TOWN OF NEW SCOTLAND PLANNING BOARD

MINUTES

MARCH 5, 2019

Planning Board Members:

Charles Voss, Chairman

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)

Public Hearings: 7:00 p.m.

1) Special Use Permit Application #604: Application submitted Rose & Robin Tell-Drake for a Special Use Permit to allow for a parcel owned by Dale Caron to be used for “Agricultural uses, less than 7 acres.” The parcel is located within the RA district at 9 Game Farm Road, contains approximately 1.3 acres, and is identified as New Scotland tax parcel #95.-3-61.10. 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).

Mr. Voss invited Ms. Tell-Drake up address the Board regarding her chickens. The special use permit has been modified from its original application. There were rabbits, chickens and goats on the property. The goats have been removed. There was also the issue with the way this property sits it also has easements across it for adjacent parcels where their wells were located. We had concerns with the animals and animal waste contaminating the neighbor’s wells. We look at that issue quite extensively the last couple of months and we decided to ask the applicant to work with the building department in reconfiguring the animal location. There is also some property maintenance issues that is a separate enforcement action that the building department has with applicant, but again part of our consideration initially with the overall site. The applicant has decided to change their approach. They have gotten rid of the goats; the chickens are remaining on the site. The applicant has asked us to modify the application to not allow goats or sheep and we are just looking at chickens. The chickens will be in a pen enclosed area, but they can also be potentially free range when they are supervised. The applicant has agreed to that. They are back before the Board to discuss that kind of final plan with the applicant and any other additional details.

Mr. Cramer: There is nothing new with this application. The applicant had gotten rid of the goats before the last meeting, but the family was sick and they missed the meeting so we had asked for an updated site plan which they had delivered to us to keep in line with the modification of application.
Mr. Voss: The updated site plan shows the house, the driveway and one of the things that we had discussed with the applicant was to maintain a lawn area around the perimeter of the building. Mr. Cramer can you explain that to the public.

Mr. Cramer: Basically to keep in line with state codes that require 10-inches or less on the lawn within the general facility of the house for safety in case of first responders or access to help keep rodents away is what the code was originally designed for. We had designated an area all around the house as lawn area to be maintained under 10 inches an area off to the side along Game Farm Road where they would like to have the ability to have a vegetable garden, plant some fruit trees, and allow for the chicken coup to be moved around in that general area. Then everything from 30-feet behind the house back they would like to keep forever wild and let it grow up.

Mr. Voss: That’s really the area that we were initially concerned with because that’s where some of the easements are for the well head which are basically kind of on the southeast side of the property.

Ms. Tell-Drake explained that they would like some more chickens and the goats are not on the property anymore. They are comfortable with the increase in chickens and they will maintain the lawn area around the house. We agree with this plan.

Ms. Schallop: How many chickens are you asking to have on the property?

Ms. Tell-Drake: Up to 13 chickens.

Ms. Schallop: When you say free range is the property fenced in suitable way?

Ms. Tell-Drake: We have a border collie who is blind, so we keep the property fenced for her safety. We will also get an additional fence that crosses the property to keep the chickens penned in further, but it’s not a pen, it’s not like a chicken yard, it’s larger than that, but there will be an additional fence that divides the property. I’m not sure about the height of that yet.

Ms. Schallop: In terms of the easement for the wells is that going to be like forever wild area. Does that present a problem for access for the neighbors who need to get to their well heads?

Mr. Cramer: The neighbors who would have the easement would have the ability to go in and maintain it as necessary, so if they had to gain access to the well to replace a pump or something along those lines you know they can take down whatever the vegetation was required in order to get there.
Mr. Voss: This is more of a question for Ms. Peck, with that easement, the owners of that easement can they continuously mow that easement strip and keep it you know mowed and clear?

Ms. Peck: Well they can’t be prevented access to it, so as long as there is nothing the Tell-Drake’s are doing that are preventing the other property owners from being able to access that easement. It should not be an issue. I don’t think this is a situation where we necessarily need a separate easement agreement regarding the right of way over there. It cannot be fenced off to prevent them from entering it; they have to be allowed access.

Ms. Galvin: There has been different site plans that have been provided to us, do we have the current site plan that shows the additional fence that is going across the property and if so what would be the date of that so that we can make reference to it in any decision.

Ms. Peck: There is no date on it, I would like it to be dated, whatever is going to be put in the file the date should be today’s date (March 5, 2019 plan).

Mr. Voss: For enforcement purposes we have to identify where the fences will go.

Mr. Voss opened up the meeting to the public.

Ms. Snyder, Town Board member, so I was looking at the diagram in here, I couldn’t quite hear everything you said, so is the fence, where is the fence again, can someone say it loudly.

Mr. Hart: There is a fence around the perimeter of the property noted by the connected dotted line that is the dog fence. Then the free range area is the line that goes almost all the way across the property, it’s sort of in the middle.

Mr. Cramer: It would go from the house 15-feet to the west away from the house back to the line that is 30-feet behind the house and over to that western property line. It would go from Game Farm Road back about half way back on the property and then back over to the right.

Mr. Hart: The dashed line that surrounds the area that ends with the phrase free range area.

Ms. Snyder: So it is the dashed lines that are divided in the middle, are there two fences, so there are multiple fences around there and that is being labeled a fence now. What is a mobile chicken coop?

Mr. Hart: It is a small structure that usually the chickens can make the ground bare within that area because there is exposure to the ground so then you can move it to a different area that has fresh ground underneath it.
Ms. Snyder: Does it have wheels?

Mr. Voss: Some do. They are a small 4x6 coop.

Mr. Hart: That is a good question how big is this structure? It is less than 4x4 feet.

Ms. Snyder: Where is the chicken waste kept on this picture?

Mr. Cramer: In that same area, it is going to be composted in the garden.

Mr. Hart: There is also a compost container labeled next to the chicken coop.

Ms. Snyder: Is the fence there now?

Mr. Cramer: Around the perimeter of the property.

Mr. Hart: Not within because that has not been installed yet.

Ms. Snyder: When would that have to be installed?

Ms. Galvin: That will be part of the decision.

Ms. Snyder: So no fence, no chickens?

Mr. Voss: Typically the conditions will have to be met before the permit is issued.

Ms. Snyder: Thank you!

Ms. Velvus, 20 Deer Meadow Lane, my comments were prepared about the application that was prepared not this latest version and I would like to say that I’m here tonight to offer to be a part of the solution. What has been brought to the Town Planning Board is a list of concerns, complaints and problems with regard to the Tell-Drake application for the special use permit. I read the letter from Rose and in response to her comments from our comments at the public hearing from the original application and I was very moved by all the health and family issues that they have encountered over the past couple of years. My first response was to think that it’s a shame that some of the struggles weren’t shared over the fence or over a cup of tea with all of us. In my 22 years of living in the neighborhood with good times and tough times all the neighbors have stepped up to help us and we have stepped up to help each other. I hope that we can continue to support each other and include all the neighbors in this effort. I think the adjustment to the application is a step in that direction. I still have some concern about adding animals to that small piece of property. I found that there were some inconsistencies in some of Rose’s statements in her letter. That doesn’t mean that she is wrong or that it is bad, but there are some inconsistencies that concern me. One is that the goats she spoke of are not the same goats.
that were in the backyard in the summer. They are two different breeds. The comments that the goats are pets and not a livestock operation is helpful, but then the next sentence it says that we listed more than that on the application in case all three kid triplets at once, so if that happened it would be 12 goats on the property and then it’s a livestock operation if they are breeding goats and if they are breeding chickens. These are just some of the concerns about poor planning and understanding how animals reproduce and that should also be in the application. That is just an inconsistency between a stated intention and the actual situation. The other statements about gardens and so forth, anybody can have a garden, I don’t think there is a need for a special use permit to have a garden. All of the comments about the gardens, and the upkeep and so forth are irrelevant to the application.

I still feel that there is some concern about my doubts that the property at 9 Game Farm Road is the proper or appropriate place to raise those chickens and rabbits while being able to maintain the nature of the neighbor and to show benefit to the community as a whole.

Mr. Voss: For clarification purposes there are no more goats on this site and they are not part of the application. They will not be allowed; if they chose to bring in livestock it will be a violation of the special use permit and will be subject to enforcement in the future.

Ms. Galvin: Nor are there rabbits on this site.

Ms. O’Malley, 19 Game Farm Road, I just need a little bit more clarification, I’m just curious about how this easement works, since it is my easement, of maintaining, you mentioned and there is a fence there, I just need clarification on that and how that works. If this permit was in fact approved how does this translate if there is another owner down the road? Then with 13 chickens how do we know it is enforced, if there is 30 chickens, how does that work. No one has really been out there to see it now and they have been in violation for over a year. It’s hard to see that being enforced or how it would be.

Ms. Peck: For your easement, you have an easement agreement with the property owner, so they would simply have to make sure, and you would want them to make sure that they are in compliance with the easement agreement. I can’t give you advice as to the extent of those obligations for either party, that’s really a personal legal matter between the two of you. Generally the way easements work is that they would not, especially something that you need access that generally they would not be able to prevent you from accessing the well, but definitely I would recommend that you review the easement agreement to see if there are any additional obligations for either of the parties there. If there are any maintenance obligations for either party it is in the easement agreement. I think it would be important to look at the agreement that is between the parties, because it is considered a separate contractual agreement between the two property owners and the terms of that will govern. With respect to the permit that is being issued by the Board that runs with the land it does not run with the property owner, so if the property owner changes provided the use has not lapsed over a year they will be allowed to continue to have chickens under the special use permit provided all the conditions have been met.
Mr. Cramer: If there is a complaint that is made a site inspection would have to be done and the enforcement action is actually much easier through the use of a special use permit than through the other channels.

Mr. Voss: We will set the number of birds that they are allowed to have. If someone drives by and sees 30, 40, 50 chickens running across the property they can make a complaint to the building department and the building department would go out and inspect. If they are found to be in violation then they will issue a citation. It is a process; there is a legal process to enforcement. It doesn’t happen overnight, the applicant was found to be in violation initially that’s why they are before us now to try to rectify there issues. Anyone else?

Ms. Crystal Heshmat: I came to night to support Mr. and Mrs. Tell-Drake’s application. My background is in environmental engineering and science from John Hopkins University. I also know a bit about farm animals and taking care of animals because of having lived for several years in the grandparents farm in Pennsylvania. I had heard that there had been some concerns expressed earlier about the condition of some of their animals as to what was happening when the family was away and so I just wanted to come and let you know that I’ve been one of the people that has been assisting in taking care of the chickens and actually had them at my house for a little while when they had to be away. At least I wanted to let the Board know at least if I had any concerns about the condition of how they were being kept and how they were being fed and treated and things like that; well I suppose I could of not given them back, but it didn’t even occur to me until today, so I thought I would let you know they were being treated well and they were fat and happy chickens. I would like to say the comments about neighbors helping neighbors; I really liked to hear that. I hope going forward that is something that can happen more often.

Ms. Tell-Drake: Currently our coop is about 6x4 and it is pretty small. It needs to be replaced. We do move it around, but it is not on wheels, we scoop up what is under there and put it in our compost. We would like to get a new coop with wheels.

Ms. Galvin: What are the dimensions of the new coop?

Ms. Tell-Drake: We don’t have a plan right now. We haven’t looked yet to see what we are going to replace it with yet. We still need to decide, we need a bigger coop, because we would like to get up to 13 chickens. We may just go get a shed and convert it into chicken coop. I will work with Mr. Cramer for a specific size or a maximum size so that we won’t go past. I can tell you about our current coop, but not our future coop.

Mr. Voss: I think if we set a maximum size building you know in terms of square footage then you could figure out exactly what would work out best for you.

Mr. Cramer: If it is going to be a mobile unit it generally going to be smaller.
Ms. Tell-Drake: We do have a smaller wire metal structure that we may put wheels on for function of a chicken coop or chicken tractor which would also work as a chicken yard and they will be safe from predators. The moveable part would be mostly part of the unit.

Mr. Voss: The compost question you are going to collect it?

Ms. Tell-Drake: Yes, we have a fairly large compost bin that we turn. We would get more chickens in the spring. There will be no goats on the property.

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

Vote: 5-0

Mr. Voss moved to approve special use permit application #604 with the following conditions:

- The applicant is permitted up to 13 chickens.
- No roosters are permitted.
- Feed is to be kept in a metal container with lid.
- Chickens must be penned and are permitted to free range only under supervision.
  - Supervision characterized as someone is present on the property.
- Chicken coop should be no larger than 6x10 foot shed structure.
- Chickens must be penned in the area depicted on the March 5, 2019 site plan.
  - They are permitted to free range in the designated area only under supervision.
- Waste from chickens is to be composted and used on site plan and must be in the fenced area.
- Property must be maintained as depicted in the site plan dated March 5, 2019 with the lawn area depicted on said site plan to be maintained under 10 inches.
- No less than 4-foot fence depicted on March 5, 2019 site plan to be installed by May 1, 2019.

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

Vote: 5-0

2) Adjourned: Special Use Permit Application #608: Application submitted by Frank DeSorbo for a Special Use Permit to allow for a parcel he owns to be used for “Agricultural uses, less than 7 acres.” 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 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).
3) **Special Use Permit Application #607:** Application submitted Jennie Meringolo for a Special Use Permit to allow for a parcel she owns to be used for “Agricultural uses, less than 7 acres.” The parcel is located within the R2 district at 107 Normanskill Road, contains approximately 0.3 acres, and is identified as New Scotland tax parcel #62.-3-17. This application is a Special Use of Article II, Section 190-14 (D)(10) of the Town of New Scotland Zoning Law and local law #2 of 2016, Section 3e(3).

Mr. Voss opened up the meeting to the public.

Ms. Becky Lyco, 108 Normanskill Road, I just want to say that I am very proud to be part of a community that is a right to farm community. I think that we should give all the encouragement to young first time homeowners who have small properties that may not have the money to afford something as horrendous as chickens, I prefer chickens over ticks, I think chickens are a good thing. I don’t have any objection to this and I’ve seen the property actually improve under her care, I don’t know her. Chickens are beautiful and the property looks great. I don’t see any problem with this at all and I live right across the street.

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

Vote: 5-0

Mr. Voss moved to approve special use permit application #607 with the following conditions:
- The applicant is permitted at most 15 chickens.
- No roosters are permitted.
- All waste from the chickens are to be composted on site.
- Feed is to be kept in a metal container with lid.
- Chickens are to be kept in a penned-in area as depicted on the map submitted with the application.

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

Vote: 5-0

4) **Special Use Permit Application #606:** Application originally submitted and approved for David Moreau to allow a Special Use Permit for the construction of a single family home 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 at 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.
Mr. Voss: The last time we asked you to discuss the access road with the fire chief which you have done and you have submitted the paperwork from the fire chief which basically discusses you know the fact that you looked at this and he is not necessarily concerned with access. He can get equipment in and out if there is an emergency back there. I appreciate that. I will just read this note from 3-1-19. To whom this may concern this should fulfill our New Salem Volunteer Fire Department needs for our trucks. Thank you for your consideration in this matter. You also had an additional note on the site plan itself per our discussion at the site this is acceptable, thank you, Mr. Shufelt, Chief New Scotland Volunteer Fire Department, date 3-1-19. That satisfies us on that. Ms. Galvin asked for a draft driveway agreement between you and the parties, if you can give us a quick update on that.

Mr. Orietas: I think Ms. Elliott dropped something off and we were just kind of revising, she was going to send me a final revision with some changes with some verbiage. That’s where we are at, I think we are close. I think it’s at the point where it is pretty much ready.

Mr. Voss: We have gotten some correspondence from some neighbors over the last couple of weeks and it seems like there was a pending agreement coming. They seem comfortable with the arrangement that you have discussed with the neighbors. That’s kind of the uniqueness of that site there are multiple shared uses of that road.

Mr. Orietas: Ms. Elliott was going to run it by Ms. Peck to make sure all was acceptable and then the next steps once everything is signed our lawyer Ms. Robinson can look it over and finalize everything. When I met with Mr. Shufelt you know I think that maybe we will just build up a little area there where it Y’s off even though there is plenty of room there, but I’m planning to probably bring the driveway forward anyway. I’m just going to put the driveway forward just straight off of Greylock and that area will get kind of absorbed in that driveway build up. I mentioned that to Mr. Shufelt and he thought that was even better.

Mr. Voss: Did we have any else Ms. Peck that we have asked for?

Ms. Peck: We had asked about the sediment erosion controls but they are on the new site plan that came in. I would say we would want to make the permit contingent on receiving a fully executed agreement between the property owners.

Mr. Hart: The stream is shown there, I appreciate that, it would be nice if the NWIA wetlands could be super imposed on that too. Mr. Cramer can show you where that is. You can go through the online mapping or do it yourself. The small runoff stream should show the designation so that’s why I’m concerned about making sure that the wetlands around it stays as an affective status. Your offset is correct from that. It’s just that I would like to have that noted as a protected area on the site plan.

Ms. Peck: Mr. Cramer would like to have it so that the improvements on the driveway are performed before the CO is issued on the house.
Mr. Hart: Is that enough engineering detail for the runoff, the silt fence?

Mr. Frueh: Yes it’s hard to tell without the contours on the map per se to see that the silt fence is running parallel to the contours, but I mean if they are going to be adding additional driveway in there you could want additional silt fencing down on the lower end.

Mr. Hart: So that driveway does on some of the other aerial photography show kind of a silky area on the west side of the driveway. I wonder what else could be done there if you have a straight shot from the driveway from the house then across that area you know what permits material running down that to the culvert.

Mr. Orietas: I have no problem with putting the silt fence across the whole distance that’s fine with me. It’s only 200 feet, so that’s fine.

Mr. Cramer: So we should depict it as the silt fence should be a minimum of 1-foot outside of the proposed widening as depicted on Mr. Demis’s engineering report. That’s really separate from the site plan that is showing where the widening would be occurring, so as long as it is on the outside of that and protecting the stream bed and with hay bales or something right along the culvert pipe.

Mr. Hart: That needs a little bit more assistance there to make sure that we’ve got multiple barriers.

Mr. Frueh: You also want to show like a construction entrance possibly like a concrete wash out pit.

Mr. Cramer: A concrete wash out pit absolutely. As far as the it is on the parcel, the roadways, the stone construction entrance before going out to the public street. Would the Board feel comfortable with Stantec approving the additional erosion sediment controls before the building permit is issued?

Mr. Hart: I think that is a reasonable thing to do. We are asking for revisions to the site plan then and it would be good to have contours on that. That’s a requirement for site plan submission. Then we can figure out exactly what’s going on with erosion control pieces. I’m not sure what else we might be missing.

Ms. Schallop: Should we concern ourselves at all with the terms of the driveway agreement or as long as they sign it?

Ms. Peck: It does not implicate the town so I’m not terribly comfortable dictating the terms of the agreement between the property owners. Only as so far is that if the easement there is going to have to be expanded, which it is going to have to be expanded that there is an agreement between all property owners in order before the town issues any permits; the specifics obligations between the parties?
Ms. Schallop: Just because there is a concern that this road be maintained in a way that permits fire vehicles get to the area, so if it requires an agreement that actually is effective in assuring that the parties agree and maintain the road.

Ms. Peck: Yes and the site plan itself had to be provided to be able to cover the fire access requirements that Mr. Frueh looked at, so as long as it maintained so that fire access is maintained as depicted on the site plan. I’m comfortable with that. As long as it continues to allow fire access and those parameters were already looked at by Stantec for this.

Mr. Frueh: The only question that I see in the driveway agreement would be defining good condition that it would be maintained with. Having adequate stone so that you are not having a muddy driveway that the fire trucks could sink into.

Ms. Peck: What we can do we can add in there that it has to be sufficient for fire access, which is stone standards. If there is a concerned raised we can make this a condition of the approval too.

Ms. Schallop: Its actually not that clear to me how this would work, but if we are comfortable just sort of say it has to be maintained in a certain condition so that fire vehicles can get through.

Ms. Peck: I think that as long as we put that in our conditions how they flush that out is going to be between them as private parties to the agreement.

Mr. Orietas: What would be the issue in my getting approval? I did have the fire chief come and approve it and yes I will build up that road before I get that CO. Probably right when I first start building it is going to be an access road there it’s going to get built up at that time. I am working with Ms. Elliott and she will get on it right away.

Mr. Voss: The Board can take action this evening if they chose after the public hearing and we can always require, because there is additional items that we have asked for to put on the map. We can condition the approval based on the applicant submitting that information. Unless the Board wants to see the updating map.

Ms. Peck: We have done it both ways depending on how the Board feels about the application.

Ms. Galvin: I think the updating is pretty clear so it would seem we could just do a conditional approval based on specifically what’s going to be requested to be updated.

Mr. Hart: Yes as long as Stantec reviews the plan for the sediment control aspects prior to issuance of building permit.
Mr. Voss opened up to the public hearing.

Mr. Miller, Greylock Lane, I want to thank the Board, first off, for considering some of the issues that we've had on Greylock, so thank you for that. Overall I think we're satisfied with the direction that this is moving. One, I guess there are two concerns, just with some of the runoff of the property which we did discuss when we talked about this driveway agreement on either side of the property it does roll over. Water does currently flow over both annexes of the driveway which does cause some runoff and additionally hearing that the driveway may be straight up on the road there could be additional runoff there. Just thinking about what the water might do to the road as we move forward, but aside from that we have no issues with the house being built. It was just more of a concern with the easement and the future of the number of houses on the property.

Mr. Voss: Just to address your question we are going to have our engineer just review all of the information and some of the updates we have asked Milt for on the map will help Mr. Frueh understand more of the runoff issues. It will be addressed.

Ms. Galvin: Mr. Frueh should we wait for your review first before we make a decision?

Mr. Frueh: If there are revisions that will be needed I can discuss with Ms. Elliott to make revisions to the site plan. We would not move forward until we said that there aren’t any revisions necessary. I don’t anticipate anything major. There are some minor revisions and additions.

Mr. Cramer: We will need an escrow for that review.

Mr. Hart: So you will be adjusting the silt fence and applying hay bale barriers as needed to break any run off that might be heading off the new driveway area with principle goals being preservation of the existing roadway and protection of the wetland from sedimentation.

Mr. Frueh: Correct.

Mr. Hart: Given those two standards I think you can have latitude to design something that is going to be specific on site. Does that sound reasonable?

Mr. Frueh: That sounds reasonable.

Mr. Davis, 11 Greylock Lane, you guys have pretty much covered all the questions that I had, just in the discussions that have happened, but I just wanted to echo again what Bill said and thank the Board for your consideration and your looking into the easement agreement which was concerning for several of us.
Mr. Voss moved to close the public hearing and Ms. Galvin seconded the motion; all in favor; motion so carried.

Vote: 5-0

Mr. Voss: We don’t have any concerns with the construction of the house. The way that the original subdivision was laid out it was anticipated you know the home in there; the only concern was just the access issues. In terms of the special use permit we do not have any objections.

Mr. Voss moved to approve special use permit application #606 with the following conditions:

- The requested changes to the site plan that the Board discussed this evening which included adding the wetlands map on the map.
- Adding two foot contours to the map.
- Driveway improvements need to be done before building permit is issued.
- Driveway agreement should be submitted with building permit application.
- Silt fence to be added on the site per storm water control designed to be updated to capture any siltation from the disturbed sites with the purpose of protection existing driveway and avoiding any sedimentation in the stream or NWIA wetlands.
- The roadway is to be upgraded and maintained to meet the standards of the NYS Fire Code as depicted for fire apparatus access roads.

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

Vote: 5-0

New Business:

1) Referral: Variance Application # 532: Application Submitted by Matthew Malark requesting relief from Article II, Section 190-12 (B)& (B)(l) of the Town of New Scotland’s Zoning Law to allow for an detached garage to be constructed partially within the front set back on a parcel. The parcel is located within the "RN' district at 365 New Salem Road. The parcel is owned by the applicant, is identified as New Scotland Tax parcel id # 72.-1-28.10. The 'l RA" district has a front setback of 65 feet from the center of the road plus an additional 30 foot setback on state roads. This request is for 23 feet of relief to allow for structure to be located 72 feet from the center of the road instead of the required 95 foot setback.

Mr. Voss moved to send a positive recommendation to the ZBA with considerations to Mr. Hart’s comments. Ms. Galvin seconded the motion; all in favor; motion so carried.

Mr. Hart’s comment: I think that given controls over sediment location and sediment re-entry into the wetlands should also be the main consideration here. If there are adequate controls for plantings and grading I don’t have that much concern about the 23-foot variance. It fits on the property.

Vote: 5-0
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 id # 93.4-11. This application is made pursuant to Section II, Part 1 C (6) b of Local law # 5 of 2007.

Mr. Voss moved to schedule a public hearing for site plan application #118, with a 1,000 foot canvas schedule, for April 2, 2019; Ms. Galvin seconded the motion; all in favor; motion so carried.

Vote: 5-0

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 approx. 3.5 acres, and is identified as New Scotland tax parcel # 83.-1-25. This application is a Special Use of Article Il, Section 190-15 (D)(14) of the Town of New Scotland Zoning Law and local law #2 of 2016, Section 3e(3).

Mr. Voss moved to schedule a public hearing for special use permit application #609 for April 2, 2019; Ms. Galvin seconded the motion; all in favor; motion so carried.

Vote: 5-0

Discussion items:

1) Minutes for February 5, 2019; Mr. Voss moved to approve minutes with correction; Mr. Hart seconded the motion; Ms. Galvin abstained; all in favor; motion so carried.

Vote: 4-1-0

2) Minor Subdivisions for the month of February 2019

a) Lot line adjustment with lands of Witchet and Gibson on Cass Hill Road.

3) Review/Comment Proposed local law for small scale solar:

Ms. Peck gave the Board an overview. As I said in my e-mail to the Board there was an FCC order that was issued, published in October that allows or ties municipality hands largely when it comes to regulating small cell wireless. So instead of having the big towers these would be placed every 500 or so feet and they are designed to
cover gaps in cell coverage. They are small cell technology that in itself is in concentrated areas to allow for better coverage. You are seeing these pop up in places like the city of Albany, there has been some in Colonie, there are some in the neighboring municipalities may come up and ride a ways on light poles or new utility poles are being put up. There has been very little regulations that municipalities have in place governing them and the regulations that have been in place governing them including the fees associated with the FCC order has come in and has essentially preempted, so what they are allowing municipalities to do right now is they are allowing them to put in aesthetic guidelines essentially. Those guidelines cannot be prohibitive. Municipalities cannot require them to be in the right of ways they have to be allowed. They can work with the community and the neighborhoods and how you want them to look. This is what this local law is designed to do. It is also designed to address some of the shock clock requirements which means once these applications are submitted to the town if it is on an existing structure, an existing utility pole the town has 60 days to issue all permits. Not just for the Planning Boards to make their determinations. If it is going to be a new utility pole that is being put up then it is extended to 90 days. Which is why there are different time frames required in here for them to go before the Planning Board? Technically under the FCC order this local law supposed to be, these regulations are supposed to be adopted by the municipalities by April 15th. It is a should not a shall, but still the Town Board is airing on the side of caution on this.

Mr. Voss: We’ve seen these in the City of Albany. My colleague on the city side, professionally, has been dealing with these things in the city and they’ve been popping up in neighborhoods all over the place and all of sudden residents see this structure on the pole outside of their house and say what is this? There is some concern on the City side you know where there are gaps in coverage and things. There are some aesthetic concerns. This is a FCC compliance order the Towns hands are essentially tied, they are limited.
Mr. Peck: The town has some limited capabilities with this; the FCC order is currently being challenged, so we are watching those lawsuits to see what comes out of them. We will see what happens. There are options there are ways to do it by requiring the wiring to be put inside the poles, so they blend in with the poles that are already up.

Mr. Voss: In Section 23-AD3 several pages in where all small cell wireless facilities shall be placed on existing structures unless the applicant meets the requirements of section G6A below. The only thing it does it references that first paragraph A locations of small cell wireless facilities, micro cell wireless facilities applicant for small cell wireless and micro cell wireless facilities shall locate site in accordance with the following priorities, one being the highest priority and five being the lowest. I didn’t see a number five priority listed here. Not necessarily that there had to be, but I saw one through four but not a five.

Ms. Peck: This has gone through several iterations, so thank you, if anyone has any edits like that please let me know.

Mr. Voss: That’s all I have.

Ms. Galvin: I saw a lot of inconsistency in capitalization. I found places where there was missing text, punctuation issues and so on. I marked my copy and I gave to Ms. Peck. Fundamentally and where I was confused the first page and item three application meets all necessarily documentation an applicant submits in order to receive a special use permit for wireless telecommunication facilities or site plan, which it should say approval, for small cell wireless facilities or micro cell wireless facilities, okay so we have two different procedural processes mentioned here. A special use and a site plan but then I don’t really understand what the first one is, wireless telecommunications facilities versus the second one.
Ms. Peck: So wireless telecommunications facilities are defined in the wireless telecommunications law which is what this amending. It has an application procedure for the wireless telecommunications in there, what I did is I added, I just added that the application under the telecommunication facility, I just added in the small cell wireless facility in this.

Mr. Cramer: The telecommunications facilities would be your tower sites.

Ms. Peck: That's defined in the telecommunications law.

Ms. Galvin: If the definition for application includes a reference to the wireless telecommunications facilities and special use permit process why wasn’t mentioned at all in the whole thing. It only talks about site plan applications and requirements, but up front it talks about application including special use permit.

Ms. Peck: I can clarify that then in the law because the application, that application standard is already written in our law, so I’m not changing that at all. That’s already written in telecommunications law, but I can just specify that.

Mr. Hart: Is there any definition or difference between the up and coming 5G wireless versus the ones that you are addressing here.

Ms. Peck: From my understanding, from what I’ve read is that 5G will fall under the small cell wireless law within those Federal regulations. It is incorporated already in the definition.

Mr. Hart: That’s going to be much more intense.
Ms. Galvin: In the end can we after all this and all the care taking into making these whole unobtrusive can they be like decorative. You know like how they have the towers that look like trees. Do we have any accord to make it blend in to the environment?

Ms. Peck: The towers that look like trees are using stealth technology in the designs. This does say that they should be using that in this as well as long as it is not considered prohibited, which brings you right back to when the application comes in if they are going to say this is essentially commercial impractical and be able to showing on that there is going to be a problem.

Mr. Richards: My question about this was that part of the FCC ruling was that they can’t be subjective to anything that the other regional big companies are subjective to such as cable or phone or whatever. We don’t put any aesthetic requirements on the boxes that the cable company puts on or the transformers that the power companies.

Ms. Peck: That is changing and that will be change with the zoning code. That was discussed with the Town Board and the problem is we are not going to be able make broad sweeping changes to everything by April 15th. The thought is to get this in at least under the FCC order and then since we already in the process of amending and working on our zoning code we will incorporate that in. By the time the Town actually see a small cell wireless application, if they do, those changes will already been made, so we won’t be in a position subject to a challenge for that.

Mr. Richards: So there will be aesthetic guidelines for all hidden code for other utilities.

Ms. Peck: We already require them to some extent with subdivisions, so when the subdivisions come in we require them to go underground. It is essentially
incorporating what the Planning Board is already doing in those in to the zoning code and that’s really what is going to be looked at. The zoning code is still a work in progress.

Mr. Hart: Just so you that you are aware I did have discussion with other Town Board members because it was in November that I had forwarded the concentration subdivision design that I had written last February and I’m asking that move forward because it’s not part of what Nan is looking at now. It is not part of zoning per se. We are already applying it with Krumkill. There really not a reason to wait for any evaluation with that. I’ve gotten several responses saying well that will be helpful to Nan. I wrote it; let’s move on, so that is what I’m asking people to do. If they don’t want me to volunteer again in the future that’s okay, my time is more valuable than that.

Mr. Richards: We have Local Law D being public hearing for it; it has been announced by an e-mail and on the website. Nowhere on the website and nowhere in the email where it tells anyone anything about the subject. Is there any way we can improve communication.

Ms. Snyder: Right. I know sometimes it does give a very small snip bit. I noticed that also. I will pass that along and just see if we can add some more text to give it a little bit more context or information.

4) Comment/Discussion: Planner escrow procedures.

Mr. Voss: We’ve talked about it a while ago.

Ms. Peck: I need to table that for the next meeting.
Ms. Snyder: On the Small Cell Solar Law we have a public hearing for the March meeting so if you have any comments or even if you support it, just send something to Ms. Peck just so that we show we sought your comments.

Ms. Peck: I’ve got some comments already I will make a formal report to the Town Board.

Mr. Hart: I think it’s time to go on record that it was quite an effort that was undertaken and I think it is going in the right direction.

Ms. Peck: We are fixing all of the typos. There was a lot of research on this one.

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

Motion to Adjourn: At 9:10 p.m. Mr. Voss moved to adjourn and Mr. Richards seconded the motion; all in favor; motion so carried.

Respectfully submitted,

Lori Saba