

Town of New Scotland Planning Board

Minutes

June 5, 2019

Planning Board Members:

Thomas Hart, Amy Schallop, Peter Richards, Christine Galvin, Robert Davies (Alt)
Lori Saba, *Planning Board Secretary*, Jeremy Cramer, *Building Inspector*,
Crystal Peck, *Planning Board Attorney*, Garrett Frueh, *Town Engineer (Stantec Engineering)*

Absent: Mr. Charles Voss, Chairman

- 1) Special Use Permit Application #608:** Application submitted Frank Desorbo for a Special Use Permit to allow for a parcel he owns to be used for “farming activity, personal.” The parcel is located within the RA district at 156 Maple Road, contains approximately 2.3 acres, and is identified as New Scotland tax parcel #73.-4-2. This application is Special Use of Article II, Section 190-12(D)(5) of the Town of New Scotland Zoning Law and local law #2 of 2016, Section 3e(3).

Mr. Desorbo explained to the Board how this evolved and how having pets have been in our family. It is regarding to having goats on 2.3 acres as pets. As growing up in Albany with two children we had dogs and we had cats. We grew up with pets when my kids were very young. As they gotten they have had dogs we went through two brothers of yellow labs. My wife is on her second horse she still rides and we board it up in Berne. We’ve had a family of being nice to pets. Sometimes when we lost our two labs within three months and if anyone has pets you know what that feels like. I share that with you because that’s what this is all about. It’s about my son having pets on this land, which are intended to only be pets. Never any expansion with other animals, which I’ve had extensive discussions with him. I haven’t realized that goats can be such nice pets, they are a pack animal. They are very friendly. I share that with you because between my children and my grandchildren have come to appreciate animals. We’ve never had any trouble I haven’t heard any complaints about the animals. We are just looking for a permit to having a peculiar farm animal as a pet. When you said farming activities we are city people. My son has lived there for about four years. There is a buffer of about 35 feet between our land and the back yards of other people. When I was here last month I heard more of a discussion about my son’s livelihood between how he uses the land. He is a blue collar worker. He cuts lawns, he snow blows snow, he does odd jobs, and he owns trucks. I wanted to hear about how the pets were bothering people and didn’t seem to be true that it affects their view shed, because I checked out their land. Some of the pine trees are still there. He did cut some down on his property. I know the view shed from Maple Avenue may not look good when you see trucks and piles of wood and what not. He is making an attempt to clean things up. He is working on a garage and other things. It doesn’t happen overnight. Why he has the goats I think his friendly nature, they are caged and they aren’t roaming unless he is there. I’m kind of impressed at how well they behave. He says it helps clean up the area, so I say to you that’s what it’s all about I haven’t heard anything and he hasn’t shared anything that the goats have done out of the ordinary. Maybe

you just don't like the look of them. I thought they were going to stay small, but they did get bigger. They are very friendly, so I make the pitch that this is all it is down the road he gets into some other kind of pet I'm going to tell him to get the more domestic kind. He does have dogs and they are all fenced in and caged in. I thank you and I hope you can understand the position I'm in. He has two goats.

Mr. Hart opened up the meeting to the public.

Mr. Colburn, Douglas Lane, I believe all of our neighbors have been here and given statements. This has been the fourth or fifth meeting for this particular situation. I have sympathy for losing a lab. I had a yellow lab, I know what it is like to lose a pet, but bottom line is it's nice to have a pet but they are not supposed to be where they are right now. You are not supposed to have them there. I believe from what I can find out they were there illegally, I think they should be removed. I am opposed to this application. Thank you very much.

Ms. Galvin: Why are you opposed to the goats?

Mr. Colburn: It is affecting me in the fact that the goats being there they burn all kinds of rubbish and fires. They have all kinds of stuff going. The goats do get out. They are around and doing that stuff, they are out and they shouldn't be there. It's against the law to have the goats here. You can't bend the rules from what the book says. That's the reason I'm opposed to them.

Ms. Galvin: Thank you.

Ms. Schallop moved to close the public hearing and Mr. Richards seconded the motion; all in favor; motion so carried.

Vote: 4-0

Ms. Schallop: Well I would note that this property is in the residential agricultural district and under statement of purpose its simply states that the continuation of forestry and agricultural activities and all intensity uses are encouraged and I will point out that this a special use permit so it's not that having these goats is illegal it's simply that because of the size of the property and Mr. Desorbo needs to apply for a special use permit. So you know it also raises an issue in terms of one of the considerations in deciding the issue if this purpose uses and design and layout will be at such location size and character that it will be in harmony with the appropriate and ordinarily development of the surrounding area. I think it's kind of interesting because in my view if you look at Maple Road it actually does have a pretty rural

character to it, however there has been development in the general facility and you have places like Douglas Lane that is now a very suburban type of street, but Mr. Desorbo's house is located on Maple Road. He has over two acres of property and so in my view this use is a permitted use and one that the code wants to encourage, so my inclination would be to vote in favor of the application.

Mr. Richards: Yeah, I would want to second Ms. Schallop's statement that it is not an illegal activity. It is a special use and it needs to be permitted and that's what we are here for. In my opinion there is a 20-foot buffer that the town owns are the goats currently on the town's property.

Ms. Peck: No they have been moved.

Mr. Hart: We have site plan as to where they are located now.

Mr. Cramer: The pen area will be located within his own property.

Mr. Richards: So complaints that I heard from the Douglas Lane neighbors was mostly about the property, the maintenance of the property not actually about the goats. I haven't heard anything about the goats themselves is the actual problem. I'm leaning favorable towards the applicant.

Ms. Galvin: I would just like to say that I completely understand neighbors concern about the fact that these goats ended up on this property without any permission, illegally. The issue before us now at this point is simply should we grant a special use permit. There is a list of criteria under the zoning code that we have to consider. A lot of those criteria don't apply to this application. The criteria that Ms. Schallop was mentioning had to do with the harmony. Whether the use would be in harmony with the surrounding area. Neighbors may have a corral with the zoning code the way it is written right now and perhaps would prefer to see animals such as goats to be excluded all together. As Planning Board we are responsible for enforcing the zoning code which does permit these types of animals as long as the criteria are met. We don't have right to change the zoning code in terms of when somebody can make an application for a special use permit. I'm looking back at the past minutes from the last meeting and what I really take from it is that some of the neighbors don't really want to look at the goats. The main complaint seems to be the way the property is being maintained at this time. There are other complaints about the way the property is being maintained. It seems that the main concern that the neighbors have just looking at some of the things that I'm reading from the last public hearing that we held in terms of ashes. People trying to enjoy their pools and burning and so on and other activities on the property, those are not activities that are before us as a

Planning Board, okay the only thing that is before us is the request to approve the special use permit. We have granted applications in other locations to harbor goats only on the condition that they are properly fenced, the number is limited, and in this case the application is only for two goats. That feed is kept in a metal container with a lid. They not are permitted to free range unless they are under close supervision and otherwise have to be penned. This is the type of criteria that the Planning Board has used in the past. We certainly don't want the goats to get out and roam free and enter onto the adjoining property owners and that is a criteria that we generally put in any approval that we grant for the use of this special use of farm animals, so that said sorry we can't do anything about the other kinds of complaints that have been raised about the way the property is being managed, but I will agree with my other Planning Board members this is an approved use under the zoning code that we have before us.

Mr. Hart: I'm inclined to agree with each of you as you made your cases and I appreciate how you related that back to the criteria that governs what our decision process is. I can craft and modify a proposed findings and decision here for this permit.

Ms. Peck: The only condition that was not discussed and I know we do look at it in these applications is the disposal of the waste. That might be something that the Board may want to add or to discuss before you vote on your decision.

Mr. Desorbo: I don't know how the waste is managed on the site. I know what we do with dogs and I think he is doing the same thing, picks it up and puts it in a container and throws it in the waste, I'm just not sure.

Ms. Peck: There are no wells in the vicinity to the house either, that's usually a concern when you look at that too.

Albany County decision was to defer to local consideration.

Mr. Hart: One of the things that I do want to note that in previous decisions the justification was not included in the way that it should be for this decision that is there is a whereas here that states although there was opposition to the project raised by the public we find that the use is not inconsistent with the uses in the surrounding area per code. Also, whereas the Town provides a buffer of 20-feet. On the use then into the statement of decision now therefore be it resolved by the Planning Board that upon considering and weighing the above factors set forth in Section 190-43 of the Town of New Scotland Zoning Law special use permit is granted with the following conditions intended to mitigate the impact of the proposed use on the

surrounding neighborhood. There is a finding that it would be in harmony with appropriate development in the surrounding area. Motion to approve special use permit application #608 with the following conditions:

- All waste is to be composted adjacent to the pen or disposed of using commercial disposal services;
- Limited to two goats;
- Feed to be kept in a metal container with a lid;
- Goats are permitted to free range only under supervision and are otherwise to be kept in a penned area that is depicted on the site plan dated May 7, 2019;
- Goats are to be moved to site plan location indicated by June 19, 2019.

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

Vote: 4-0

- 2) **Site plan application #118:** Application submitted by Anthony Buscema for a site plan review to allow for a 13.2 KW Ground mounted solar PV system. The site contains approximately 16.4 acres, and is located within the RF zoning district. The property is located at 20 Countryman Lane and is identified as New Scotland tax parcel i.d. # 93.-1-11. This application is made pursuant to Section II, Part 1 C(6)b of Local Law #5 of 2007.

Mr. James Vanapolus, Empire Solar representing Mr. Buscema explained that it is a ground mounted solar system. This is direct user consumption, no visual impact to the neighbors. The land rises on the north side and it is flat on the other side of the property. There are no close neighbors. We are not selling any power back.

Mr. Hart opened up the meeting to the public.

No public comments.

Mr. Hart moved to close the public hearing and Ms. Galvin seconded the motion; all in favor; motion so carried.

Vote: 4-0

Mr. Richards: Since we received no public comments I'm familiar with this property. I know the person up the hill and they will build houses eventually, but they have no objections.

Ms. Schallop: We have a solar law that is designed to encourage the use of renewable energy. There were no objections. This is obviously totally appropriate use of solar energy so I'm in favor.

Ms. Galvin: I think this application should be approved.

Mr. Hart: Does anyone have any concerns about construction?

Mr. Vanapolus: Yes they are going to be vehicle screws. They all go over 8-foot deep in the ground they have proper footings through techno metal post, so it will be per the engineer specs.

Ms. Schallop moved to approve application #118 and Ms. Galvin seconded the motion; all in favor; motion so carried.

Vote: 4-0

- 3) Special Use Permit Application #609:** Application submitted Kim Newell and Eldrid Andres for a Special Use Permit to allow for a parcel they own to be used for "Agricultural uses, less than 7 acres". The parcel is located within the RH district at 44 New Salem South Road, contains approximately 3.5 acres, and is identified as New Scotland tax parcel #83.1-25. This application is a Special Use of Article II, Section 190-15(D)(14) of the Town of New Scotland Zoning Law and local law #2 of 2016, Section 3e(3).

Ms. Elliott, representing Ms. Newell and Mr. Andres, explained that a special use which is not against the law it is something that is allowed, but the Board must look at and have recommendations and conditions. I know that you've looked at a lot of chickens and you have a pretty standard analysis of what you wish to do to which my clients are also interested and want to do. The feed and the removal of composting on their parents property which is on County Route 308 they have 62 acres it will be transported there. The chickens are housed in an area that is fenced, there are no roosters. Realistically the chicken aspect of this special use I did not think was the issue. I think the issue was a deed restriction that was over 60 years old on this parcel that did not come up in their title search. Typical title search is a 40 year look back for the bank mortgage purposes. I know they have chickens on their parcel. I know that is not something the Board likes to see. Please know that Kim has always had chickens when she lived in Bethlehem on a farm and when she had them on Route 308 they have 62 acres also have chickens. Don't need a permit, so it was not something that they just said lets go against the law, because as they look or lets go against and not get a permit as you look in the neighborhood I have four other parcels that have chickens. Some have permits some do not. We are in an agricultural area as I look at across the street on New Scotland Valentino has horses and other animals there, the house on the corner on less than one acre has chickens, there are other places on the road that have chicken. As I proceed westerly

I have two parcels that not only have agricultural uses and farming they are in the ag district. I have George Klapp and Timothy Wood we have Christmas trees we have a variety of agricultural. So then it left me with what do I do with a 60 year old deed restriction? I thought lets go find the heir to the original person Harvey and Elizabeth Martin who placed this restriction on and I thought well maybe they will find that, so hold and behold the title insurance company pulled up Paulette Moak who is the only heir granddaughter of the Martin's. Kim went to visit with her and found out that they always had different animals. They thought this restriction really only going to apply and that's why the intent is very important, but the intent is a big thing that they wanted to have it if it was going to be sold to family members that they kind of cleared the air that they can only do this. The fact of the matter is all these places got sold and resold and there are family members there. Ms. Moak did an affidavit which is called an affidavit of service saying who she is because I want you know the title insurance company found her and yes she is the heir. An affidavit is produced, next a deed description done conveying that restriction away to Kim and Eldrid and I also then went and talked to Ms. Atkins and I thought who better to talk to than an attorney. Ms. Atkins said we could do it this way, so that's why you have that extra paperwork. I don't know what else I can describe other in the neighborhood the one thing that does concern me because I'm hopeful that they have good chickens and they can have chickens. I look at special uses through all your codes and not everybody knows what needs a permit, most people don't, I even have some people who don't believe we have zoning. I try to explain those things. Your recommendation of what you need to look at 190-43 for special uses really doesn't apply. I think you what you want to look at for chickens, but as I look through your codes special uses that are listed, there are 12 in one zone and 19 in another. You asked for a deed of record that is provided. If we gave you a 40 year old title search it would not show the restriction. Are we going to then refer and keep going back because I'm sure there are places that wouldn't show up in a 60 year old? At what point, it's a slippery slope to go and ask on deed restrictions.

Mr. Hart: I appreciate that and you don't have to go further.

Ms. Elliott: I hope the Board understands we have done our due diligence.

Mr. Hart: You did. Ms. Peck did some research and can you give us a summary report on how that is relevant to deeds and our reviews.

Ms. Peck: I did look at some of the issues that were raised here with the deed restriction. Ultimately I advised the Board when it comes to enforcing the covenant that is really a private matter, as discussed by Ms. Elliott and that when looking at a special use permit what the Board should be looking at the criteria under the code as

to whether the use comports with that criteria. If a neighboring property owner has concerns over a restricted covenant in a deed it would then be up to the neighboring property owner to try to enforce that through the court system. The Board itself does not need to bound and there is some precedent that there is a question whether it should be bound by restrictive covenants if they do not implicate the criteria of a special use permit under the code.

Mr. Hart: You reinforce that opinion by specific case law that makes a very clear statement with that.

Ms. Peck: Yes.

Mr. Hart: That said there are two elements that have changed since last meeting, one is that we have in possession with the additional materials that were submitted an actual release, if I can call it that, of the restrictive covenant on the deed and a warranty deed with the lien covenant that is signed and witnessed as an indication that restriction is released by the bona fide heir on the property. Those two pieces being that there is evidence of release of that restriction and also our guidance that we are bound by what is contained in our code and not what is in a deed restriction. I will then entertain comments from the public.

No public comments.

Mr. Hart moved to close the public hearing and Ms. Galvin seconded the motion; all in favor; motion so carried.

Vote: 4-0

Ms. Galvin: Other property owners who may have relied on that restriction when they purchased their property that really is a personal matter between those owners and the alleged violator. We don't have jurisdiction over that. Would you agree with that?

Ms. Peck: This Board does not have jurisdiction over enforcing it.

Ms. Galvin: So it's been represented to us that there are a lot of uses with respect to chickens in the neighborhood. I think with respect to the standards that apply under section 190-43 of our code the general site standards it would be my opinion that the proposed use is in harmony with the surrounding area and that I would vote myself to approve the application.

Ms. Schallop: Well I hope I understand correctly, because I read the case myself and I read what she wrote and what she said tonight. It was my understanding that the Board should decide the application according to the standards in the code and it would be improper for us to consider the fact that somebody was objecting on the basis of restrictive covenant and if they do have that objection it is up to that land owner to seek redress privately. That's my understanding even though honestly that was surprising to me. It feels like an unfairness to the neighbor, we have information before us, allow the situation has changed because in the interim Ms. Elliott has gotten this affidavit, but I understand it would feel unfair butting aside that affidavit to approve an application when there is this restrictive covenant that someone has altered us to, but with the law and this is a Court of Appeals has spoken on this issue and it was pretty clear that we shouldn't consider that, so putting aside that issue which is pretty much been I think laid to rest by this affidavit with regarding to particular property I agree with Ms. Galvin this is a neighborhood where there are other people with chickens. Chickens are very much in harmony with the neighborhood. I would therefore be in favor of granting this application.

Mr. Richards: I am in favor of whatever our standards are for this application.

Albany County decision was to defer to local consideration.

Mr. Hart: Any commentary from the Town of Bethlehem with regard to the water supply property that is adjacent?

Mr. Cramer: None.

Mr. Hart: I am of the same mind on this I think that we can use deed restrictions as evidence of what the nature of neighborhood can be or should be, but in this case the neighborhood speaks for itself. Currently there are farm animals in use on adjacent properties that is rural looking area. I would concur that this use with the standards set of chicken conditions would basically be in harmony with the adjacent development.

Mr. Richards moved to approve special use permit application #609 with the following conditions:

- Applicant will have up to 12 chickens;
- No roosters are permitted;
- All waste to be taken off site to be composted;
- Feed to be kept in a metal container with a lid;

- Chickens are to be kept in a penned in area as depicted on the map submitted with the application.

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

Vote: 4-0

- 5) **Site Plan Application #119:** Application submitted by Stuart Morrison for a site plan to add a 24' x 28' two story additions to an existing commercial building. The addition will be used for increased interior space, add a second means of egress to the second story, and construct an enclosed walkway to the existing storage building. The site is owned by Stuart Morrison, contains approximately 1.0 acre, is located within the Commercial Hamlet District of New Salem at 705 New Salem Road and is identified as New Scotland tax parcel id# 82.-3-21. This application is made pursuant to Article V, Section 190-52 of the Zoning Law of the Town Of New Scotland.

Mr. Morrison explained that not much has changed since the last time I was here. You asked me to do a calculation as far as on site retention for storm water and it looks like depending on your analysis of that deck area somewhere between 200 and 500 gallons of water for an inch and half rain event so we are looking at adding about 20-feet of 3-foot of infiltrators on that side yard.

Mr. Hart: That will be enclosed with filtered fabric and top door open?

Mr. Morrison: Top.

Mr. Hart opened up the meeting to the public.

No public comments.

Mr. Cramer spoke with a Mr. Weston, neighbor directly adjacent to Mr. Morrison property and he was in favor of the application.

Mr. Hart moved to close the public hearing and Mr. Richards seconded the motion; all in favor; motion so carried.

Vote: 4-0

Albany County decision was to defer to local consideration.

Mr. Hart: Overall I think it is a good design. I appreciate the effort that went into making that fit on the site. I appreciate the effort to do the calculations and add infiltration trenches that addresses my concern.

Mr. Hart moved to accept site plan application #119 and Ms. Galvin seconded the motion; all in favor; motion so carried.

Vote: 4-0

- 6) **Site Plan Application #120:** Application submitted on behalf of Chris Frueh for a site plan review to allow for the operation of a “mobile concession vehicle”. The business would be open Monday - Thursday from 6:00 a.m. until 2:00 p.m. and Fridays 6:00 a.m.-5 p.m. The proposed site is owned by Chris Frueh, is located in the Commercial Hamlet District of Fuera Bush at 1369 Indian Fields Road, and is identified as New Scotland tax parcel id # 107.2-2-60. This application is for a permitted use as per Article II, Section 190-16 (D)(7) of the Town of New Scotland’s Zoning Law.

Mr. Garrett Frueh recused himself from this application and left the meeting. He is related to the applicant.

Mr. Alton MacTice: I’m the owner. The proposal was for some flowers and mulch which have been done. The only thing I have not gotten to is the proposal to box in the propane tank. The weather has not been the best.

Ms. Galvin: I would like to ask a question. I know that there is a very wide NYS right of way adjacent to the Stewarts property do you have the same type of right of way adjacent to your property? If so, it looked to me that you may be approaching that right of way.

Mr. Frueh: Actually the road had been shifted when they built that new bridge about 20 years ago or so. Originally the street was when you go down the road you can see how it has been moved over, so that’s why it looks closer. In front of Stewarts they have a large ditch that which belongs to the State. On our side there is not as much. The right of way is not from the center of the road.

Mr. Hart: Do you know where the edge of the right of way falls with respect to what is on the site where the property is?

Mr. Frueh: As far as I know I'm within the property. I don't know the distance from the edge of the pavement to the property line. If I'm going to guess I'm going to say approximately six to eight feet. That parking lot has been there for 40 years now. It was a trailer lot, so I still have trailers there.

Ms. Elliott: My father surveyed that parcel for Mr. Frueh's dad in 1974. I have several maps on it. I believe shortly thereafter it's been much more than 20 years they shifted the bridge, which is why they built a new bridge and took the old one down, which is why the road does appear to be closer on your side. I do not believe that the food truck is sitting on the NYS right of way property. I believe it is solely on the lands of either your father or you, I don't remember who has the title to that now.

Mr. Frueh: It is solely mine.

Ms. Galvin: Is the truck mobile or stationary?

Mr. MacTice: It is mobile.

Ms. Elliott: It is mobile but it does not move at this time.

Mr. MacTice: It has wheels but it is on blocks and it stays there. Not sure if it will be on the site during the winter months. If Mr. Frueh allows me to leave it then that would be my preference, because it blocked and it is leveled. I would have to do that for the equipment inside.

Ms. Galvin: But it will not be in operation.

Mr. MacTice: We are just seasonal, because of the weather. We will not be open the middle of November to April 1st.

Mr. Hart: We looked it up and the property line shown directly on the edge of the grass towards the road and it appears the property line goes into the roadway where it curves. There is a right of way but mostly occupied by the road. This use to have a permit and it lapsed.

Mr. Cramer: Correct there was an approved site plan for a food truck or food trailer that was applied by the Cossacks and it had been determined that over a year had lapsed and that there were enough differences in the applications to require a new application.

Ms. Galvin: I have a question just using the photographs that you provided, so this propane tank so that's visible right on the roadway?

Mr. MacTice: Well that depends on which way you come. There is a tall evergreen tree that blocks it as you coming into Feura Bush.

Ms. Galvin: I took some picture of it today and it is just right out there. I was just wondering if you can place that on the other side of your setup, so we don't have the gas right on the roadway.

Mr. MacTice: That is part of the proposal to box it in, it would be a three sided thing, and I just haven't had a chance to do it yet. To move it to the other side would be into the seating area of the public, which I don't think it's a good idea.

Ms. Galvin: I don't know where it could be moved, but I don't think it looks good right on the roadway. My suggestion would be to somehow screen it in some way.

Mr. Cramer: There was intention to screen it similar to the trash can that he had constructed, it should be in the pictures you have. If the Board wanted to require some sort of fabric inside the lades so that the white tank wasn't so visible or do something additionally to require not necessarily a lander per se but some sort of physical barrier in case there was an accident and a car came across.

Ms. Galvin: All I can say even if it is boxed in I don't think that is very attractive on the main road. I would like to see it relocated off the main road. I'm trying to figure out what other location it can be moved to.

Mr. Hart: I think we have some ideas on that, but let's defer until later in our discussion. I will open up the meeting to the public.

Ms. Elliott, Feura Bush, I'm a Feura Bush girl I'm happy to have somebody take a chance in a small business and put this together again. There are some of us that work out in the field and we don't have a chance, we don't bring our lunch all the time and it's good to just be able to run in. He has great food. I asked Alton are you going to put up those silly flags again, and he said no they were tacky. Good answer Alton. I don't mind the color he has worked hard on putting up umbrellas it's a comfortable place to pull in and there is plenty of parking. The food is good, so I'm in favor of this application.

Mr. Hart read into record some e-mails that were received.

Ms. Peck: A letter was received on June 4, 2019 from Joanne Davies, 31 Morning Star Lane, Feura Bush, NY. The letter indicated that she will be out of town on June 5th. The application is seeking permission to operate a mobile concession vehicle situated on Route 32 in the hamlet of Feura Bush. An application that was submitted after the vehicle had been situated and was in operation. While a member of the Planning Board I had voted against the previous application for a food truck at this location citing the May 1994 Comprehensive Use Plan which stated as a goal to improve the appearance of major gateways to the Town, i.e. the Route 32 approach to Feura Bush. I was not opposed to the concept of the food business at the corner but rather to the visual impact a food truck would have upon entering the town. In my opinion it would not be in agreement with the stated goals of the Comprehensive Plan. There have been several improvements made at this gateway to the town including Track 32 restaurant and the renovation of the building that now houses Ziland Water Solutions. I would also add to that list the pending application by Stewarts another Feura Bush gateway business to improve their site. While a similar type statement is not included in the 2018 Comprehensive Use Plan update I strongly feel that the importance of the appearance of entering the Town of New Scotland at major roadways should be of significance to the Planning Board. In my opinion this food truck does not enhance or evoke a sense of pride in the community. To that end I would ask you to consider very carefully and include in your discussions of this application if a food truck belong at this gateway location. If you do determine that it is allowable I would ask you to have a thoughtful discussion of what should be done to improve the appearance of the food truck and the site where the application has installed the food truck. Please keep in mind the question would you permit the food truck to be located at other major gateways to the Town of New Scotland. Thank you for your consideration of my comments.

Mr. Hart: We have another comment by Inga Pratango, I think the food truck there looks quite nice as long as it stays that way and it is kept clean of trash. Much nicer than the older one that was there. I hope the food is good.

Albany County decision was defer to local consideration. Recommendation to notify the Town of Bethlehem of this application, which was done at the public hearing notifications.

Mr. Hart moved to close the public hearing and Ms. Schallop seconded the motion; all in favor; motion so carried.

Vote: 4-0

Mr. Hart: I like the use where it is, but I'm very sensitive however to the entry to the hamlet and I would like to see if we can come up with some solutions to dress it up a little bit more than what we considered so far. I'm not talking about something that would consider a significant cost, but when you come into the hamlet and you look at Track 32 and what the Stewarts is going to look like I think that entryway is good. Having a food truck there too is very consistent with the usage in the area. The clientele and the ability to be able to stop in and I think it adds more than it takes away from what that community entry is. That being said I'm thinking of something more like rather than a three sided box around the propane tank, maybe something like moving the propane tank to the end of the truck rather than to the street side, so at least you are sheltered from that one side. I'm a big symmetry person and the idea of having perhaps two shorter stature maybe four foot cedar segment fences that might extend his wings to either side of the truck and have a return back to it as long as it doesn't block views. Adding to that the plantings that you already considered those are the sort of things I want to have a discussion about, so if you come up with a better landscape plan that is not going to be onerous on the scale of this business, but something that could have an impact on how things look when you come into the hamlet. Those are my thoughts.

Mr. Richards: My only thought for the propane tank is that some sort of large planters handle a car backing into a person or something like that with some sort of plantings to screen the propane tank and (can't hear). I expect improvement with that whatever is on the side of the road there.

Mr. Hart: So you are thinking of a planter that's of some size that could...

Mr. Richards: Yes right now we just have a flower pot.

Mr. Hart: How many planters are you thinking about?

Mr. Richards: I think Track 32 had these planters during their outdoor seating area, but that was what I was thinking of.

Mr. Cramer: On the front sides they were incorporated into the landscaping, I thought they were more vertical boards painted to match the buildings themselves and then they had the flower pots up top on the front side.

Mr. Richards: Something that simultaneously buffer the lower part.

Mr. Cramer: Just a suggestion there is nothing, I understand that the applicant already has a propane tank that is in use but they make different sizes and tanks that may be lower to the ground that lessen the visual obstructions if the applicant was willing.

Mr. Hart: So what we are looking for are solutions here. Are we in concurrent with that that is the general trend that we are on here?

Ms. Galvin: I still would like to see it improved upon and would like to see a couple of ideas. Whatever this Board desires, whatever we think would be affective I think we need to do something about it.

Mr. Richards: There is a problem in that we can't put permanent plantings on the right of way; on the side of the road it comes pretty close.

Mr. Cramer: Deep rooted plantings would interfere with the Town's water lines that are right in that grass area.

Mr. Richards: So we are bound by planters the way I see it. I think planters would be a simple solution to screen some of the...

Mr. Hart: What are the sizes of the planters that are there right now?

Mr. MacTice: The plan is for the half barrels.

Mr. Richards: More than two would be better I was thinking more like a box planter, but half barrels are fine, it's just two in that space would take up a decent size space, maybe four would be better or something like that.

Mr. Hart: Do you have any objection to having fencing?

Mr. Richards: I do not object other than you did mention that is onerous on the business. I have no objection.

Mr. Hart: Come back up and let's work through a solution together that would be the best way to go.

Mr. Cramer: Doe the applicant have the propane filled on site or is it something where he is bringing it some place to be filled.

Mr. MacTice: They come to the site and fill it every other week. So that's the issue with boxing it in, they need access it to fill it.

Mr. Cramer: What about burying the bottom half to reduce the size so that the fencing could be you know possible trim work and below, so that the fencing could go across the truck to cover up like about to the top of the wheel well verses half way up the truck.

Mr. Hart: I still think the look would be better to have a standard fence set up and you could do put the fence as moveable panels, if you had a panel that had four or five receptacle for the post so that when the truck needs to be filled it up you can just remove the panel.

Mr. MacTice: Showed the Board more pictures.

Mr. Hart: I think if the propane tank is moved to the side and you had that fencing that I'm envisioning come to the corner of the truck, you can even use the corner of the truck in some fashion to give you know a lose anchor for that, have that down to a 4x4 receptacle and then turn the corner 90 degrees to that. That is going to give you some wind resistance to that and I would do it on both sides whether or not you are screening anything on the other side or not just because you know basically you are making a view entry into the hamlet.

Mr. MacTice: What if I moved the propane tank directly behind the truck? If you were coming into the town you wouldn't actually see it until you drove around the truck.

Mr. Hart: Yes that is what I'm suggesting and it would still need to be boxed in. I would be satisfied if it was moved around the corner and then you had a wing fence on both sides. Showed the applicant the style of fence he would like to see.

Mr. Cramer: I would suggest possibly requiring the screening that is a fence around the port o john to be upgraded to the same so there is uniformity on the lot.

Mr. Hart moved to close the public hearing and Ms. Galvin seconded the motion; all in favor; motion so carried.

Vote: 4-0

Ms. Schallop moved to approve site plan application #120 with the following conditions:

- Moving the propane tank to the side as proposed to the end of the truck;
- Enclose that with a screening fence using a shadow box slab design;

- Upgrading with consistent fencing on a wing off of the truck at 90 degree. It can be moveable. Two flower pots integrating with the fencing to be at least the size of a half whisky barrel size planter. Making it all consistent on the site for the port o potty;
- Seasonal operation will be April 1st to December 1st of each year;
- Monday – Thursday 6:00 – 2:00 p.m.; Friday 6:00 a.m. – 5:00 p.m.; occasional Saturday hours between the hours of 6:00 a.m. – 5:00 p.m.
- Signage - something on the back of the truck for signage of no more than 8x5 foot sign centered on the truck. No temporary sign. On the people side there would be a sign the other side would be no more than 4x5 sign on the truck above the black line. The two signs added to the truck do not exceed the 50 sq. ft. that is allowed per the law;
- Port o potty located on the premises during the hours of operation;
- No free standing lighting is permitted. Lighting will be provided by and installed and located inside the truck or beneath the food truck awning;
- Banners other than the American flag and the open sign flag shall be prohibited;
- The applicant will be responsible for the control of all on site traffic and parking on the site. Also, management of any waste that is generated on the site.

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

Vote: 4-0

- 7) **Request for Modification: Special Use Permit Application #606:** Application originally submitted and approved for David Moreau to allow a Special Use Permit to for the construction of a single family dwelling on a 3.01 acre parcel owned by him. The new owner, Milt Orietas, is requesting to finalize the original special use request to build a dwelling. The property is located within the Commercial District on Youmans Road as 5 Greylock Lane and is identified as New Scotland tax parcel #72.-3-41.52. This application is a special use of Article II, Section 190-17 of the town zoning law.

Ms. Peck: Essentially what we are looking for is a modification of his prior decision, which would remove or alter a condition that a driveway easement and maintenance agreement is provided that is between the owners of 5 Greylock Lane, 3 Greylock Lane, 11 Greylock Lane, and 17 Greylock Lane prior to the issuance of the building permits. We looked at this we consulted with Stantec on it and reviewed the engineering plans that were provided by the applicant. We all agree that the engineering plans that are provided by the applicant are in accordance with the fire code. It does call for it to be a fire apparatus road in accordance with NYS

requirements. In looking at this it is almost similar but not quite to what you guys were looking at the Newell issue with the restrictive covenant. Essentially what we are looking at there is a deeded easement with maintenance obligations to two property owners as opposed to all five lots on this road and initially what was presented to the Board that there was an expectation that all property owners were ready to sign onto a new maintenance agreement and that way we didn't have to worry about who was going to be responsible with keeping this road to the fire code standards. That apparently has changed. I'm looking at this and to be perfectly honest my only concern from a legal standpoint is to make sure that the lot that is this applicant is agreeing to maintain the road in accordance with the fire code, so whether is that a new agreement that gets executed between maybe three of the property owners as opposed as to all five of them. Or whether it is just a condition we modify the approval to add a condition such as an easement or deed restriction for this lot that puts in a maintenance obligation and how they figure out how they are going to pay for it or who is responsible for what portion of it is really a private concern. That is all okay as long as there is agreement that is binding to this applicant that they will maintain the road in accordance with the NYS fire code. That is my big concern for all of this. Any questions?

Ms. Schallop: So the bottom line is the applicant agrees to put a deed restriction on saying that the owner of this property is going to be responsible for maintaining the road according to the fire code standard. That should satisfy our concern.

Ms. Peck: Yes however they determine they are going to split that maintenance up, I mean I'm not suggesting that you redo the easement and that all maintenance obligation go on this property, I'm just saying this property got to be able to agree to it, because when it comes enforcement we can't go after the other two guys. We can only go after the property owner, whoever owns it.

Mr. Hart: The instrument for its implementation condition modification on special use permit as opposed to us warranting any deed restriction.

Ms. Peck: Yes, so you can modify the conditions on the original permit that says there is going to have to be a deed restriction or a revised easement that puts some sort of maintenance obligation onto this lot. We didn't talk about how it would be split up. We just said a driveway easement and maintenance agreement between the five property owners and that the road had to maintain in accordance with NYS fire apparatus road. The property owner maintains a maintenance obligation for this.

Mr. Hart: Yes we are modifying the, because we actually overstepped on the initially condition.

Ms. Peck: I don't know if I go as far as overstepping we had property owners come in here and say that they agreed to, that they were going to agree to this that everyone was going to walk away and be happy with the maintenance agreement. That obviously has changed, so if not everyone is going to sign up then we just need to make sure we can enforce it and get somebody.

Mr. Hart: And the standard is the fire code standard as opposed to everyone else.

Ms. Schallop: So this property is not shown on this one.

Mr. Cramer: The majority of it is.

Ms. Schallop: So the obligation to maintain is for the entire road even though this property owner is not going to own this entire road, but as an easement to use it.

Ms. Peck: It is because this application is now changing the type of road it needs to be. If it wasn't for this application that would never have come into play.

Mr. Hart: What is the best implementation instrument for this?

Ms. Peck: I would say either an easement put together for this property that puts a maintenance obligation for the road or a deed restriction either way a recorded instrument that is going to run with the land and that is going to make sure there is a maintenance obligation.

Mr. Hart: That language sounds very good.

Ms. Peck: What we can do before there is a permit issued by the building inspector that the easement comes in and that it just gets looked at and approved make sure it is in accordance with what are intentions were, what the Boards intentions were, and that can go through the attorney's office, it does not have to come back to the Board for a hearing and an approval.

Mr. Hart: Is there anything else before us on this matter. This is it? This is the sole issue?

Mr. Cramer: Just for disclosure that we still need to have the erosion sentiment controls updated on the site plan and approved by Stantec before issuing a permit for the house.

Mr. Hart: That has to do with runoff down this roadway and also toward the wetland.

Mr. Cramer: Correct.

Mr. Orietas: I will speak with Ms. Elliott because I thought she had an updated one. I thought she dropped it off a couple of months ago.

Mr. Cramer: The updated one was not considered to the standards that the Board wanted. The Board wanted some additional measures taken around the stream. An escrow will be needed to give to Stantec for then to finish their review of that.

Mr. Orietas: I would like to request if before, because I'm not exactly I'm going to start building so I would like to have it contingent if we could have all this in place you know before the CO. I'm not in any rush to build so I don't know and this way it will give me time to get something in place. I said I wasn't opposed to adding that house so it's 33% whatever it is, I mean I'm not opposed to that, that's fine because there is no one living there and I will be straightforward if I do sell the place this is what it is and it will be right in front of them. They will be 1/3 responsible, on paper, for maintaining the road, even though all of us pitch in. We do sign a yearly contract with Red Maple, he is there, he does it. It's very hard to enforce because it's a private road.

Mr. Cramer: I think the original discussion was that the road needed to be constructed and determine to meet the site plan before the CO on the building knowing that if he built the road to the specs and then the concrete trucks come in and deteriorate the road that there won't be a way to make sure that Mr. Orietas or the contractor for that house had to make sure it was back up to current standards before the CO could be issued. Now as far as the easements or the deed restrictions being filed I think that would be more in line with making sure that it was filed before the building permit was issued for the house. Or before there was a closing or transfer of ownership, which ever one came first.

Ms. Peck: I would rather be a town triggered event.

Mr. Cramer: But this approval, he only has one year for the special use permit for the permit to be issued, no different than this lot had received a special use permit five or six years ago through the original owner and it has lapsed and that's why we were back to discuss this again. So whatever the Board feels is necessary.

Mr. Hart: I interjected before the hearing would be open so you can have the benefit of legal and to list the different things that are still outstanding. Do you have more to add to that before we open it up to the public?

Mr. Orietas: I think I'm good, I think when we all talked to Ms. Elliott we could just file a driveway agreement with Albany County, that's all it would be. I'm not familiar, I have no clue, I can easily find out.

Ms. Peck: It would be an updated easement, which would be incorporated into a driveway agreement. I mean something to that, honesty I don't care so much about the driveway agreement. I just want to make sure there is some sort of maintenance obligation written into the easement for this one, or the ownership I should say for this one parcel.

Mr. Orietas: I'm on board with that for sure.

Mr. Hart opened up the meeting to the public.

Mr. Bill Miller, Greylock Lane, I'm a neighbor and we are one of the two houses that is responsible for the maintenance on the road. Just in speaking with our attorneys and consulting them they agreed with the expansion of the driveway would exceed scope of the original easement as it is currently stated. The easement lists as the condition as it was on the date of that agreement. Certainly some concerns there and something for us to attempt to work out as we move forward. Just some questions that I have regarding the road itself and the expansion or widening of the road just in terms of, I don't want to call them shoulders, but I guess off the side of the actual gravel there is a culvert there. It looks like it is 48 feet long but there is not much ground there right now and I measured it the other day and it measured about 22 to 24 feet, so I don't know if there is a buildup plan around that so there is not just a 20-foot road with a 2-foot drop off, so I don't know if there is any specs regarding that, at least I didn't see it on the plan that I got from Mr. Cramer. In addition, just the driveway construction itself ingress and egress that is obviously the only road in and out for all four homes and I don't know what type of construction and if it would prevent anyone from currently transporting the road while the construction is going on specifically again with the culvert if there are any issues with that. Then lastly I do have a concern about the proposed location of the driveway of the home which I have brought up a couple of meetings ago. It is directly at the top of Greylock Lane runoff comes there now and we all have driveways that have runoff and the runoff that does come off now does start to wash away the gravel on Greylock causing additional maintenance in specific spots, so again from a drainage area I don't know what can be done about that, but just to try to prevent deterioration of a road that we would be required to maintain. The main

point is still that first point regarding the scope of the current easement agreement that was signed by Dave Moreau and Matt Fiske back in 2008.

Mr. Colin Davis, 11 Greylock Lane, I've lived there for about five and half years now, I was only just recently just last year even keyed into the fact that there was an easement agreement that was an issue. When I bought the house my title search came back and said that lot one and two were responsible for maintenance of the driveway which made perfect sense at the time because there were only two lots and then I bought the house. It never occurred to me that there was going to build three more houses and expect me to still maintain 50% of the driveway. I guess that's I mean based on what you said about the chickens, that's not for the Board, but just so you know where I was coming from. Then I was approached by Ms. Elliott out of the blue a few months ago can you come to this meeting we want to redo the driveway. We all sat down, all the neighbors from the road, we all sat down, we discussed it, we all agreed that five lots were going to split the maintenance evenly and then all of sudden right before we were getting ready to sign the agreement we are not agreeing to that anymore. Apparently three out of the five are still on board myself Miller's and the Minnick's they said they are still on board to signing the agreement. It's just the two lots that are owned by Mr. Orietas. I guess my big concern which I think is the issue at the heart of this with the Planning Board is assuming I am legally bound by that agreement that I didn't know about that says I'm 50% responsible for the maintenance of the road as Bill stated that's 50% of the maintenance of the road as it existed when that agreement was signed. If you all approve Mr. Orietas to widen the road to make the road bigger that is now a larger maintenance burden, because it is a bigger road and that is transferring that burden on to me and to Bill because our agreements say we are responsible for right now at least that is what is alleged. I appreciate what Ms. Peck was saying that this new lot having some responsibility for that but that seemed kind of vague I just want them to have sort of maintenance responsibility well if they have 10% and now Bill and I still have 45% a piece that doesn't really seem equable especially because the whole reason this is happening is because that house is being built. As you said if that house wasn't being built we wouldn't even be having this discussion. It wouldn't even be an issue. That was the gist I got when I spoke with my attorney as well was the town cannot put that burden on you as far as approving the road and allowing the road to be significantly made larger and then expecting us still to solely be responsible for maintaining it. I guess that to me that really what the heart of this issue is. I try to do the right thing, I try to be neighborly and do my fair share and I do acknowledge that since Mr. Orietas has moved in has contributed and has helped with the maintenance. I guess my concern is and I even asked him after the last meeting right to his face, well if you are willing to do it and you've been doing it all along the only reason you are not willing to put it in writing is so that you won't have to do it later on, or if he sells his house or the Minnick's sell their house, or whatever agreement we have in place now between neighbors goes away as soon as

someone sells their house. What my concern is that all of sudden now Bill and I are going to be responsible for this significantly larger burden of maintaining buying stone having stone rolled out and even for plowing, you add 6-foot width to the driveway that is going to cost more to plow it every winter. It just doesn't seem right that should be put solely on us and again like I said Mr. Orietas has been helping and contributing his share, but he built his house, that put a lot of wear and tear on the driveway with all the heavy equipment in and out. He built the Minnick's house and they are in there now that put a lot of wear and tear on the driveway with all the heavy equipment in and out. We all still contributed equally to bringing the driveway back to where it was and neither of us yeah you messed up the driveway building houses we expect you do to it, we still contributed, were out there racking stone. I just think that it needs to be whatever you all are going to approve just needs to take into consideration it will not, if there is not a stipulation that the driveway agreement needs to be amended to reflect the extra maintenance burden then that's solely putting that on Bill and I according to the way the existing easement is being interpreted.

Ms. Galvin: But your obligation for maintenance only goes to the road as it existed at the time the agreement was made.

Mr. Davis: When it was brought to my attention and I sent the stuff to Ms. Peck a year ago when I found out about it. I went back through the Albany County Clerk's office I actually did two closings on my house. I assumed the mortgage from the previous owner under a VA loans, so I just took over his mortgage initially then I refinanced it when the rates went down real low. I actually did two closings and two title searches and nothing ever came up about a driveway agreement other than one that says the Miller and I split maintenance 50/50 because we were the only two houses on the road at the time. It didn't say excluding anybody else, so I went all the way back through to tracking deed back to deed to whatever through Albany County Clerk's Office and the only thing I was able to find an agreement from 2008 timeframe that was agreements supposedly between Dave Moreau an Matt Fiske, Fiske was the builder that built our houses, and it said Bill and I lots are responsible for the maintenance. The third lot which was later subdivided into Mr. Orietas' three lots that third lot was excluded from any responsibility, that's what this agreement said, but Mr. Fiske never signed it, Mr. Moreau signed it and filed it with Albany County and now Mr. Fiske was killed in a car accident a few years ago, so we can't even ask him what was your intent, what did you want done with this. All I have is a piece of paper that the party who was essentially assuming responsibility for the maintenance of the driveway never signed and never agreed to in writing. Again, I didn't want to go too far off in the weeds with that because based on what Ms. Peck said earlier it's not the Boards job to interpret private covenants or private agreements or whatever or enforce those that would be something if Bill and I weren't maintaining the driveway and one of the other neighbors had an issue with

it I'm assuming they would have to sue us or take us to court and that would not be a town issue, but at the end of the day I don't know if that is legally enforceable to begin with. When I think about it what are we talking about here we are talking about \$200 a year for some crusher run and we are already contributing for the snow removal so is it really worth it for me to paying attorneys and paying this and paying that to try and fight it, I've just been saying hey I hope we can all do the neighborly thing. At the end of the day my concern is that I see applies to the Board here is that by approving this significant change to the existing driveway is also changing the scope of what Bill and I are perceived to be responsible for at this point.

Mr. Hart: I understand that let's have that other discussion rather than discussing that with the neighbor at this time.

Mr. Dan Peters, 51 Youmans Road, I usually don't say anything at these meetings, because it's none of my business, but we have an infrastructure on our road with water and Youmans Road itself and I'm not opposed to a house being built but the epic center of the water problem is right where the house will be built. We have a driveway problem, you have water problem, and you have a Youmans Road problem. Let's do the right thing at least with the driveway.

Mrs. Jill Orietas: Wife, when I bought this house we made an investment in the house and we understood it came as is and I respect that they didn't see that agreement when they signed in with the driveway and that is not our fault. That is not the point of the conversation because that's a whole other legal ramification and who knows who is going to live there here we bought this house as is with the agreement as is, period. We now are invested in new property that was when we bought the house pre-approved to be built. So the Board at one point and time did approve residential houses whether people knew that or not again I don't know, but that's the way Mr. Moreau had it set up. He had it subdivided to build houses on it. My husband has been here for six months trying to get things approved and do everything that you are requesting with the apparatus he has done that, the road is maintained by us. We all are pitch in we aren't changing our legal terms on that. That is our investment that is our future investment, I don't know who is going to live next door to us, they don't know who is going to live here, again not my problem I didn't sign that agreement. I didn't sign into that agreement, so my point its preapproved to be built so we will include that easement, we have no problem including that easement for the new house to be built or to participate in the maintenance as far as concrete trucks if you want to go tit for tat there are water trucks going on our driveway every two weeks. There are other things. The houses are running out of water, so again another time and another place. We don't have the water issue. It was preapproved we are willing to do whatever it needed to we took the apparatus we paid money to that and now we are willing to give that house into the easement and so there it is.

Mr. Hart moved to close the public hearing and Mr. Richards seconded the motion; all in favor; motion so carried.

Vote: 4-0

Ms. Peck: There is one thing I would like to clarify. There was a statement made about whether the Town can obligate the neighboring property owners to maintain the road up to a certain standard, no they can't, which is why this can't fly, not a proper legal term. This should not move forward without the applicant agreeing to actually maintain the road in this manner, because if there is an enforcement action regardless of how this affects the scope of the easement that is not something that the Board is looking at. It is not something that I have reviewed. It could change the scope it might not change the scope. If there is an enforcement action that this road is not being maintained to this standard and that is something that there is going to be enforcement action on we will be able to go after the owner of this lot. We will require that the owner of this lot comply with these conditions, now whatever the owner feels like they need to do because of separate private agreements or other easements that's unfortunately private civil matter that is actually not before this Board and the Board cannot enforce those agreements and really should not be weighing in whether they are legally enforceable or not. I just wanted to make sure that was clarified.

Mr. Hart: Right so the action before us and the proposed modification is to impose an easement on this property alone for the maintenance of the upgraded driveway.

Ms. Peck: And to remove the prior condition that required all property owners to sign on to an agreement to maintain the private driveway.

Mr. Hart: That's the nature of the modification and that is the entirety of the consideration for modification that was subject to this hearing.

Ms. Peck: Yes you are still using your special use criteria, obviously, even on a modification but yes that is what is being asked of the Board.

Ms. Galvin: So procedurally is it an easement, it's really an affirmative obligation it's not really a right to use something else like an easement. What are we talking about this has to be incorporated in a deed to any new owner?

Ms. Peck: It would be an easement recorded so you can put the maintenance obligations to the easements when they get recorded, so it would be either updating whatever easement is recorded to require a maintenance obligation for this lot. It

can be incorporated right into the deed. Either way if it's a recorded easement or if it is incorporated into the deed it will run with the land.

Mr. Cramer: The easement for the driveway is for these two gentlemen to get to their property through this parcel. The maintenance obligation is incorporated into the easement. This parcel will not need an easement for access the driveway is fully on this parcel, until it turns to go towards Milt's house and before it turns to go towards these two gentleman's houses here.

Ms. Peck: So then we are looking at a deed covenant, it is not going to be an easement, it will be a deed covenant.

Ms. Schallop: That property will encompass the entire length of the driveway that needs to be up to code.

Ms. Peck: Yes, so it will be a deed covenant.

Mr. Cramer: Along with the wings of the additional widening turning radius which would still be beyond this parcel here that we are talking about not just the straight run in widening but where the widening is occurring at the driveway areas as per required by the fire official.

Ms. Schallop: Just to clarify Ms. Peck we obviously can't seek to enforce the private covenant maintenance agreement that exists if something happens, I'm assuming we have no relationship with these other two other gentlemen, but you aren't pining about whether or not given a bit their easements, their obligations are now whether they have an obligation to maintain the road.

Ms. Peck: I have not looked at that issue at all and I have not made any opinion on that at all. We can enforce against this property, so this is the property that is looking for the approval, so if this road starts falling about we go after this property. However they take care of it based on private agreements is a different issue. We at least have someone we can go after.

Mr. Hart: We are also passed the consideration for the storm water that was done by prior decision by this Board and deferred to Stantec to address which I recall did include a diversion at the head of that driveway to not have to flow down on this structure. With regard to widening of the road and offsets to at the culvert location. You looked at the culvert at one point.

Ms. Frueh: Yes. We did look at the existing lane is about two-feet of elevation difference from the end of that culvert we just want to see a three on one slope from where this edge of drive gets expanded out to existing grade. That should be a condition and added to the plan.

Ms. Peck: We have it as now as approved by the Town designed engineer. What I would propose if the Board was going to approve a modification it would be that the first condition that the approval be modified so that first condition which was a driveway easement and maintenance agreement between Greylock Lanes #5, #3, #11, and #17 be executed and provided to the Town of New Scotland Building Inspector prior to building permit be stricken. It would be modified to read that a deed covenant or a covenant be included in the deed for 5 Greylock Lane which will impose a maintenance obligation on that lot so that road is maintained in accordance with the requirements set forth in NYS Fire Code for a fire apparatus access road and that be provided to the Town of New Scotland building inspector for review and approval by the Town of New Scotland planning attorney prior to the issuance of a building permit and filed with the County Clerk prior to the issuance of a building permit. We initially had our second condition for the approval was that driveway improvements must be completed prior to the building permit issued by the Town. We want to change that now that the driveway improvements to modify condition #2 to say driveway improvements must be completed prior to issuance of certificate of occupancy by the Town.

Mr. Cramer: That way any deterioration from the construction would be fixed before the CO was issued.

Ms. Peck: So they need to provide the deed covenant before building permit but then all the improvements have to be done before a CO is issued.

Mr. Hart: Ingres and egress during construction of this can be done to allow traffic to flow.

Ms. Peck: It needs to be done in a manner which allows traffic to flow. I will add that in as a condition.

Mr. Hart: Please do. This is a very complicated mess.

Ms. Peck asked the Board if she could propose a motion.
The Board agreed.

Ms. Peck, the motion that I would proposed is to approve a modification of special use permit #606 to be modified as follows:

- The first condition of the approval that was granted on March 5, 2019 be stricken and amended to read that a covenant being incorporated into the deed for 9 Greylock Lane that imposes a maintenance obligation on 9 Greylock Lane so that the road will be maintained in accordance with the requirements set forth in NYS fire code for a fire apparatus road and that covenant be provided to the Town of New Scotland Building Inspector and to the Town of New Scotland Planning Attorney for review and approval and filed with the County Clerk prior to the issuance of a building permit for the lot.
- The second condition would be modified to read that driveway improvements as depicted in the plans provided by the applicants engineer must be completed prior to a certificate of occupancy being issued by the Town.
- A fifth condition will be added on that will state that ingress and egress of Greylock Lane will not be obstructed in any way during construction.

Ms. Galvin: So moved.

Mr. Orietas: I have a couple of questions, can I come back up, and so I'm a little unclear on what the deed covenant for a maintenance agreement.

Ms. Peck: It's not a maintenance agreement. It's just imposing a maintenance obligation, you can have a bunch of deed covenant or restrictions, and you see them in subdivision all the time. It will just impose a maintenance obligation for this lot.

Mr. Orietas: Just that lot just to make sure that it's up to par with the fire, to make sure that the fire apparatus can come?

Ms. Peck: No, that it is maintained in accordance with the requirements set forth in NYS Fire Code for a Fire Apparatus Access Road, which is exactly what DeMis provided us, so it should be in accordance with all that.

Mr. Orietas: That does not mean that this house is not solely for maintenance of that? Because I don't think that can happen.

Ms. Peck: If the road starts falling apart we are going after 9 Greylock Lane, so 9 Greylock Lane has to have some responsibility to maintain the road. That's why I said we are not going to flush out the language of this deed covenant right here and

now which is why I'm thinking that you provide it to the Town and we will take a look at it and we can work with your counsel or whoever you are using to try and figure out the language that's going work best for the Town on this.

Mr. Orietas: I think that is fair because since that house is the final one and that one is the tipping point for the fire apparatus that it would make sure that it's cleared properly. Mr. Shufelt said it was wide enough as it is just to make sure it is cleared out and the Y is clear so I think I'm good with that.

Mr. Cramer: But this is John DeMiss' report not Mr. Shufelt's just for clarification.

Mr. Orietas: But John DeMiss' it says 20' but that's in total with the shoulder.

Mr. Cramer: Fire apparatus access road calls for drive able 20-feet, so the 2-foot wider and that's why we got into the discussion with the shoulder around the culvert pipe.

Mr. Orietas: Right which is over 20-feet, I had pictures months ago, I mean you say 20-feet but Youmans is 16-feet.

Mr. Cramer: Youmans was constructed before the fire code was updated.

Mr. Orietas: So was Greylock.

Mr. Cramer: But now there is a new agreement on Greylock that is requiring this.

Mr. Orietas: So is Youmans following that also.

Mr. Cramer: Youmans is a town road and is a separate issue.

Mr. Orietas: Okay, fine whatever Mr. Demis says is fine with me. It says proposed 20-foot drive lane, it says gravel on there, I think whatever drive able is. Right now on my picture it does show that there is gravel.

Mr. Cramer: Mr. Demis' report also calls for four season fire apparatus drive ability.

Mr. Orietas: Okay, I did talk to Mr. Shufelt about in depth and he also can vouch for whatever we do. He brought his truck and we measured everything.

Mr. Cramer: He had no option to the new design.

Mr. Hart: Does that answer your question?

Mr. Orietas: Yes. I know we are saying drive able I'm hearing yes you can drive on a lawn.

Mr. Cramer: A fire truck can't drive on a lawn. That's what the fire code is calling for.

Ms. Galvin made the motion with the modifications and Mr. Hart seconded the motion; all in favor; motion so carried.

Vote: 4-0

Old Business:

- 1) **Site Plan Allowance #122:** Application submitted by Stewart's Corporation for a site plan review to allow for a new 3,696 sq. ft. store to be constructed as well as reconfiguration of the gas canopy, parking, and sign on an existing site. The site contains approximately 37,423 sq. ft. and is located within the CH Zoning district. The property is located at 1360 Indian Fields Road and is identified as New Scotland tax parcel #107.2-2-58. This site plan application is made pursuant to Article V, Section 190-52 of the Zoning Law of the Town of New Scotland.

Mr. Hart moved to schedule a public hear for the next Planning Board meeting and material must be submitted to Mr. Cramer before June 18, 2019 to be put on the July agenda; Mr. Richards seconded the motion; all in favor; motion so carried.

Vote: 4-0

New Business:

- 1) **Referral: Variance Application #535:** Application submitted by Lauren and Gorden Blaisdell requesting relief from Article V, Section 190-56 B of the Town of New Scotland's Zoning Law to allow for a pool to be constructed 10' from the side property line. The parcel is located within the RA Zoning District at 64 Morningstar Lane. The parcel is owned by the applicants and identified as New Scotland Tax parcel i.d. #106.-4-33. The RA district has a side yard setback of 25'. This request is for 15' of relief to allow for the pool to be located within 10 of the side property line.

Mr. Hart made a motion after considering both the site characteristics and the lack of an alternative and the fact that the neighbors do not have an objection I would

like to make a favorable recommendation to the ZBA on this application. Ms. Schallop seconded the motion; all in favor; motion so carried.

Vote: 4-0

Discussion items:

- 1) Minutes for May 7, 2019. Ms. Galvin moved to approve the May 7, 2019 minutes and Ms. Schallop seconded the motion; all in favor; motion so carried.

Vote: 4-0

- 2) Minor subdivision for the month of May 2019
 - No approved minor subdivision for the month of May
- 3) Discussion/Comment: Proposed Local Law C of 2019 regarding Solar Collector Facilities on Town landfill sites.

Ms. Peck will send an overview of what was discussed regarding proposed Local Law C of 2019 regarding Solar Collector Facilities on Town landfill sites.

- 4) Discussion/Comment: Draft Planner Resolution

Ms. Peck will edit the draft planner resolution with the Boards comments.

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

Motion to Motion to Adjourn: At 11:00 p.m. Mr. Hart moved to adjourn and Mr. Richards seconded the motion; all in favor; motion so carried.

Respectfully submitted,

Lori Saba