

JOINT TOWN AND VILLAGE PLANNING BOARD MEETING MINUTES

March 20th, 2024, at 6:30pm | 103 Main Street, Mount Morris NY

Present: Jim Patrick, Planning Board Chairman; Planning Board Members Phil Race and Joel Clester

Excused: Planning Board Member Larry Woodworth

Others Present: Shawn Grasby, Town Code Enforcement Officer; Mark Mullikin, Village Code Enforcement Officer; Bill Manthey, Village Trustee; Joe Rawleigh, Town Councilman; Kevin Fahey, Community Member and Zoning Board of Appeals Chairman; Community members Gretchen Saunders, and Mark Ewing

CALL TO ORDER AND REVIEWAL OF MINUTES

The meeting was called to order by Chairman Jim Patrick at 6:32pm.

Shawn Grasby led the Pledge of Allegiance. All members in attendance introduced themselves. Chairman Jim Patrick announced that additional items have been added to the agenda including a reviewal of a subdivision and area variance application located at Fiddler Road in the Village of Mount Morris, as well as reviewal and comment on the Village Solar Laws, and subdivision application for a property located at the corner of Dutch Street Road and Moyer Road in the Town of Mount Morris. Chairman Patrick added that the Fiddler Road application for subdivision and area variance will first need to be seen by the Zoning Board of Appeals and that the applicant will need to return to the Planning Board for a public hearing after the Zoning Board of Appeals grants an area variance.

Chairman Jim Patrick added that Board Member Larry Woodworth has been excused from the evening's meeting as he had a prior engagement.

A motion to approve the February 21st, 2024, meeting minutes as written was introduced by Phil Race and seconded by Joel Clester, and was voted on by members as follows:

Aye: 3 (Clester, Patrick, Race)

No: 0

Abstain: 0

The motion was carried.

PUBLIC HEARING— HOAGLAND/MT. MORRIS – NUNDA ROAD SUBDIVISION

Chairman Jim Patrick opened the public hearing for a minor subdivision in the town on Hoagland Road. Chairman Patrick gave the floor to Town Code Enforcement Officer Shawn Grasby to provide an overview of the application.

Town Code Enforcement Officer Shawn Grasby explained that the proposed parcels included on the subdivision application meet all requirements per Town Code and are located in a low-density residential district.

Chairman Jim Patrick verified with Mark Ewing, the applicant, that the current parcel is 75-acre lot. Mr. Ewing stated that the original parcel is approximately 72 acres, and that he is looking to split off 10 acres from the parcel and give the remaining 62 acres to his daughter. Chairman Patrick asked what would become of the remaining 62 acres. Mr. Ewing stated that he did not believe that his daughter currently has any plans for further development of the acreage, and that the land is currently primarily used for hunting and firewood. Mr. Ewing also stated that he and his wife have no plans to develop the 10 acres that they plan to keep.

Chairman Jim Patrick opened the floor for questions from the board. Town Code Enforcement Officer Shawn Grasby stated that the application is cut and dry. Chairman Patrick asked if anyone present in the gallery had comments or questions regarding the application. Hearing none, Chairman Patrick closed the public hearing.

A motion to approve Mark and Lisa Ewing's application for minor subdivision at 1831 Hoagland Road in the Town of Mount Morris, Tax Map ID 144.-1-36.11, was introduced by Joel Clester was seconded by Phil Race, and was voted on by members as follows:

Aye: 3 (Clester, Patrick, Race)

No: 0

Abstain: 0

The motion was carried.

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Chairman Jim Patrick advised applicant Mark Ewing to file with the county as soon possible as failure to register timely may lead to him needing to reappear for another hearing.

MINOR SUBDIVISION APPLICATION RECEIVED– TOWN OF MOUNT MORRIS

Chairman Jim Patrick began reviewal of an application for a minor subdivision located at the corner of Dutch Street Road and Moyer Road in the Town of Mount Morris, Tax Map ID 133.-1-13.116. As the applicant, Benjamin Borntreger, was not present, Chairman Patrick asked Town Code Enforcement Officer to give an overview of the application.

Officer Grasby stated that the application proposes dividing 3 acres from the existing 35-acre parcel and added that the remaining lot will have frontage on both Moyer Road and Dutch Street Road. Officer Grasby also stated that the wells and septic have been included on the map as requested.

Community member Kevin Fahey inquired as to whether the property is up for sale and listed at 2.8 acres and if the listed acreage in the sale details is correct or if it has changed. Officer Grasby explained that the total acreage is defined by the center road of the property, but that the acreage inside of the highway lines totals 2.588 acres. Officer Grasby added that the subdivision meets frontage requirements and set back requirements within the town code as is.

Chairman Jim Patrick requested that applicants complete a SEQR and added that the county prefers that the SEQR be completed electronically as many fields are automatically populated based on parcel's Tax Map ID. Chairman Jim Patrick opened the floor to the board for questions. No comments or questions were presented.

A motion to waive the County Referral and to set the public hearing for Benjamin Borntreger's application for subdivision at 3167 Moyer Road in the Town of Mount Morris for Wednesday, April 17th, 2024, at 6:30pm was introduced by Phil Race and seconded by Joel Clester, and was voted on by members as follows:

Aye: 3 (Clester, Patrick, Race)

No: 0

Abstain: 0

The motion was carried.

MINOR SUBDIVISION APPLICATION RECEIVED– TOWN OF MOUNT MORRIS

Chairman Jim Patrick began reviewal of an application for a minor subdivision at 10 Dio Lane in the Town of Mount Morris, Tax Map ID 133.-1-13.116. Chairman Patrick gave the floor to Village Code Enforcement Officer Mark Mullikin to provide an overview of the application. Code Enforcement Officer Mark Mullikin stated that the property is currently owned by Richard Dioguardi and contains approximately 8 acres. The owner and the applicant, Kevin Fahey, wish to divide approximately 3.335 acres from the existing parcel and turn it over to Mr. Fahey. Mr. Fahey's lot borders the proposed subdivision and when added to his current 3.7 acres would total approximately 6 acres in total. Mr. Dioguardi plans to retain the remaining acreage. Officer Mullikin added that there is no significant impact on the community.

Chairman Jim Patrick asked the applicant, Kevin Fahey, if there was anything that he would like to add. Mr. Fahey stated that Richard Dioguardi has struggled with his health of late and is hoping to lessen his tax burden by extending the subdivided acreage to him, and that Mr. Fahey has explained that this will likely not be the case unless significant frontage is taken away from the primary parcel. Mr. Fahey stated that Mr. Dioguardi is also hoping to subdivide an additional parcel to Marcy Dioguardi as well.

Chairman Jim Patrick inquired as to whether a sewer easement or sanitary sewer that runs through Kevin Fahey's existing property. Mr. Fahey reviewed the provided maps and stated that he doesn't recall a sanitary sewer being added to the property but pointed out a manhole nearby. Town Councilman and community member Joe Rawleigh added that he didn't believe that a line is through the property but that an easement is. Mr. Fahey added that he doesn't have plans to build on the property.

Kevin Fahey added that he's had an issue with the Village Code and County Planning Board is that the area variance requirement for the owner's other proposed subdivision has come up due to an error in the current Village Code. Kevin Fahey explained that the NYS Department of State dictates that most codebooks contain an administrative variance that provides ways for the Planning Board to navigate through instances of errors within the code. Secretary Kaylee Leone stated that she had tried to figure out when the typographical error setting the minimum square footage within the code to 115,000 square feet

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but has not been able to determine what year the code was updated to this erroneous number. If the code was submitted correctly to New York State but was erroneously updated following submittal, the issue might be easily fixed.

A motion to set the public hearing for Kevin Fahey's application for subdivision at 10 Dio Lane in the Village of Mount Morris for Wednesday, April 17th, 2024, at 6:30pm was introduced by Joel Clester and seconded by Phil Race, and was voted on by members as follows:

Aye: 3 (Clester, Patrick, Race)

No: 0

Abstain: 0

The motion was carried.

MINOR SUBDIVISION APPLICATION RECEIVED– VILLAGE OF MOUNT MORRIS

Chairman Jim Patrick began reviewal of an application for a minor subdivision at 21 Fiddler Road. Chairman Patrick asked Village Code Enforcement Officer Mark Mullikin to give an overview of the application.

Officer Mullikin stated that the applicant, Marcy Dioguardi, is hoping to subdivide a 1.93-acre parcel into two parcels containing 1.155 acres and .872 acres. The resulting .872 parcel will be retained by the current owner, Richard Dioguardi.

Village Code Enforcement Officer Mark Mullikin again detailed that the current village code contains a comma on the minimum square footage requirements, making what should be a 15,000 square foot minimum requirement appear in the village code as 115,000 square feet minimum requirement or equal to 2.64 acres. Officer Mullikin added in accordance with this error, the subdivision, if approved, will create a non-conforming lot. Therefore, the applicant has applied for an area variance that will need to be seen before the Zoning Board of Appeals. Officer Mullikin added that he does not see any negative impact to the community should the subdivision be approved and stated that the applicant plans to keep the lot vacant for the foreseeable future but may plan to put a residence on the resulting parcel at some point in time.

Chairman Jim Patrick asked if this application for area variance has already been scheduled before the Zoning Board of Appeals, to which Zoning Board Chairman Kevin Fahey stated that it was not. Chairman Patrick stated that the public hearing for the applicant's subdivision would need to be seen before the Planning Board after the Zoning Board of Appeals approved the area variance.

DISCUSSION OF PROPOSED VILLAGE SOLAR ENERGY LAW

Chairman Jim Patrick moved onto discussion of the new solar energy law for the Village of Mount Morris. Chairman Patrick invited Village Trustee and Deputy Mayor Bill Manthey to provide an overview on the proposed law. Trustee Manthey stated that a moratorium was passed a little less than a year ago, and that the Village moratorium varies from the Town moratorium due to space and land constraints as the average Village lot size is much smaller than the average Town lot size. Because of this, additional terms and conditions apply to solar panels within the Village. Village Code Enforcement Officer Mark Mullikin added that the Village attorneys are basing code off other nearby municipalities' code. Officer Mullikin stated that development on a residential scale would really look like accessory structures and roof-mounted systems as opposed to solar fields that are seen in within the Town, aside from agricultural districts within the Village which might allow for fields should the plans confine to the proposed Village solar law.

Chairman Jim Patrick asked Village Code Enforcement Officer Mark Mullikin if new panels would require a building permit, to which Officer Mullikin stated that they would.

Chairman Jim Patrick opened the floor to questions.

Community member Kevin Fahey stated that wanted to offer insight into the County's position. Mr. Fahey asked if there was anything contained within the proposed law that offers protection for prime soils. Village Code Enforcement Officer Mark Mullikin stated prime soils usually don't concern residential zones but stated that such protections are detailed in the tier two details within the solar law. Secretary Kaylee Leone stated a phrase listed within the code including the passage that "disturbance of prime farmland of statewide importance shall be avoided to the maximum extent practicable". Mr. Fahey stated that he brings it up because many villages and towns only allow for a certain percentage of solar panels/arrays located over prime farmlands to be permitted in their code.

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Upon reviewing the proposed village solar law, Chairman Jim Patrick asked if the Village is planning to be able to offer special use permits in the future, as the law proposes that largescale solar projects permitted in agricultural districts will require special use permit approved by the Village Board. Village Trustee and Deputy Mayor Bill Manthey stated that they don't anticipate having many applications for large-scale solar projects within the Village. Village Code Enforcement Officer Mark Mullikin stated that the special use permits can be required by the Planning Board instead, to which Chairman Patrick stated that he has no preference and only asked to receive clarification on the process.

Village Code Enforcement Officer Mark Mullikin stated that the proposed law would be inserted into the Village Code as a new chapter.

Board member Joel Clester asked how the Village would know if a property's solar was not producing energy for one year, as the code states such non-production would trigger decommissioning. Town Code Enforcement Officer Shawn Grasby added that special use permits are required annually for largescale solar projects, and solar companies are required annually to submit output reports to the municipalities in which they are located.

Chairman Jim Patrick asked if the law covers battery storage at all, to which Village Trustee and Deputy Mayor Bill Manthey stated that it doesn't. Town Code Enforcement Officer Shawn Grasby added that such restrictions would need to be put forth in a separate law.

Board member Joel Clester also called into question the three-foot walking space between arrays, as residential roof-mounted solar panels usually require a three-foot perimeter around the panels as this allows for the roof space to be maximized. Village Code Enforcement Officer Mark Mullikin stated that verbiage can be changed to "around arrays" instead of "between arrays".

Village Code Enforcement Officer Mark Mullikin stated that the proposed law has been sent to the county.

OTHER BUSINESS

Chairman Jim Patrick asked the board if any members had additional matters to discuss.

Secretary Kaylee Leone stated that she reached out to the County Planning Department for copies of the town and village municipal agreements. Heather Ferrero, the County Planning Department's Deputy Director, will send copies when she returns from vacation, at which time Secretary Leone stated that she would forward the agreements on to the Planning Board. Secretary Leone also prepared information for the Planning Board members detailing which applications the County Planning Board recommends be forwarded for review, which applications are required for review, as well maps for county-wide and town-wide trigger zones. Secretary Leone stated that she was unable to obtain a trigger zone map for the Village, as the link was broken on the County's site. Community member Kevin Fahey happened to have a copy with him and provided it to Secretary Leone. Secretary Leone also stated that the agricultural parcels located within the town and village are also included within the prepared packets for the board.

Chairman Jim Patrick stated that the Fire Department will be readying a site plan for review in the coming months. Village Code Enforcement Officer Mark Mullikin stated that the site plan will first be reviewed by village engineers. Community member Kevin Fahey stated that the restrictions of an R1 district will be superseded should the planned structure be built. Chairman Patrick stated that the Fire Department will need a special use permit and site plan review. Mr. Fahey responded that they would need a use variance, to which Chairman Patrick again stated that they would need a site plan review and special use permit. Mr. Fahey stated that village law is wrong, and that the County has stated such in the past. Chairman Patrick advised Mr. Fahey that the County doesn't run the Village or Town, to which Mr. Fahey responded that the County is an extension of New York State and that the state would consider such a special use permit in this instance as spot-zoning. Chairman Patrick stated that this would not be considered as spot-zoning as the zoning of the parcel itself is not being changed. Mr. Fahey stated that he did not believe that a special use permit was the correct way to proceed. Chairman Patrick stated that he is abiding by the current Village Code and stated that a similar use permit was applied for by a car salesman on Case Street. Mr. Fahey stated that the special use permit that Chairman Patrick is referring to also should not be allowed, to which Chairman Patrick stated that it wasn't allowed as the Planning Board did not approve the application. Mr. Fahey stated that he believes that these applicants should be applying for a use variance and not a special use permit. Chairman Patrick asked Mr. Fahey who would carry out the site plan review in such an instance, to which Mr. Fahey stated that the Planning Board would still carry out the site plan review but that the Zoning Board of Appeals would see to the use variance. Chairman Patrick stated that he must abide by the way the code is currently written. Mr. Fahey stated that he would contact the

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Department of State to see what they have to say about the matter. Mr. Fahey explained that the current code is wrong, and that the County also stated that the zoning is wrong. Chairman Patrick stated that he doesn't disagree the Village code is flawed, but that he needs to proceed with a special use permit and site plan review as outlined within the current Village Code. Mr. Fahey stated that this could result in major issues should someone file an article 78, to which Chairman Patrick stated that the Village Board is ultimately responsible for ensuring that their codes conform to New York State's requirements and that whether anyone agrees with the code or not does not change the fact that the Planning Board must work within the current parameters of the Village Code. Chairman Patrick stated that he has continuously brought up issues within the Village Code, but as he is unable to change or update it that he must abide by it as written. Mr. Fahey stated that he just wants to make sure that these reviews and approvals are being done correctly. Chairman Patrick asked Mr. Fahey what would be changed if the process were changed over to an area variance instead of a special use permit, to which Mr. Fahey responded that use variances are difficult to obtain but that the applicants can gain municipality status to supersede the variance requirements. Chairman Patrick stated that at least through the current process that community members have a chance to be heard in a public hearing, to which Mr. Fahey stated that he didn't disagree with Chairman Patrick and only wanted to state that he believes there is a more legal way to go about the process. Chairman Patrick encouraged Mr. Fahey to voice his concerns at the next Village Board meeting, but that at this time he needs to proceed with a site plan review and special use permit. Chairman Patrick asked Mr. Fahey if he did not approve of the Fire Department's project in general, to which Mr. Fahey responded that he took no issue with the project and thinks that the site would be great for what the Fire Department has planned. Mr. Fahey added that he just wants to ensure that the Fire Department can rest assured that the process is done right in the instance that someone who opposes the project comes along to contest or stop the project.

ADJOURNMENT

A motion to adjourn and set the next Planning Board meeting for Wednesday, April 17th, 2024, was introduced by Phil Race and seconded Joel Clester, and was voted on by members as follows:

Aye: 3 (Clester, Patrick, Race)

No: 0

Abstain: 0

The motion was carried, and the meeting was adjourned at 7:40pm.

Respectfully submitted,

Kaylee R. Leone
Deputy Town Clerk/Town Planning Board Secretary