her site issues to be able to wipe the dog down. The legal perspective as a real estate attorney the purchase is really contingent on this, whether she chooses to go through with the contract if it doesn't happen would be her option, but she doesn't have to. I understand what you are saying you can't effectuate the covenant restrictions people bought with those in mind, it's in there deed. They run with the land. To change them if she is not going to buy would seem silly. I just wanted you to keep that in mind. I appreciate your time.

Ms. Angela Diamond, I live at 2 Pebble Court, and I went around with Arnus because I know all of my neighbors to ask them to sign the petition and there wasn't any of the neighbors who were against the fence. I mean we are a senior community and especially after they saw pictures of what the fence would look like. They were concern if it were to be a solid fence you know they would have a problem with that, but this once is only 4-feet high and no one had an issue with it. I just wanted to say that on Carolyn's behalf.

Mr. Brian Gregor, 17 Stone Creek Court, I let my dog out the garage for the same reason about clean up. I'm not going to let her come in through the deck or anything else like this, not even the front door. We have towels to be able to clean her up. Dogs get messy, so I just would look at that being a natural course taking care of the animal especially in inclement weather to bring him in through the garage. That's it.

Mr. Willis Potts, 11 Pebble Court, I'm one of the neighbors who met with the attorney to sign agreeing with the petition. I would encourage to look favorably upon it as a citizen of Slingerlands and also as a future neighbor. I appreciate the time.

Mr. Voss moved to close the public hearing and Ms. Galvin seconded the motion; all in favor; motion so carried. Vote: 5-0

Discussion:

Mr. Voss, the support from the neighbors who came tonight was very helpful.

Ms. Galvin, I also think it is noteworthy that everyone has been put on notice and we have no negative responses.

Mr. Hart, I am also satisfied with the explanation why the fence needs to be where it is relative to the garage and also why a physical fence is needed as opposed to interfering with the dogs principal training purpose. You can't train a dog to respond to a fence and be response to the main owner.

Mr. Voss moved to approve subdivision application #447 with the following conditions:

- That the Town receive documentation of the deed restrictions and the proof of filing of those deed restrictions. Proof that filing of deed restriction also leads to covenants that are required within the deed restrictions. Documentation of the necessary signatures that are required (23 signatures).
- Landscaping should be at 30% coverage with some sort of evergreen species on Pebble Court side, and you are free to add landscaping on the front if you like or the rear at your discretion. Four season plantings would be acceptable. Vegetation should be on a raised bed it would prevent the runoff from going towards the catch basins. The vegetation will be in before the CO is issued.
- Building permit will be required for the fence and the requirement shall be satisfied before the permit is issued.

Mr. Hart seconded the motion; all in favor; motion so approved. Vote: 5-0

**Old Business:**

- 1) **Update: Major Subdivision Application # 624:** Application originally submitted by Frank Burnett as subdivision # 573 to divide his land into three parcels received preliminary plat approval January 5, 2016. The project approval's time frame had expired while working towards receiving water and sewer approvals in order to apply for final plat subdivision approval. The project was recently purchased by Maxim Real Estate LLC and they are looking to reapply for the original project and to include an extra lot. 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. Voss asked Mr. Cramer to give the Board an overview on this project.

Mr. Cramer explained that he received new subdivision plan and a new sewer district extension report. We are still waiting on the deed, that was requested at the last meeting we went over some of the items that we were going to need there are some things on the map that still need tweaking. At the same time I think the deed dealing with the easement on the private road is one of the major things we are still working on, because that will determine what lot three is available or not. We have not gotten that information.

Mr. Arico, as far as the deed and easement we do have a draft, it is in draft form explaining that the present easement that goes to existing 22 and 21 Toby Lane would be eliminated, I guess, and a new easement written in lot three. The maintenance of Toby Lane will be pretty much split 50/50 between 22 and 21, so each one would have a third of the cost overall between the three parties. It is a basic easement.

Mr. Voss, do we have the existing deed? There is some language in there that we had asked for last time.

Mr. Arico, the deed presently is just that they both have rights and access to that road, it is very basic.

Mr. Voss, we need a copy of that.

Ms. Peck, the one we have references, it doesn't actually have the easement in it, but it references the easement that was contained in the prior deed and that is what we need to see. The December 6, 1968 deed is what we need to see, because that actually contains the easement language in it. Have you gotten agreements with the other property owner Rowland about entering into the new easement?

Mr. Arico, no.

Mr. Voss, make sure that the prior deed doesn't mess up this plan. If that prior deed have any other restrictions in it that prevent you or prevent the site from broken up this way or access issue you are going to go back to the drawing board and redesign this whole subdivision again. I think it is to your benefit to have that research done.

Mr. Hart, how does this relate to the McNaughton easement which is the property across from Mason Road, you have an easement that extends through this property too, at least according to the tax maps.

Mr. Arico, as far as I know there is no connection to this property or Mason Lane as far as that easement goes.

Mr. Hart, it crosses Toby Lane, please check the tax maps, which is why you need that deed from 1968. You have multiple easements overlaying each other here. One goes to the McNaughton property, which is across the street on Mason Road, and then you have the Toby Lane separate deed and easement.

Mr. Voss, I think we will need the 1968 deed, and have your attorney research that. We need to see what that says. It is relative easy to get, your surveyor will have that information. Once we get that information we can review and meet again then schedule a public hearing.

Mr. Hart, the thing I'm concerned about and I need to find the section in the code that deals with this, but because of the way the subdivision is being articulated you are created flag lots out of this and there is specific language in our code that discourages flag lot creation. We will have to get back to you on that.

**New Business:**

- 1) Special Use Permit # 597:** Application submitted by Tom Popolizio to allow for an 8.4k Ground mounted solar PV system. The site contains approximately 1.2 acres, and is located within the RA Zone. The property is located at 2070 New Scotland Road and is identified as New Scotland tax parcel id # 72.-2-3. This application is made pursuant to Local Law V of 2017, Section 2, Part 1-6(A) of the Town Of New Scotland.

Ms. Costello, was representing Mr. Popolizio, this is a solar PV system. It is very low impact. The height is 12'1".

Ms. Galvin, I do not see your screening plan. The law requires a screening plan, so please have the applicant submit the screening plan.

Mr. Cramer, the applicant didn't feel it needed screening. The neighbor to the right is looking directly at the panels. Not sure if the neighbor to the left can really see it. We will have a public hearing and we will see what the neighbors say.

Board requested:

- Screening plan and/or relocation plan to accommodate screening for the property to the right of the applicant.
- Photographs of the area to show the current screening.
- A public hearing for this application will be scheduled for February 6, 2018.

**Discussion items:**

**1) Minutes** for 6/6/17, 7/11/17, 10/3/2017, 10/23/17: Mr. Voss moved to approve the revised minutes for 6/6/17, 10/3/17 and 10/23/17; Mr. Hart seconded the motion; Ms. Galvin in favor; Mr. Richards abstained and Ms. Schallop abstained from voting; motion approved. Vote: 3-0-2

Mr. Voss moved to approve the 7-11-17 minutes and Ms. Galvin seconded the motion; abstaining Mr. Hart, Mr. Richards and Ms. Schallop, motion approved. Vote 2-0-3

**2) Minor Subdivisions** for the month of December 2017

- Cillis property on Stove Pipe Road.

**3) Proposed Local law on New Scotland Mixed Use Hamlet Zoning District.**

Mr. Voss, I have two things that I would like to throw out for your consideration. On the zoning map we look at the back, it is exhibit A, my only comment would be, I know the Town Board kick this around, it would be to include Youmans Road parcel that are commercial now as R2 or RA, preferably RA, because that area is going over to residential anyways. Right now they are keeping it commercial. I think the only reason they do that was because the uncertainty of the Dave Moreau property. We know that is going to be residential.

Mr. Cramer, but that won't fit with the R2 area.

Mr. Voss, if it comes as a conservation subdivision.

Mr. Cramer, I think he was up to 23 or 24 lots on 40-acres you are still coming up short which would require a variance.

Mr. Voss, yes, but either way that whole area, I don't think should remain commercial.

Mr. Cramer, no, I agree with you.

Mr. Voss. Right now it is designated as commercial.

Mr. Hart, part of the discussion of that, that you have to be aware of is that now that's under site plan approval, under special use permit, which actually under the current zoning provides a greater level of review, let's say, than R2 would, because of the as of right approaches that



R2 would offer, so you have to balance that out. Not just in terms of where you think the parcel is going to go, but what level of control is appropriate, so I think you need to look at what the Special Use Permit is versus what the R2 zoning requirements are.

Mr. Voss, don't we want the as of right to simply remain residential versus any sort of commercial, because as of right now someone can come in and put a commercial outfit.

Ms. Peck, and do that as of right. I mean if that is what the Town Board is looking for.

Mr. Hart, that is because there was a plan that was submitted to us that we had some statements about already, so since that was in process under a special use permit that was the thinking process that goes on with that process.

Mr. Cramer, that was under the sketch plat major subdivision application which was approved, so the design of that project if they move forward has to stay consistent with as he is proposed unless the Board agrees to change.

Mr. Hart, they must of changed that, because that was a conceptual approval.

Ms. Peck, the only problem with that though is that if you get into a situation like you've got with Burnettes where it gets abandoned then you are right back to having parcels that are going to have As of Right commercial uses there.

Mr. Hart, that is the commentary that needs to go back to the Board rather than saying it, should just be R2, because it is going commercial. There are two different paths for protection, one that's currently under consideration and the one that is the nuclear option.

Mr. Cramer, even if you were to change it to RA it is still within the study area and is still going to require a cluster subdivision according to this law, which gives you your conservation subdivision. It doesn't allow for any flexibility other than that.

Mr. Voss, that's what I'm saying, we don't want anything else in there other than residential.

Mr. Hart, yes, so that is the commentary that goes back to the Town Board for their consideration.

Mr. Voss, the other thing was section 190-10-5045 maybe just clarification, its section S, section 190-10-S1B. It talks about above ground storm water management basins are to be located behind structures and landscaped appears as if part of the natural setting. The use bio-swale and rain gutters to manage storm water are encouraged, design of which shall be incorporated on the site. I might want to see that language tweaked a little bit too just give us a discretion residential applications of those facilities are great, they work fine, if there is a mechanism to preserve for long term maintenance. As of right now if you inquire a property, says a residential property owner to have a bio-swale you don't give the Town the discretion to enforce it.

Mr. Cramer, well, no you need a bio-swale or a rain garden you need to have somebody educated as to what they are to identify the plantings.

Mr. Voss, plus they would have to maintain that facility. Essential storm water management.

Mr. Cramer, they need to. Any one put on a residential lot just like any other storm water practice is put into an inventory and has annual inspections that need to be done.

Mr. Voss, there is going to be mechanisms to make sure it is done correctly. I think they are great. For commercial applications we have a commercial property that is on the hook, but for residential not so much.

Mr. Hart, we can put easement in on each of the facilities.

Ms. Galvin, I can attest to the fact that the comments from the Planning Board when it first review were all taken into consideration and changes were made as a result.

Mr. Voss, yeah, it is a great zoning, it will help out immensely and give us guidance. Anything else?

Ms. Peck, yes, there is one comment which I did mention to some of the Town Board members, but it did go there for review. It is on page 28 when it talks about the, this actually came up in reviewing a potential project that could be a couple of years down the road, but under J, at the bottom of page 28 when they are talking about J it has a mandatory provision for integration of design standards for improvements to and reuse of existing buildings and the only thing that causes me a little bit of concern here is that some of the things like providing more than a 25% transparent or translucent materials on each story, or relocating parking to the side of the rear of the principal building. Depending on the property and what is already is there may not be practical and as this is written the request for modifications to design standards only applies to the design standards of part F, so technically in order to be able to modify the requirements of J they will need a variance. I would just put some sort of provision in there that allows for similar modification requests that are in I to be applied to J as well.

Mr. Cramer, I would also, in my opinion, if you are looking for the change in the buildings drop it down from a change of use that triggers this to some sort of change of any structural modifications may require something along these lines. Well to take the old Big Box restaurant in to consideration we had a meeting not that long ago and if the new owners wanted to keep that residential, multi-family, he doesn't have to do anything. He just does away with the church part and leaves the residential and then you are left with a building that might not get changed for another 30 years. Stonewell Plaza there six or seven different uses on that piece of parcel, if one comes out and other one comes in and it's within those six you aren't getting any changes. Not that you couldn't change the layout of the parking more or less, but you are not getting facades changes, you are maybe getting some clean up on the outside, I would say anything that's any structural changes, or anything that requires.

Mr. Hart, I would send the comments to the Town Board saying that there needs to be a more sensitive trigger resulting in change in building to improve the buildings than what it is. Change in use is not sensitive enough to trigger what is required and what the public vision values are for altering the architecture of structures. You are absolutely right.

Ms. Galvin, I stood before the Planning Commission in the Village of Colonie and they require that the Planning Commissioner reviews every change of use of a commercial property.

Mr. Voss, Colonie does change of tendencies.

Mr. Cramer, yes, lots of people do.

Mr. Voss, sometimes they result in structural modifications to a building to conform with their design standards. Anything else?

**Adjournment:** At 8:45 p.m. Mr. Voss moved to adjourn and Mr. Hart seconded the motion; all in favor; motion so carried. Vote 5-0

**Respectfully submitted,**

**Lori Saba**