

PLANNING & ZBA MEETING

MONDAY, AUGUST 19, 2019

MEMBERS PRESENT: ZBA: JEFF MULLIGAN, CINDY KELLEN, DIANE ATTEA, ROBERT WESTFALL

PLANNING: TOM MCGOVERN, CLARA MULLIGAN, KATHY MANNIX, MICHAEL MILES, RANDY KOZLOWSKI

ABSENT: SAM PRICE (ZBA), KATHY COLE (PLANNING)

OTHERS: CEO BRIAN GLISE, MRB ENGINEER LANCE BRABANT, TOWN ATTORNEY JAMES CAMPBELL

VISITORS: MICHAEL FOGEL, MICHAEL LEWIS, STEVE TRADER, SCOTT WHEATON, SAMUEL GOWAN, JASON BARLEY, MICHAEL CLARK, ERIC HUPPERT, KAREN CRATER, KARL MITCHELL, KAREN SCHIEDEL, LISA ARNOLD, JANET MANKO, JUDY FALZOI, NICOLE FLORA, VICKI BISHOP, CHUCK MORGAN, KEVIN O'DONOGHUE, RONALD THEW

CLERK: KIM MCDOWELL

ZBA & PLANNING BOARD MOTION TO OPEN THE MEETING WAS MADE BY BOB, SECONDED BY RANDY.

KATHLEEN COLE -ABSENT
TOM MCGOVERN- AYE
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - ABSENT

CARRIED 9-0.

ZBA & PLANNING BOARD MOTION TO APPROVE THE MINUTES FROM THE JOINT MEETING ON JULY 22, 2019 WAS MADE BY CINDY, SECONDED BY DIANE

KATHLEEN COLE -ABSENT
TOM MCGOVERN- AYE
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - ABSENT

CARRIED 9-0.

FLORA, NICOLE/2938 POLE BRIDGE ROAD/TAX PARCEL#54.-1-7.2-VARIANCES - SIDE SET BACK AND 2 FAMILY DWELLING - PUBLIC HEARING

Attorney Jim Campbell notified the Boards that his office has provided legal services for the Flora family in the past.

Jeff asked Ms. Flora to give some background on the project. Ms. Flora purchased the property from her mother and it was a five-family home at the time of purchase. She has a family friend that lives in the front of the house which would be one apartment and then convert the other apartments into one for her forever home.

Cindy asked why they need a variance, Brian stated that it is a non-conforming dwelling, the side set back is 40 feet and they are 37 feet. It is also going from five-family dwelling to a two-family dwelling. A variance is required since two-family dwellings are still non-conforming in an Agricultural zoning district.

Lance presented the SEQR Resolution - Type II Action and ZBA Decision Sheet to the Board members.

MOTION TO OPEN THE PUBLIC HEARING WAS MADE BY CINDY; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - ABSENT

CARRIED 4-0.

Jeff asked if there were any public comments regarding these variances, which there were none.

MOTION TO CLOSE THE PUBLIC HEARING WAS MADE BY BOB; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - ABSENT

CARRIED 4-0.

Jeff did not read the entire SEQR, just re-stated the requested variances and asked if there were any additional comments/questions. There were none.

TOWN OF AVON ZONING BOARD OF APPEALS RESOLUTION
NICOLE FLORA - VARIANCE APPLICATION
2938 POLE BRIDGE ROAD - AG - ZONING DISTRICT
TM# 54.-1-7.2 - AREA VARIANCE

SEQR RESOLUTION - TYPE II ACTION

WHEREAS, the Town of Avon Zoning Board of Appeals, (hereinafter referred to as Board of Appeals) is considering an Area Variance approval for side yard setback of 37 feet where 40 feet is required for a total area variance of 3 feet, and a variance to allow for 2-family residential unit in lieu of the 4-family designation located at 2938 Pole Bridge Road within the AG zoning district; and

NOW, THEREFORE, BE IT RESOLVED THAT, the Board of Appeals does hereby classify the above referenced Action to be a Type II Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

BE IT FURTHER RESOLVED THAT, Type II Actions are not subject to further review under Part 617 of the SEQR Regulations; and

BE IT FINALLY RESOLVED THAT, the Board of Appeals in making this classification has satisfied the procedural requirements under SEQR and directs this Resolution to be placed in the file on this Action.

The above resolution was offered by Bob Westfall and seconded by Cindy Kellen at a meeting of the Board of Appeals held on Monday, August 19, 2019. Following discussion thereon, the following roll call vote was taken and recorded:

Jeffery Mulligan - AYE
Samuel Price - ABSENT
Cindy Kellen - AYE
Bob Westfall - AYE
Diane Attea - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Board of Appeals for the August 19, 2019 meeting.

Kim McDowell, L.S.
Kim McDowell, Clerk of the Board

MOTION TO CLOSE THE PUBLIC HEARING WAS MADE BY BOB; SECONDED BY DIANE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - ABSENT

CARRIED 4-0.

MOTION TO APPROVE BOTH VARIANCES WAS MADE BY BOB; SECONDED BY CINDY.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - ABSENT

CARRIED 4-0.

Variances have been approved. Since Ms. Flora has already submitted her permit application, Brian will need to approve and Kim will process for Ms. Flora to pick up.

THEW, RONALD & FELICIA/6411 ACORN TRAIL/TAX PARCEL#45.-1-84
-VARIANCE FOR ROAD FRONTAGE

Both Mr. Thew and Mr. O'Donoghue were present to discuss this application.

Mr. O'Donoghue stated Mr. Thew is trying to subdivide his property into two parcels, one will be 4.5 acres which is his existing home and the other parcel will be 3.15 acres which he plans to sell. The road frontage is 66 feet and this is a shared driveway with one other property currently. The code states in the Agriculture zoning district there is to be 60 feet frontage for each parcel. Since there are 2 parcels and requesting another parcel, it would be 180 feet frontage needed. There are also concerns with the grade of the driveway and emergency vehicles accessibility.

Bob asked if they have read the email with the concerns from the Fire Chief:

As we have spoken before, I as the fire chief have concerns with any construction and/or expansion on Acorn Trail and Huckleberry Hill. With Acorn Trail, we are very limited in access to the properties already. The driveway exceeds the 10% grade and more so, the driveway is not constructed as a roadway. It is overgrown and the Fire District Tahoe was striking tree branches. I believe the grade is 10.7% (if I recall properly) and we can overcome the slight grade. The vegetation and trees need to be trimmed back significantly and the driveway/roadway be improved to allow access for a truck of 76,000 pounds and 13' tall. Due to there being no water source available, we will be laying a great deal of 5" hose (800-900') and then trucking water into Oak Openings @ Acorn Trail. If the property is to be split, this would create another location on the private drive/street that we can not access.

As for Huckleberry Hill, it also presents issues with access. The private drive/roadway is too narrow, starting with the entrance. Wit the fire last winter, we did have one fire truck damaged by the stone pillar gates being too close. There is no water and the length of the drive is about 3760' long from State Highways 5 & 20 to the end. Again, we would need at least three fire trucks to make the lay of 5" hose from front to back.

There is no real room to turn around or pass by another truck. The driveway is overgrown in spots and needs cleaning.

I don't know the feasibility of connecting the two roadways and widening Huckleberry Hill to a true two lane roadway, but that would be my first suggestion. Running a water line on Huckleberry Hill before anymore houses are added would be the next.

If there are any question or concerns please let me know.

Respectfully,

Jeff Faugh
Fire Chief
Town of Avon Fire District
East Avon Fire Department

Mr. Thew is trimming back the trees currently with the help from neighbors. Lance stated the driveway/private road needs to be in compliance with the weight of the emergency vehicles as well. Mr. Thew feels the driveway can withstand the weight of the vehicles since he had trucks all his life on the property with no issues. Lance suggested Mr. Thew come up with a plan and confirm the ability to handle the fire trucks and come back with those issues addressed and completed.

Brian questioned who is responsible for plowing the driveway in the winter since it is not a dedicated road. Mr. Thew stated that he does it as well as the neighbors. Jim Campbell stated Mr. Thew should have a reciprocal maintenance agreement with neighbors, even though they all agree right now, if someone sells their property the new owners may not be so willing to do so. Once you get that agreement, get it recorded so it becomes part of the title for the future.

Brian stated the international code for emergency vehicle accessibility has changed recently. The private drive needs to be brought up to compliance before the variances/subdivision is granted. Lance stated Mr. Thew has two options, one you make the driveway completely complaint with the code or meet with the Fire Chief and find out which exact parts need to be reconstructed to become complaint with the code.

Lance gave Mr. Thew instructions on what needs to be done before coming back to the ZBA Board. Kim also gave Mr. Thew a copy of the email and contact information for Fire Chief Faugh. Mr. Thew needs to let Kim know by September 9th if he would like to be put on the ZBA agenda for the September 23, 2019 meeting.

HENN, HELGE/ROUTE 39 & ASHANTÉE LANE/TAX PARCEL#34.-1-3.113 -
PLANNING - SUBDIVISION APPLICATION - CONCEPTUAL DISCUSSION

Mr. O'Donoghue was present to represent Mr. Heen for this subdivision application. There is 74 acres and Mr. Heen would like to subdivide 4.6 acres from that to be purchased by Mr. McFadden who owns the adjacent property. Jim asked if any of the land is in conservancy, which it is not. Jim also asked if Mr. McFadden plans to combine the 4.6 acres with his current parcel, Mr. O'Donoghue is not certain what his plans are.

Tom McGovern asked if this is zoned PUD or Agricultural, and it is zoned Agricultural. Jim asked if Mr. Heen could do a lot line adjustment instead of a subdivision, which it was determined he can do either. Jim stated that a public hearing wouldn't be required for a lot line adjustment but would be required for a subdivision.

Mr. O'Donoghue will discuss whether Mr. Heen would like to do a lot line adjustment or subdivision and get back to Kim with his decision.

HANSON AGGREGATES NEW YORK LLC/2049 HONEOYE FALLS NO. 6 RD./TAX
PARCEL #26.-1-13-SPECIAL USE PERMIT & SITE PLAN APPLICATION

Mr. Fogal addressed the Boards stating that they do not have any additional information to present tonight. They did attend the Livingston County Planning Board meeting regarding the expansion and they recommended approval subject to advisory comments. They did review the written comments that were received from Avon residents. Hanson feels that a lot of the comments were similar to what was stated during the public hearing at last month's meeting which they have addressed. A majority of the comments were environmental in nature and they were sufficiently addressed during the NYS DEC SEQR process. Mr. Fogal feels the applications submitted are comprehensive and complete and the Boards have enough information to approve them.

Tom asked if they have done anything to address the concerns regarding noises at night such as the slamming and beeping of dump trucks. They have talked with their employees and asked them to be conscious of the slamming of the trucks and they have started switching the backup beepers to strobe lights on the trucks to be used at night. They have also posted notices regarding the 10 ton weight limit on both Works Road and Oak Openings Road and these roads are to be used for local deliveries only.

Clara asked what type of operations are done at night. Blasting hours are limited Monday-Saturday from 9-5 by NYSDEC permit. Trucking can be 24 hours depending on the project, NYS DOT works at night for some project and Hanson is required to be open during those times.

Kathy Mannix asked if the expansion land in Avon is leased and Hanson does own the parcel. Clara stated that Mendon has a moratorium on mining. Hanson is not expanding into Mendon at this time.

Jim gave a brief synopsis of the procedure relating to the site plan and special use permit applications and the requirements for approval. The site plan approval doesn't have many challenges since they are not changing the foot print or making any structural improvements or infrastructure modifications, however, approval is based on the special use permit approval per Avon Town Code. The special use permit has factors for consideration and the ZBA and Attorney Campbell have had discussion, in terms of legal guidance, about the code and how to proceed with the special use permit application. Jim has prepared a resolution of findings as well as some background to the ZBA Board members. The Code of the Town of Avon regarding mining/excavation operations are a permitted use in the Town of Avon in the Agricultural zoning district.

One of the issues that was discussed extensively is hours of operations. Per Jim's conversation with Mr. Fogal, Hanson doesn't feel there should be any restrictions on hours of operations except restrictions on the blasting hours dictated by NYS DEC permit. Attorney Fogal believes that the authority of the ZBA is preempted by the New York State Mining Law and that since the NYS DEC permit did not contain restrictions as to hours of operation, the ZBA should not limit hours of operation. Jim stated that the restrictions if given by the ZBA Board will only apply to the 10 acre expansion in the Town of Avon. Jim asked if this Board feels strongly about the hours of operation restrictions. Jeff and Diane both feel concern for local residents but not sure what affect it will really have overall if given. Jeff asked if the continuous operations are confined to the asphalt process only, Hanson said that part of the stone operation runs as well. The only operations in the Town of Avon will be the blasting and removal of stone to the processing area. Cindy asked if in the 10 acres will these only be daytime operations and they stated as of now yes but it will depend on customer demand.

Jim stated to the ZBA Board members that they may want to table the matter on adopting the resolution until they have made a decision with all the information available to them regarding restrictions on the hours of operation.

Mike asked in the 10 acres in Avon what will generate the most noise and can they use any engineering to mitigate the noise levels. The only loud noise will be the drilling for quarry blasting before the first blast takes place. Generally speaking, Hanson will not be operating in the evening hours in Avon. Hanson stated the NYS DEC did do an extensive study and most of the noise concerns were in the Town of Rush. Hanson will do everything in their power to reduce the noise. Blasting on average is typically once a week and they blast 25-32 times from April through November. Drilling for blasting is 6:30-7:00AM behind barriers.

Tom is appreciative of looking into reducing the noise levels. He is also asking that they notify neighbors when blasting occurs and they do send out email blasts. He read the report regarding wells and aquifers and he would like them to be conscious of the neighbors water supply as well.

After confirming with the ZBA Chairman, Jim stated the ZBA would like him to explore the law to see if it is preemptive in regards to hours of operation. Jeff stated that there is not much the ZBA can control. Jim stated that he needs time to research this information and asked for another joint meeting in order to make informed decisions. Tom McGovern would like the Planning Board to make some recommendations to the ZBA Board for the special use permit.

Next joint meeting will be held on September 23, 2019 7:00PM at the Town of Avon. The Planning Board meeting scheduled for Tuesday, September 3, 2019 will be cancelled.

Some discussion between Jim and Board members on what resources are available that they can research to make an informed decision on the applications. They also decided that they would meet at 6:00PM on September 23, 2019 for legal guidance in preparation for the meeting that follows.

Tom McGovern stated that even though the public hearings had been closed there are visitors that have questions and he would like to hear them.

Chuck Morgan asked if tax map#26.-1-13, where the expansion is taking place, is considered a new mine since no mining has taken place previously. Jim stated no, the NYS DEC has made a determination through the expansion application that this is not a new mine. If they do another expansion on the remaining land that they own they will have to do another application. Some discussion on how NYS DEC advertises/posts when these applications are submitted to them took place. There was also discussion on what the impacts and process would be if the Town Board decides to make mining operations not permit able in the Town of Avon.

Another visitor stated that Hanson in Stafford just had to add a water district due to the fact that they ruined the wells in that area. Jim discussed the pros/cons of Town water in an Agricultural district with mining operations to all present.

Judy asked about fracking and what the NYS DEC process was to those companies that applied for permits. They made them go to each Town and get a valid permit before the NYS DEC would issue them a permit. She also stated that the Planning and ZBA Board members are the end of the road for the residents when it comes to their concerns. Jim stated while that is true, the Board members have very little they can do since it is a permit able use in the Town and an approved NYS DEC permit issued.

There was a lengthy discussion between Jim, Board members, and visitors about what requirement are used and how decisions are made by both Planning and ZBA boards.

ZBA & PLANNING BOARD MOTION TO CLOSE THE MEETING WAS MADE BY
MIKE, SECONDED BY BOB.

KATHLEEN COLE -ABSENT
TOM MCGOVERN- AYE
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
SAM PRICE - ABSENT

CARRIED 9-0.

MEETING CLOSED.