

**TOWN OF NEW HARTFORD
PLANNING BOARD MINUTES
MONDAY, JUNE 13, 2011
NEW HARTFORD PUBLIC LIBRARY – 5:30 P.M.**

The Regular Meeting was called to order by Chairman Elis DeLia at 5:30 P.M. at which time the Pledge of Allegiance was recited. In attendance were Board Members Ellen Rayhill, Julius Fuks, Jr., Peggy Rotton, Bob Wood and Jerome Donovan. Board Member absent: Brymer Humphreys. Also in attendance were Town Attorney Herbert Cully, Codes Enforcement Officer Joseph Booth, Lis DeGironimo, Town consultant/engineering, Supt. of Highways Rick Sherman, and Recording Secretary Dory Shaw.

Draft minutes of the April 11, 2011 meeting were received by each Board Member. Motion was made by Board Member Peggy Rotton to approve these minutes as written; seconded by Board Member Bob Wood. Board Member Julius Fuks, Jr. abstained as he was not a Planning Board member at that time. All others in attendance in favor.

Chairman DeLia introduced newest Planning Board member Julius Fuks, Jr.

Subdivision: Faxton-St. Luke's Memorial Residential Health Care Facility and St. Luke's Memorial Hospital Center Foundation, 1656 Champlin Avenue, New Hartford, New York. Preliminary & Final Review/Approval of a 2-lot Minor Subdivision. Tax Map #317.000-2-1.2 & 1.3; Zoning: Planned Development Institutional. Ms. Sharon Palmer of Faxton-St. Luke's appeared before the Board.

This Minor Subdivision and descriptions had been reviewed by Town Attorney Cully and it meets all Town Code. Also, this accommodates the expansion of St. Luke's Home for setbacks and parking that were needed.

Motion was made by Board Member Jerome Donovan to **grant Preliminary & Final Subdivision Approval** of map dated/revised April 1, 2011 based on the recommendation of Town Counsel; seconded by Board Member Peggy Rotton. All in favor.

Site Plan Review: Faxton-St. Luke's Healthcare Facility, Inc., 1650 Champlin Avenue, New Hartford, New York. Final Site Plan Review/Approval of a proposed addition/renovation to St. Luke's Home. Tax Map #317.000-2-1.3; Zoning: Planned Development Institutional. Close SEQR. Ms. Andy Alesia of Alesia & Crewell Architects, Mr. Donald Ehre of Boulder Consultants, and Ms. Sharon Palmer of Faxton-St. Luke's appeared before the Board.

Messrs Alesia and Ehre addressed SEQR comments regarding the Water Board and Soil & Water. Mr. Ehre had been in contact with both of these agencies and those updates are reflected in the drawings.

Lis DeGironimo reviewed comments, spoke with the two agencies and all comments addressed. Chairman DeLia asked the Board Members if they would like Mr. Ehre to discuss this further – Board Member Fuks wanted him to do so as he would like a summary before he votes.

Mr. Ehre explained the 35,000 sf addition and the grant the medical center receives from the State. With this addition they had to address parking, storm water and drainage, green space, etc. – everything is owned and maintained by St. Luke's. They also would like an outdoor gazebo. Mr. Ehre was asked to explain the green roof concept – which he did. Also, he explained where the meter is located for the Water Authority so they are aware of any leakage. They have applied for offsetting credits for sanitary. Mr. Ehre stated SWPPP had been accepted by Soil & Water. Chairman DeLia said this is part of the SPDES permit.

Mr. Alesia referred to minor changes in and around the gazebo which amounts to a path. He referred to the steep drop off. – they put up a fence, sections in between the stockade fence and vegetation (which had been addressed by Lis DeGironimo)..

At this time, motion was made by Board Member Peggy Rotton to close SEQR with a Negative Declaration; seconded by Board Member Bob Wood. All in favor.

Motion was made by Board Member Peggy Rotton to **grant** Final Site Plan Approval of map dated March 25, 2011 with revisions of May 25, 2011; seconded by Board Member Bob Wood. All in favor.

St. Thomas Church for property located on **Haverhill Drive, New Hartford, New York.** Preliminary and Final Subdivision Review/Approval of a four-lot Minor Subdivision. Tax Map #3228.000-2- 77; Zoning: Medium Density Residential. Mr. Terry Hoffman appeared on behalf of St. Thomas Church as a consultant.

Mr. Hoffman explained St. Thomas owns 9 ½ acres on Clinton Road and part of that parcel fronts to the rear of Haverhill Drive. They have been instructed by the diocese to sell this part of the property on Haverhill Drive. All lots are residential and meet current zoning requirements. This leaves the Church with 8 ½ acres. The existing parking lot for the Church will not be affected. They will use the same subdivision restrictions as the adjacent Fawncrest development to stay in conformity with the area. The playground located nearby will not be affected. He already has people interested in these lots.

Codes Officer Booth and Lis DeGironimo were asked for their comments – no comments.

*At this time, motion was made by Board Member Ellen Rayhill to **grant** Preliminary and Final Subdivision Approval of map dated April 5, 2011;

Board Member Donovan would like to add a condition to include the Fawncrest deed restrictions.

*Motion to add a condition that the plots include the Fawncrest deed restrictions on the plot filed at the County; seconded by Board Member Peggy Rotton. All in favor.

Mr. Hoffman stated he has no problem including these restrictions.

The Other Guys, 4470 Commercial Drive, New Hartford, New York. Amendment to Final Site Plan Review/Approval of a proposed rehabilitation of existing building to be used as a drive-in restaurant. Tax Map #328.011-1-13; Lot Size: 0.357 to 0.431 Acres; Zoning: Retail Business 1. Mr. Alex Forte of Octagon Engineering and Mr. B.J. Evans appeared before the Board.

Mr. Forte explained that he commented on the SEQR responses for those agencies as requested; NYSDOT had some concerns which he feels have been addressed. They changed the entrance slightly to obtain a Highway Work Permit. He also referred to changes on the plans submitted... Page #1 remains the same; Page #2 they located a fire hydrant; the sign planter and location on the northeast part of the property; the sign post fronts on the property that the Other Guys is situated on; Page #3 elevations exactly the same; #4 floor plan is the existing plan; Page #5 basement plan is same; Page #6 sign plan for the driveway entrance was modified – they had an island easement for a 40' driveway – drop curb and median – they are installing it. Commercial Drive is banked away from the property. They show drainage running around the edge of the curb. The sign that was there will be removed under the Highway Work Permit; and they removed some of the plantings on the east side of the project. They flattened the slope in the rear. These are the changes they have done to the Site Plan.

Chairman DeLia stated these changes are because of the NYSDOT's response.

Codes Officer Booth asked who would remove the sign – Mr. Forte said as a condition of the Highway Work Permit, they remove the sign that is in the front of the property. Mr. Bolos, owner of the property, will have to work with them on this – Mr. Forte said it is currently being discussed to remove it.

Board Member Rotton referred to the steep drop off by Tony's Pizza – what will be done with the surfaces. Mr. Forte said it will be blacktopped and leave the rest undisturbed.

Chairman DeLia referred to Lis DeGironimo's concerns and the difference between the plans submitted in April to now, what is going to be different with parking - gravel area. Mr. Forte said the plantings and island are costly. He could put a planting bed there to differentiate. He was also asked about stabilizing the grade – Mr. Forte said they would use fast growing plants. They will limit what they disturb with annual growth and get it done soon. Mudd Creek is a distance away.

Codes Officer Booth asked if this impacted the number of parking on site – Mr. Forte said no on either side.

Board Member Donovan referred to NYSDOT's requirement for the island – that would put some conditions on further development. NYSDOT only wants one access point to the property. Mr.

Forte explained to the Board that they are looking at the redevelopment of an existing building to put a use there. At some point if someone wants to purchase the whole lot, they would have to go back to NYSDOT. They are aware it could impede future development of another application with one entrance and curb based on what NYSDOT wanted. Any further development they would have to go back to NYSDOT and also come back to the Planning Board. Before they submitted this to NYSDOT, they had to make Mr. Bolos aware of this.

Board Member Rotton would like to see some greenery on the east side of the parking lot, i.e., grass. She also referred to the drop off in the back and adjacent to the next building there is a trail that goes to the building. If they put in the limited access (which they are), where are they going to end up exiting the trail. They are putting in a curb median and some plantings
Board Member Wood asked if there was a trail next to the parking lot. Mr. Forte said it will be blocked off. Mr. Forte said there would also be no trespassing signs.

Chairman DeLia felt they could work with Codes Officer Booth regarding a planting berm

Board Member Donovan said the plan submitted on April 11, 2011 shows the trees on that site. They did that to refine where the parking lot was but now they have a significant cost to satisfy NYSDOT comments and are trying to save some money. He expressed his feelings about aesthetics of a site and what agencies may request. Mr. Forte said they took some plantings off because of the additional expense – they want to get the developer in there. They aren't trying to circumvent anyone. They will add the additional plantings if it is what the Planning Board wants.

Board Member Fuks asked if the plantings would affect snow removal. Mr. Forte said they are comfortable with the snow removal issue on this site.

Attorney Cully asked if they knew if there is an easement for the trail. Chairman DeLia asked if any of this was on the subject property – Mr. Forte said it starts with a little triangle to the adjacent property. He could block it off. Attorney Cully said if there is an easement, he needs to be careful. Mr. Forte said there is an easement there – it is a cattle pass. This was initially part of a farm.

Lis DeGironimo has no comment just as long as cars stay on site.

Motion to close SEQR with a Negative Declaration was made by Board Member Jerome Donovan; seconded by Board Member Bob Wood. All in favor.

Motion was made by Board Member Peggy Rotton to **grant** Final Site Plan Approval to The Other Guys on plans dated 3/28/11 with revisions of 4/6/11, 6/2/11 and 6/3/11; and to include Site Plan exhibited on 4/11/11 which was stamped and dated; seconded by Board Member Bob Wood. All in favor.

Presbyterian Home, 4290 Middle Settlement Road, New Hartford, New York. Amendment to Final; Final Site Plan Review/Approval of a proposed 7,500 square foot building for a new Parkinson's Unit. Tax Map #328.000-2-67.1; Lot Size affected: .25; Zoning: Planned

Development Institutional. Mr. Raymond Garrett, CEO/Presbyterian Home, and Mr. Peter Nelson of Nelson Associates appeared before the Board.

Chairman DeLia stated this application was added to the agenda for tonight's meeting.

Mr. Nelson said their proposal is to add a Parkinson's Unit to the existing wing, which results in the reduction of beds, and which allows them to receive State money. He referred to the sewer flow – there are no new additions to the sewer. This project is being presented in two (2) phases.

Chairman DeLia asked about the status of the sewers. Lis DeGironimo mentioned there were some Infiltration & Inflow issues and until those were remedied, the Planning Board held back on Final Approval at their last appearance before this Board. Town Attorney Cully commented on a letter of April 28, 2011 to Highway Supt. Richard Sherman, committing to begin process for approval of repairs; then a letter received from their Counsel dated June 8, 2011 indicating that they went forward with the process. In part, this establishes the commitments the Town is looking for with regard to the repair of The Meadows' private sewer system.

It was stated that the Division of Housing and Community Renewal oversees the operation. They must approve release of the money. This project is separately titled.

Mr. Richard Sherman, Supt. of Highways, stated the Presbyterian Home is interested in using the same contractor that would be doing work in the Town – Presbyterian Home would contact them privately to see if they can get this contractor to do the work at Presbyterian Home also.

There being no further comments, motion was made by Board Member Peggy Rotton to close SEQR with a Negative Declaration; seconded by Board Member Jerome Donovan. All in favor.

Motion was made by Board Member Jerome Donovan to **grant** Final Approval of this project with plans dated February 7, 2011; seconded by Board Member Peggy Rotton. All in favor.

Aldi's, Inc. to be located at **8448 Seneca Turnpike, New Hartford, New York**. Final Site Plan Review/Approval of a proposed 14,993 ± square foot grocery store at the **Jay-K** property on Seneca Turnpike. Tax Map #328.011-1-20.1; Lot Size: 1.70 ± acres. Zoning: Retail Business 1. Close SEQR. Mr. Chris Kamar, representing Aldi's, Mr. Lou Kibling of Aldi's, Attorney Dan Cohen, Mr. Dean Kelly of Jay-K, Mr. Brian Mandryck, Engineer, Mr. Pat Agen of Prudential Real Estate, and Mr. Ned Walker of Walker Design, appeared before the Board.

Also in attendance were Mr. Ken Andella and Ms. Linda Lubey of NYSDOT.

Town Attorney Cully referenced any vote taken tonight in connection with this project, that it is a requirement of this Board that the applicant would have to have four (4) affirmative votes. He understands one (1) Board Member may abstain. There are six (6) Board Members in attendance. Attorney Cohen relayed this information and the applicant wants to make a presentation at this time.

Mr. Kamar stated they put together a 15 page response letter addressing SEQR comments. He also referred to the Town's contract engineer, Barton & Loguidice, PC, who were satisfied. He talked with Mrs. JoAnne-Humphreys of Oneida County Soil & Water and he said she didn't think there was anything further holding them back on this project. The applicant completed a Flood Plain Elevation Certificate. Mr. Kamar said the plan is the same – building in the same location and entrance. It shows an underground detention system, landscaping and loading dock in the rear. They have addressed NYSDOT'S comments and the traffic study was updated. They addressed their comments in the best possible way to satisfy NYSDOT – this project still requires a Highway Work Permit – NYSDOT will still have a say over this project. Further, the applicant needs a Building Permit, and Certificate of Occupancy once completed. The Town still has input to make sure it is designed and built the way it is presented.

Chairman DeLia referred to Ms. DeGironimo. She stated that Barton & Loguidice, PC reviewed the storm water calculations – they are satisfied with this. The retaining wall issue is still a concern of hers. Further, she is concerned about the existing power pole, and the stacking of cars on and off of the site.

Mr. Kamar said there is one (1) lane entering and three (3) lanes exiting on the State road. He feels cars can circulate on the site and get out. As relates to the pole, it has been left up to the property owner – it is an existing pole. The option is to protect that pole.

Mr. Kelly said he talked to National Grid and they want to put barriers around it. The cost to move it would be about the \$60-80,000 range. Mr. Kelly thought maybe some sort of island would help. It was mentioned there is landscaping which defines it.

Mr. Ken Andella of NYSDOT approached the Board stating their letter was addressed. Some concerns they had were related to what was happening to the rest of the site. They address what is going in and what is proposed in the future. The applicant stated there is no future development there. Mr. Andella said they are still not satisfied with that – they would like to see the bigger picture as currently we have this project on Route 5 and if they knew what was happening in the future, they could address and design it. It would be beneficial to the Kelly's at the same time with any future development - those facilities could be taken care of. If that work is not done for example in 2-3 years, and because that area wasn't earmarked today, then the Kelly's would have to come through and pay the cost of the mitigation that may include poles, etc. If there is nothing, that is acceptable, but they have always said why not put in a second access to Route 5B.

Mr. Andella said some other issues are site work – they would like to see one – reason being that for this corridor they would like to see sidewalk activity - people use sidewalks.

Mr. Andella further addressed the Jay-K intersection and cars turning into and out of the site.

Board Member Rotton referred to a round-about. Ms. Lubey said the intersections are too close together and not feasible. A plan would be to separate the two (2) intersections completely and there is no funding for this or any additional lanes on Route 5. She stated essentially the traffic is

a NYSDOT concern – there is a safety concern in that there are a number of accidents in this area. They need favorable accommodations to enter and exit this property.

Board Member Bob Wood asked if the intersection could be raised so it looks like a road rather than a driveway – Ms. Lubey said what they had hoped for was the developer to do this. It would put the cars at a better vantage point.

Town Attorney Cully referred to the Zoning Board of Appeals meeting where Mr. Andella was present and the level of service at that intersection right now. Mr. Andella indicated it was better than 1992 – perhaps a C – Route 840 has helped. Mr. Mandryck said on a Friday afternoon the level is between B & C - it doesn't take into account other things.

Board Member Donovan stated left turns would improve safety. He has concerns about additional development there and on adjacent parcels. He referred to NYSDOT asking for a full build out analysis. If this project gets approved, is a Highway Work Permit going to be approved. He is concerned about segmentation of this review. He explained the recent Zone Change, what is being presented at this time, and what could develop in this area and how it could affect this intersection - is NYSDOT comfortable with this.

Mr. Lubey said they will assume this is a full build out and they are assuming this as presented.

Attorney Cohen stated there are no future plans – this was put there at the request of the Town. He feels there is nothing further on this project for Aldi's – regarding segmentation.

Chairman DeLia said there is no segmentation here – there are no plans from this developer. The GEIS in the 1990's identified all issues. The Town of New Hartford and fees in lieu of mitigation provides for development to happen. It is every person's right to develop their property.

Board Member Donovan said for the record that this document is twenty (20) years old and hasn't been updated. He feels a lot of development has happened in this area since then.

Board Member Fuks referred to the NYSDOT having plans but no funding or improvements of that intersection. There is a certain level of growth with that study to help to guide future development. Ms. Lubey agrees. Mr. Andella said taking Route 840 into consideration, he will do new counts and work from them. He stated Route 840 has reached its 20-year volume in movements in just a few years.

Ms. DeGironimo stated segmented review is permissible. But regarding grade of intersection from proposed plans, there is nothing there changing the grade – would it be in the Highway Work Permit? Mr. Andella said yes, from type of design. In looking at the alignment, he feels they can't leave it; also, grade for pedestrian access and delineation into the driveway on both sides to insure that corridor is totally isolated.

Board Member Fuks wanted to know if there is a time frame for segmentation – Town Attorney Cully said no specific time limit is set forth, and he referred to and explained a Court of Appeals

case. He stated we can't speculate, it isn't segmentation at this point in time unless we are aware of a plan. All offsite SEQR is done under the GEIS in 1992, and adopted by the Town Board. We are only looking at site specific issues. There is no time limit; however, if an action is planned, they have to come forward with it. Attorney Cully does not see any issues as it relates to segmentation.

Attorney Cohen agrees.

At this time, Mr. Andella said if the traffic study is based on what is planned for this project and the site plan shows it, and mitigation recommended for that, they have no problem. If the traffic study doesn't show the need, he thinks the access on 5B is available. It wouldn't affect the Highway Work Permit but he would still like to see it. If it is not there, we'll make it work. Technically, there is no major issues that can't be solved but these recommendations should be looked at seriously. The access has to be an appropriate access and he wants to see sidewalks. The developer pays for the sidewalks. He will make sure issues are addressed through the Highway Work Permit.

Mr. Andella referred to the existing landscaping business on site – they have been selling landscaping and storing it on the State right-of-way for many years. It was stated that this has been addressed.

Chairman DeLia asked Mr. Andella if the NYSDOT is going to require sidewalks on their right-of-way – Mr. Andella said yes. Ms. Lubey said again they are assuming this is a full build out.

Chairman DeLia asked what the developer wanted this Board to do – proceed or defer. Mr. Kamar feels SEQR was addressed, and he said Town Staff has been helpful. Town Attorney Cully advised what would happen if a vote was taken and failed. Mr. Kamar asked if the Board has anything substantial to tell them – he further stated this Board has to have something to deny them on. Attorney Cully doesn't feel they should tell them how to vote and why.

Chairman DeLia feels the risk is on the developer, not the Town. The Town is not taking a risk by approving this. If NYSDOT said there is a traffic issue, the developer has to address it.

Board Member Donovan asked Codes Officer Booth, do all projects have to come back to the Planning Board in this zone. Mr. Booth said this is one of the most liberal zones in the Town. He went through some of the permitted uses in this RB1 zone and the requirements without having to go through the Planning Board. Chairman DeLia asked, does this include multiple buildings – Mr. Booth said yes.

Board Member Donovan has concerns about this as the permitted uses in this zone do not need to come back before this Board.

Mr. Andella asked, if the Town has this provision for permitted uses, would they have to come to NYSDOT for another permit and if an action took place within 500' of their system, would they still be notified – Mr. Booth said no, unless there is mitigation earmarked.

Board Member Donovan asked Mr. Booth regarding permitted uses, the impacts don't come before this Board or available to NYSDOT for an analysis – Mr. Booth said he is correct.

Attorney Cohen asked if they were to defer for a vote, would there be any further meetings this month – the answer is no. He said the law is specific about it, you don't have to get into speculating what is going to happen.

Chairman DeLia said the Town Attorney has given us his opinion that segmentation isn't involved here.

Town Attorney Cully asked Mr. Booth, if they obtain a permit, they pay the same mitigation under the GEIS – Mr. Booth said yes.. A SWPPP would be required.

Mr. Andella asked if the Board would be able to put a contingency on any additional development that would come before the Board again for this site. Attorney Cully said it is not required in that zone.

Mr. Kamar stated that based on what we talked about tonight and the smaller types of development in the future without Planning Board approval, it sounds like low volume uses. He knows the property – it is not an easy property to develop. We have talked about the cost per square footage that goes into the fund for GEIS that accounts for traffic; we talked about segmentation; the Town Attorney said this is not segmented; the applicant's attorney said there is no future development. If they choose to develop, it is a risk they are taking. He feels comfortable by taking a vote tonight.

Mr. Dean Kelly addressed the Board saying the property has been this way for over 70 years.

Board Member Wood asked Codes Officer Booth – if we vote this down, can they build this anyway – response: yes, but smaller.

Board Member Donovan for the record feels a development facing a major State highway with a high accident rate and no money available to redesign it, is a concern of his. He acknowledges the traffic study and safety to change the turning lanes, but he is concerned about future development. Until he has an understanding on the full impact on that intersection, he can't make a judgment whether to go forward.

At this time, motion was made by Board Member Peggy Rotton to close SEQR with a Negative Declaration; seconded by Board Member Bob Wood. Vote taken:

Chairman Elis Delia – yes
Board Member Bob Wood – yes
Board Member Ellen Rayhill - yes

Board Member Peggy Rotton – yes
Board Member Jerome Donovan – no
Board Member Julius Fuks - abstained

Motion carried by a vote of 4 – 2 (one objection and one abstention).

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Motion was made by Board Member Peggy Rotton to **grant** Final Site Plan Approval for latest Site Development Plans received on June 3, 2011 with noted revision dates shown; seconded by Board Member Bob Wood. Vote taken:

Chairman Elis Delia – yes
Board Member Bob Wood – yes
Board Member Ellen Rayhill - yes

Board Member Peggy Rotton – yes
Board Member Jerome Donovan – no
Board Member Julius Fuks - abstained

Motion carried by a vote of 4 – 2 (one objection and one abstention).

The date of the next Planning Board meeting was discussed. Dory Shaw will be in touch with the Board Members regarding a meeting in July.

There being no further business, the meeting adjourned at 7:30 P.M.

Respectfully submitted,

Dolores Shaw
Recording Secretary

dbS