

**Town of New Scotland
Zoning Board of Appeals
Minutes
June 22, 2021
7:00 PM**

Zoning Board Members:

Jeff Baker, *Chairman,*

Dean Sommer, Edie Abrams, Erin Flynn Casey

Lori Saba, Planning Board Secretary, Jeremy Cramer, Building Inspector

Crystal Peck, Zoning Board Attorney, Garrett Frueh, Town Engineer (Stantec Engineering)

Roll call: Mr. Baker, Mr. Sommer, Ms. Casey

Absent: Ms. Abrams

Resigned: Lance Moore

**Zoning Board of Appeals Meeting
COVID Update**

The Zoning Board of Appeals for the Town of New Scotland will hold a regularly scheduled meeting on June 22, 2021 at 7PM. **Due to health and safety concerns related to COVID-19 in person attendance will not be permitted. We are working diligently with our current limited staffing to start uploading applications to the Town's website prior to the meeting to give the public the ability to see the applications and supporting documentation and would encourage anyone who would like to comment on an application that has a public hearing scheduled for the upcoming meeting should email those comments to the Building Inspector at jcramer@townofnewscotland.com by noon of the meeting day. In accordance with the Governors Executive Order 202.1 the meeting will take place remotely via Zoom. All written comments will be collected, submitted to the Board for review, and be read into the minutes of the following meeting prior to a decision on the application. During this time, all Zoning Board meetings will be recorded and a transcript of the meeting will be made available at a later date. Members of the public can connect via telephone or video conferencing to the meeting at:**

Public Hearings:

1. **Variance application # 549:** Application submitted for an area variance by Stephan Andres and Mark Taylor to request relief from Article II, Section 190-12 (B) to allow for a lot line adjustment of two parcels. The Andres parcel currently has 1 acre and the neighboring parcel owned by Taylor currently at 0.51 acres has less than the required lot area. This request is to merge 0.10 acres from the Lands of Andres and merge with the Lands of Taylor. Both parcels are located at 69 & 79 Maple Road, located in the RA Zoning district, and are identified as New Scotland Tax parcels # 73.9-2-2.1 (Andres) & #73.9-2-2.2. The minimum area requirement in the RA district is a 44,000 sq. ft. or 1.01 acres. If approved, it would allow for the lots to be 0.92 & 0.60 acres. Both parcels currently have existing improvements.

Ms. Elliott: The application went to Albany County Planning Board. Albany County's response was to defer to local jurisdiction. We received a positive recommendation from the Town of New Scotland Planning Board. Now that the Town has a Planner you have about 60 different lots here that are all non-conforming in this zone. I will bring this to the Town Board's attention.

Mr. Baker opened the meeting to the public.

Ms. Joanne Porter, 89 Maple Road; We've been owners there since 1988. Have been through multiple different zoning regulations in the Town of New Scotland. We would like to try to understand how this property development began before they got this zoning approved. They've been digging at this property and they developed a foundation over the last two months. As the property owner next door I was not informed until you sent us to this public forum. It would help to know what the process is. Why is someone going to be allowed a variance on the zoning recommendation of an acre for each property?

Mr. Cramer: To answer your question this application has to do with a lot line adjustment. The construction that is going on with the Andres property is part of a building permit that was issued and it does not require ZBA or Planning Board approval.

Mr. Baker: Is there any issue with the building permit with the Andres with setbacks either on the existing configured lot or the revised one.

Mr. Cramer: There are no setback violations.

Mr. Baker: These are legitimate questions. You are seeing construction going on next to you. The nature of the construction building a garage or accessory building just normally requires a building permit and the neighbors do not get notified about that as long as the structure is being built in conformance with the Zoning Code. What we are here for is that the two neighbors want to swap out a small piece of property. To do this land swap between them they will need our approval. Both lots are technically under-sized. Because they are pre-existing from the Zoning Code, they are allowed to be there and continue to do that and it is when there is an adjustment like this an issue happens. The question I would ask you in terms of making the comment do you have any reason to be opposing this swap of the 10th of an acre between the two parcels? Do you have any reason to believe that will impact your property or it is detrimental?

Ms. Porter: I understand what you are doing and I appreciate your question and I cannot object to the swap of this .10 acre. I would like ask the Zoning Board how they want to approve a building on a lot that's less than the one acre which is the current zoning recommendation for the Town of New Scotland.

Mr. Baker: Because the way the Zoning Code works if you have an existing substandard lot which is what this is called, because it is less than one acre they are allowed to build on it and they are allowed to put on an accessory structure like a garage provided there is enough space and they meet the setback requirements. They are meeting the same requirements as if it was a one acre lot.

Ms. Porter: I appreciate what you are saying. As long as it is a garage it is acceptable.

Mr. Cramer: There was a building permit issued in March which currently is above the minimum lot standards to put in a garage in the location that is acceptable to the setback requirements of that zone. They are in front of this Board to offer that land to Taylor if approved by this Board to swap out that land which then would take it just under the minimum but still a significantly more than what Taylor owns currently.

Mr. Sommer: What we have in front of us looking at this is that it's a square off of a non-parcel ground, no new lots are being created and no setback violations will be created. I think what she is asking is she is just trying to confirm this is an accessory like a garage that it is not a dwelling there.

Ms. Porter: That's correct, my concern are they planning on turning this into a home.

Mr. Cramer: There is no intention for the area of land to be conveyed to Taylor. On the lands that will still remain to be the land of Andres they are currently in the process of building a garage. There is no current proposal for anything back there. Andres garage is not allowed to become a dwelling unit. It only has the ability to become an accessory structure such as a garage. There is no allowance in our current zoning for a dwelling or a bedroom to be located within that garage. To make it commercial he would have to come in front of the Planning Board. There is no intention of that.

Ms. Porter: I appreciate your comments and I'm grateful as I said your letter was the first we were told about the construction next door.

Mr. Cramer: The letter for this hearing has nothing to do with the construction. We can pull up the site plan so you can see it.

Ms. Porter: I'm now even more confused, so I appreciate that you helped me with the location.

Ms. Elliott: I believe that at some point Mr. Andres would like to do a new fence and it would be silly to just fence in that extra 40x110 that is basically vacant. It has two trees on it and it seemed to work and look better and fit better to be owned by Taylor. He is never going to put a building back there and he is never going to do anything with it.

Mr. Sommer made a motion to close the public hearing and Ms. Casey seconded the motion; all in favor; motion so carried.

Mr. Baker: We will now discuss the standards of the area variance:

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - No
- Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - No
- Whether the requested area variance is substantial;
 - No
- Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the district or neighborhood; and
 - No
- Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.
 - Yes

Mr. Baker moved to approve area variance #549 without conditions; Mr. Sommer seconded the motion; all in favor; motion so carried.

Ayes: Mr. Baker, Mr. Sommer, Ms. Casey

Nays:

Abstained:

Vote: 3-0

New Business:

1. **Variance Application #552:** Application Submitted by Stewart's Ice Cream Co. Inc requesting relief from Article II, Section 190-17 (B) of the Town of New Scotland's Zoning Law to allow for an addition to be constructed within the side setback on a parcel. The parcel contains 2.6 Acres, is located within the "Com" district at 2475 Delaware Turnpike and is identified as New Scotland Tax parcel id #93.-1-29. The side yard setback requirement in this zone is 15 feet. This request is for 2.5 feet of relief to allow for structure to be located 12.5 feet from the property line.

Mr. Tyler Fronte, representative for Stewart's Ice Cream Co.: I am here tonight to discuss our proposal at our Clarksville location. We are proposing an 833 square-foot addition to our current shop. This would allow us to improve the interior and our food-to-go program. The program is growing and with the food-to-go program we will need additional space. We are here tonight in front of the ZBA for an area variance on the rear, side yard and the south of the property.

Mr. Cramer: It is 12 feet deep all the way across the back of the store. The area in question or the area that requires the variance is all the way at the bottom of the store by the property line where they have approximately 12 ½ feet. Currently the side setback which that would consider for the commercial zone is 15 feet. It is a variance of 3 feet and it is that one corner.

Mr. Fronte: We did look at alternatives here, but this is the freezer space, The food-to-go program kind of pushes everything. We need additional storage space so that's why we are here tonight. We did try moving it to the opposite side of the building but due to where our cooler and freezers are existing today we are limited on options as to where that can be located. We have a Storm Water Plan, which we will submit for your review.

Mr. Baker moved to schedule a public hearing with the ZBA on July 27th. The applicant will go the Planning Board on July 20, 2021. This application will go to Albany County for review.

- 2. Variance Application # 551:** Application Submitted by Richard Long requesting relief from Article XVI, Section 190-112 (D)2(a) of the Town of New Scotland's Zoning Law to allow for a 72-unit apartment complex to be constructed on his parcel. The parcel contains approx. 13.61 acres of buildable land, is located within the "HDE" district at 2080 New Scotland Rd, and is identified as New Scotland Tax parcel id #84.-1-28. The HDE zoning district base density when water and sewer are proposed is one unit for each buildable acre or 43,560 sq. ft. This request is for 35,326 sq. ft. of relief per unit to allow for a base density calculation of 8,234 sq. ft. per unit for the multifamily complex.

Mr. Hershberg, representing Mr. Long: We are in a hamlet extension zone, which in our mind calls for keeping buildings close to the main arteries that hamlet zones devise for and we think that does that. Again, we have total of 18.8 acres a portion of which is constrained. By and large, we think essentially the goal of the hamlet when you're talking one unit per acre in the Code. One unit for 3,000 sq. ft. in the other portion we think that is a little difficulty to figure out exactly what the density requirement should be, but we believe that as you stated it sounds like a significant variance. Meanwhile, the only way to make this hamlet work in there and to have it feasible would be to allow an increased density over the one unit per acre. We do provide for an access road to our project and we think that it meets the not the specified requirements as are per the code, but I think it meets of the goal of the hamlet design for this area. I can answer any questions the Board may have.

Mr. Baker: The Hamlet Zone was created with specific purposes and goals which Mr. Hershberg talked about. In this section of the Code the variance requires one acre per dwelling unit. Elsewhere in the same Code the density and bulk standards for multi-family housing only requires a minimum of 3,000 sq. ft. for the density. If that was actually being applied to this application since they are at 8200 sq. ft. they would actually be in compliance with it, but Mr. Cramer's determination on this is that the one acre per unit seems to control on it. Mr. Hershberg, one of the problems I have is applying the standard criteria for granting an area variance would take us so far beyond this one acre per unit. I'm not sure if I'm comfortable if that works in the way to getting an area variance. Also, as you know, if we are going to entertain this as an area variance and give it opportunity to be approved we have to deal with the SEQRA review on this. I was wondering might you rather than ask us for a variance to ask for an interpretation as to how the ZBA thinks that this should apply in the reconciliation of these two provisions. Alternatively you could go to the Town Board and ask them to clarify it and change the law.

Mr. Hershberg: We set up that variance request so it looks more like an interpretation. It doesn't make sense to say one unit per 3,000 sq. ft. when the general limit area is one per unit. We don't think that they

can both occur so rather than asking for a variance would it assist you to restructure it as an interpretation. We are certainly would be willing to do that. We hope the Board would side with us regarding the interpretation one per 3,000 which we easily meet by the computation that was provided. We would appreciate that. The problem is that we don't think it makes sense to be consistent with the Hamlet designation. Most communities have a hamlet designation on their busiest arteries and the main roads of the Town. The Hamlet was intended for things like this where you can leave a large portion of the property undeveloped and you could put more buildings close to the roadway. The cost of developing this site is not insignificant. We do have to provide an independent private sewer disposal system, which is an expensive add-on. Obviously water and sewer has to be put in and roadways, so we don't think it makes sense to conform with the hamlet designation on this site if in fact we are held to one unit per acre. If you think that treating this as an interpretation we certainly would be willing to reapply for that.

Mr. Baker: Obviously I'm not going to pre-judge the outcome of it, but certainly in my mind I find it easier to be able to get to that path than to give you an area variance on it. If we were to pursue this as an interpretation and if the ZBA were to grant an interpretation favorable to the applicant all that would mean is that they would still need a special use permit from the Planning Board, so the Planning Board would undertake all of the SEQRA review and all the traditional planning analysis, so that would certainly not mean we would not be opining at all or giving any approval or giving any approval for a 72-unit development.

Ms. Peck: Yes it would be subject to a full review. The only thing with looking at this with an interpretation as opposed to the variance request is we have to see the timing on it. Technically that would need to be made within 60 days of the denial. I just want to make sure that there is not a concern procedurally. I just want to take a look at that. I don't have the dates in front of me right now.

Mr. Hershberg: I can make that interpretation application tomorrow. I think it will be within 60 days of Mr. Cramer's notice to us that we violated the one-acre. We did have some earlier discussions with the Town and Mr. Cramer to find out what they thought the density requirements were, but I think we are within the 60 days of that interpretation that Mr. Cramer made.

Ms. Peck: You might be. I just don't know one way or the other.

Mr. Baker: I would also think if the area variance application were submitted within that time frame that would certainly toll it or they could convert it from an area variance to an interpretation.

Mr. Cramer: The application was actually received prior to last month's meeting and I had asked them for a narrative of how they would meet the criteria of the area variance and that was something else that was included, so the application remained not complete until we had received that before putting them on the agenda. I'm not sure how that would work with the 60 days.

Mr. Baker: My suggestion is that you submit any legal authority on this regard to support an interpretation like that. I think that is a good question. I think that would be welcomed. I would highly recommend you submit something that would support that.

Mr. Hershberg: I will look into that. How we sit right now is either you will accept our area variance application and set a public hearing date or we will table this variance application in consideration of us applying for an interpretation. Those are the two options that are available to the Board right now?

Mr. Baker: Yes.

Mr. Hershberg: I don't want to speak for my clients who are sitting here watching me, but given what I've heard here I think we would prefer to table this matter and await an interpretation application, hopefully a timely interpretation application stating the facts and perhaps providing legal opinion to support our position regarding on the table, the language and which should take priority.

Mr. Baker: That is fine with me.

Ms. Casey: Has the applicant considered doing a single family dwelling development in that area?

Mr. Hershberg: I don't know whether or not Mr. Long considered that at all, but my opinion is that given the slopes, the proximity to stream course, some wetlands interpretation that we are going through right now, it would be very hard to develop land into single family homes.

Mr. Long: I would like to address that issue too; we would like to make a nice area in the Town of New Scotland for our older residents to retire to. Presently there isn't an area where someone could downsize and move to an apartment in the Town. This way the residents could have a place to go. Many of us have lived here all our lives. We don't want to move out of town. I think the assets would outweigh the drawbacks. That's what we would like to leave the community: a remembrance of what we have done here. That is what we are thinking.

Mr. Hershberg: These will be rental apartments.

Ms. Casey made a motion to table this application and Mr. Sommer seconded the motion; all in favor; motion so carried.

Old Business:

1. **Adjourned by applicant: Variance Application # 548:** Application submitted by Seaboard Solar and Bohler Engineering to request a two-part variance application to allow for a large scale solar project to be sited on a parcel that contains prime soils and mature forest. Siting considerations identified in Part 2 G, Section 4.xiii of our Solar law prohibits large scale solar facilities to be sited on any portion of a parcel that is considered prime farmland, which contains prime soils, or that contains more than 1 acre of mature forest in the siting area that would be removed. The proposed solar project is located on a parcel owned by Francis McCaffery and Robert Jones, is located in the RA Zoning District on Bullock Road, and is identified as New Scotland tax parcels id # 83.-4-40.2.
2. **Variance Application # 550:** Application Submitted by Ryan Conley requesting relief from Article III, Section 190-29 (D)1(a) of the Town of New Scotland's Zoning Law to allow for an unattached accessory structure to be allowed to remain within the side setback on a parcel. The parcel is owned by Sandra Conley, containing 0.29 Acres, is located within the "RA" district at 34 Old New Salem Rd. and is identified as New Scotland Tax parcel id #84.-2-6. The side yard setback requirement in this zone is 5 feet. This request is for 4 feet of relief to allow for structure to be located 1 foot from the property line. Applicant did not show up for the meeting.

Mr. Baker made a motion to table this application and that we ask Mr. Cramer or Ms. Peck to send a letter to the applicant notifying him that he was supposed to be at this meeting and to inform us how he wants to proceed. He will need to appear at our July meeting and inform us on how he wants to

proceed, otherwise we will deem the application withdrawn. Ms. Casey seconded the motion; all in favor; motion so carried.

Regular Meeting:

Discussion/Action: Minutes of May 25, 2021, meeting. Ms. Casey made a motion to approve the May 25, 2021, minutes and Mr. Sommer seconded the motion; all in favor; motion so carried.

Motion to adjourn: At 8:17 p.m. Ms. Casey made a motion to adjourn and Mr. Sommer seconded the motion; all in favor; motion so carried.

Respectfully submitted,

Lori Saba

THE NEXT TENTATIVELY SCHEDULED MEETING IS July 27, 2021