

Town of Stuyvesant
Planning Board Meeting
November 28, 2022

Members in Attendance:

T. Hotaling, Chair
Kathryn Schneider
Howard Gibbons
Harold Leiser
Joseph Belline
Michael Stasi-Alt
Tal Rappleyea, Town Attorney via phone
M. Mahalek, attorney Cuddy Feder
Multiple residents of the community

Not in Attendance: Gale Bury and Diane Fingar

Call to Order: 7:00 pm

Chairman Hotaling opens the meeting by welcoming everyone to the regularly scheduled meeting and explaining to the audience a slide he has on the screen, community participation, start with the Pledge of Allegiance, do a Public Hearing and then a couple remarks after that.

T. Hotaling asks P. DeLong to do the roll call.

He adds for the record, Michael Stasi is a Board Alternate who is observing the first part of the meeting during the public hearing scheduled, and then he will be replacing Joe Belline, who verbally recused himself on the matter of the Rudolph Family Farm.

Joe adds that he is no longer employed by them.

Motion: to adopt the minutes from the October 24 meeting made by J. Belline; seconded by H. Gibbons. All in Favor, minutes are adopted.

T. Hotaling states the first order of business is the public hearing, the applicant is requesting approval for a minor subdivision for parcels located at 282 Ridge Road and 2713 Ridge Rd, respectively. The subdivision will result in two separate parcels, one of 4.34 acres and one of approximately 108 acres appearing for the Brandley estate is Cynthia K Elliott.

C. Elliott presents her map and explains this is a two-lot minor subdivision on Ridge Road and what they are doing is utilizing one side of the road to create a lot, one of which has all of its improvements, and the remainder of the land is on the other side of the road. They have a purchaser for the Estate, have achieved a variance for the 4.34 acres in a 5-acre zone, and gives her green certified mailing cards that have come back to the Secretary. She continues it is almost a de facto subdivision in the respect that Ridge Road bisects the parcel, they are not planning any construction, that this is just to get a mortgage on the house. She asks if there are any questions from the Board before they open the Public Hearing.

T. Hotaling states the meeting is open for public comment on the matter, that anyone may wish to speak for or against.

No comments are made.

Motion: to approve the subdivision as it has no substantial negative impacts per SEQRA, made by K. Schneider; seconded by J. Belline. All in Favor, the motion is approved, and the subdivision is granted.

T. Hotaling states that the Public Hearing is concluded.

T. Hotaling elucidates that the next matter is Rudolph Family Farms aka Sharptown Ridge, LLC. They submitted a revised application for the development of 58.47-acre agricultural parcel located at 384-404 Sharptown Road, proposing a family residence with an attached guest residence, horses, green houses, buried beds, 20 farm staying rental units with 134 parking spaces, and undeveloped acreage preserved for agricultural use. They first appeared before the Planning Board in June; at that time the Planning board had several issues about areas of the law that were not resolved in the zoning law. The Planning Board requested that the matter be reviewed by the Zoning Board of Appeals, and the ZBA approved the measure with certain caveats. T. Hotaling explains the slide up on the screen, an executive summary that had a couple of the highlights of the Zoning Board resolution, copies of the slides and resolution were available to the public. He states; the Planning Board sought the ZBA's interpretation of the Zoning Enforcement Officer's determination on certain areas of the Town Zoning Law, two additional grievances were also considered by the ZBA, the ZBA reviewed numerous submissions from the public, heard input from members of the community and reviewed approximately 20 written submissions from the public. He continues, the town zoning law defining "agritourism" as "farm related enterprises that operate for the enjoyment and education of the public which bring together tourism and agriculture" apply to the proposed project. He adds, the proposed project comprising of the development of greenhouses, berry, vegetable and flower beds, horse barn, and barns/garages fall within the definition of Agribusiness. He affirms that the ZBA found that the "level and density" of the proposed development of 20 individual transient residential units plus the remaining mobile homes on the property would exceed that of an agricultural use, adding the ZBA applied a density averaging methodology in the Town Zoning law to determine the suitable number of dwelling units on the property. T. Hotaling observes that particular section of laws is on page 18, is a schedule that applies to all the zones within the Town, each one is slightly different and there are several caveats to how that is applied. He finalizes the statement by noting, The Zoning Board has referred the matter back to the Planning Board, with the specific finding that the planning board apply the same density methodology found in the Town Zoning Law and strongly encouraged the Town Board to review the zoning law with respect to the definitions of agriculture, agritourism, agribusiness and short-term rentals. He adds it is a lengthy Resolution and there are many parts to it. He notes the resolution was filed, copies were sent and copies were available to the public. He continues, the Planning Board received an application dated November 18, not quite 20 days after the conclusion of the resolution by the ZBA, filed by Mr. Mahalek. He observes it is noted in their revised application that several minor changes were made to the property; amongst them a separate guest house, the number of greenhouses has been reduced, additional area for vegetable and berry beds, 25 seasonal parking spaces were added to accommodate daytime visitors, along with 1 parking space added to each of the 20 farm stay units, and two parking spaces added to the distillery, trees have been added along the property line and a grove of fungus resistant chestnut trees have been introduced to the site. T. Hotaling observes the letter submitted refers to some previous business with the Board, and notes there was no density average applied to the application.

M. Mahalek offers a different perspective and their opinion of the applicability of the terms.

T. Hotaling reiterates if the density averaging was applied to the application.

M. Mahalek notes that the density stated by the Planning Board has not been applied to this submission, he is prepared to discuss the application of that equation, the follow up with the vision on that part. .

T. Hotaling refers to the letter submitted by the attorney; he states the two and a half a page preamble describes at length the law and the reasoning behind the rationale applied the resolution as being flawed.

M. Mahalek responds that they do stand by the letter, that they also wanted to see what the formula could potentially produce and were happy to discuss that with the Board.

T. Hotaling reiterates that they had asked the ZBA for an opinion and once they get one that becomes law, and they follow it. He suggests they have a couple options to either revise their plan or sue.

M. Mahalek responds that their team having considered the equation prior to this meeting, they still feel that the project still complies with that equation as applied, they are happy to walk the Board through that, and provide a submission to that point if the Board intends to apply the submission as recommended by the ZBA.

T. Hotaling confirms they do intend to apply it as it was sent to the Board.

M. Mahalek adds his team does feel comfortable that they comply with the equation, when they do submissions like this they want to get every perspective that we feel is justified into the record, they are willing to work with the Board and make this a streamlined process, he feels that that they can apply this decision in a matter that is compliant with the goals of the plan and the plan is compliant with the equation.

T. Hotaling address the letter again.

M. Mahalek confirms from their legal perspective, the equation typically applies to the scenario of a subdivision, there is no subdivision request being made here, he wanted to cement that for the record. He adds, they continue to work on projects past submission deadlines to evolve them, make them as efficient as possible, to make them complaint with visiting goals as possible, and comply with pertinent regulations. He continues, his team continued to work together and applying that equation as they feel. that their product falls within its terms, while their perspective is that this equation shouldn't apply, they are happy to apply it based on how they understand the equation to apply.

T. Hotaling affirms that what he understood from the attorney's letter was they felt that the ZBA did not have the authority to do what they did and when they did do it, it was wrong.

T. Hotaling and M. Mahalek continue to discuss the attorney letter, resolution and density.

T. Hotaling asks if in their estimation the engineers, or anybody else that the density averaging methodology that they applied would not result in any changes to your project.

M. Mahalek replies he understands the equation to apply. He clarifies that the Chairman has made clear that he is not open to that particular discussion as it is something that the ZBA has recommended to the Planning Board, he asks to preserve his rights on the applicability of that equation, adding they are comfortable in their position that their plan complies that equation

T. Hotaling observes, the resolution says that the level and density of the housing aspect of the plan is too great in magnitude to remain within the definition of agritourism, since a proposal for 20 individual transient units plus four existing trailers, the main house and guest house create a situation where the residential rentals will become the primary use of exceed that of agriculture.

M. Mahalek responds that first line refers to due to the nature of the project, the project no longer falls into "agritourism", but in the resolution, there's specifically a separate paragraph that says all the agricultural uses from the farm stay units to all the agricultural operations fall under the agri-business use, which is a separate code, so I just want to highlight that the language regarding the application of that equation was in the context of the definition of agritourism. He adds that their team continues to work on this, they feel their plan in zoning compliant, no plans have ever been requested prior the ZBA's resolution for us to need any type of variance for the dimensional elements of the project or the number of units, there was obviously the appeal on the nature of the farm stay, but there was no

discussion ever about compliance with certain dimensional requires in the zoning code, being in violation.

T. Hotaling asks what remedy the applicant seeks if they will not comply with the order.

M. Mahalek responds, that as the applicant they do not interpret the Zoning Code and the Planning Board does not have the authority to interpret the Zoning Code, that is under the Building Inspector, so if the Building Inspector does come back and says they need XY or Z because of this number of units and there is disagreement about the application of the density equation, then they can respond appropriately at that time. He adds he does not want to get into a scenario where he doesn't know how the Building Inspector would come out one way or the other, and they have already decided once on the conditions and one of the options was not required.

T. Hotaling states there are many possible outcomes prior to them coming tonight and they anticipated that was one of them; that was, once the ZBA provided to us a plausible framework, the second part of this becomes, under what statutory circumstances would the Board provide to further understand what is appropriate. He continues, so he is advising his clients based his understanding of the law, really not understanding any practices or what we are really trying to get to.

M. Mahalek responds, his role is to advocate for this project, facilitate communication with the Board and work with the Board repository.

T. Hotaling clarifies, but in order to clearly understand what that is, you would need to be provided a framework with the applicable ordinances from the zoning with which they would intend to work with, and possibly ask the Zoning Enforcement Officer to provide a document that would assist both of them in understanding where to go.

M. Mahalek responds, the Zoning Officer in their role can make a determination, he states in this whole they have done their best to be transparent, to work with the Boards that they are before, to present the applicable materials online, they are not trying to hide anything, and as part of that often discussions with boards and projects and with building inspectors, they'll make collaborative effort to understand what the terms of an equation, for example the density averaging equation, is and how that would apply to a site like this with over 58 acres. He adds they are hoping to have that collaborative effort, particularly in light of what they think is the minor nature of the project in comparison to some other projects that have been before the Town previously.

T. Hotaling observes a good answer for would be some values from the zoning enforcement officer.

M. Mahalek responds, guidance from the zoning enforcement officer is always enlightening.

T. Hotaling affirms they agree on that, adding that as he reads it, the way it was drafted and in very plain language, asking the applicant if he feels that coming back to them with 20 units was appropriate.

M. Mahalek reiterates he disagrees and if the Board wanted them to specifically reduce the number of farm stays they would expect the Board to say, reduce the number of farm stays. He adds what he understands the Board to say is, they know this is not a subdivision, here are the equations you usually use, and a footnote about why you don't fall under agritourism, which is not the use they were designated under, and regardless here is the equation we really use.

T. Hotaling clarifies that the ZBA said this project falls within a very broad definition of agribusiness/agritourism, obviously stating that there is far too much rental and not enough farm, they were specifically concerned with the agribusiness definition and using it when your primary means of income is rentals and not agriculturally based.

M. Mahalek states that what he took away from the Board's resolution was a deference to the Planning Board on this because the ZBA wasn't prepared, or they didn't want to make that determination on their own.

T. Hotaling clarifies, the ZBA did exactly what they were supposed to do, they interpret the law for the Board and return it to the Board for action.

M. Mahalek maintains that he has a perspective he would like to put before the Board, the application of that equation, adding again, they made their points, and in terms of the application of this equation we will prepare to discuss that to the Board, to the Zoning Enforcement Officer and any other interested parties.

T. Hotaling conveys that in anticipation of the meeting he asked the Zoning Enforcement Officer to begin drafting what would be the appropriate sections of the zoning law that the Board would apply to evaluating this. He continues they do not have specific thing to help them, there are broad things that apply to their analysis, the Board will formally ask him to provide something and provide that so appropriate adjustments can be made to the plan. He adds, if they still believe that methodology still allows for 20 housing units, review it carefully because was not the ZBA's intention and it's not this Board's intention. He expresses that fact it is an agricultural community, the zoning laws, and how the proposal has a mountain of engineering that goes with it. He finalizes by stating, the Board will ask the Zoning Enforcement Officer to provide a document, if there is a question as to the design and the density methodology that formula, then the Board will provide you with something with that will get you an answer.

M. Mahalek reciprocates that from their internal discussions they have perspective about the application of that equation, some of what was touched on in their letter, that they would be happy to expand on further this evening.

J. Belline asks to count down all the metrics and observes the engineering part of 20 septic systems would need to go to the County to approve before they could approve it.

M. Mahalek states they are happy to follow all the appropriate review processes needed at the local and county level, they just wanted to offer the Board the earliest opportunity possible to start providing its comments on this project following a significant amount of time before the ZBA.

H. Leiser asks if there is a time limit on the project and if the open ground is currently under a 10-year lease by Belltown Farms.

The applicant and M. Mahalek respond that it is under lease, but they have notified them of their intent to develop and have crafted a lease to reflect that they would maintain growing operations on the site until they take it over for the chestnut farm.

M. Mahalek adds they would like to provide some context about their perspective on the density averaging equation and their understanding of certain numbers, he understands the Board has asked the Zoning Enforcement Officer to draft guidelines, and voices he thoughts that as the applicants it would be important for them to have the opportunity to provide their input as to backing their claim that their plan is designed to be compliant with that equation for consideration, be it rejection or acceptance or modification by the zoning enforcement officer.

M. Mahalek and T. Hotaling discuss the opportunity to speak and the fine line between litigating the matter with the Board.

M. Mahalek offers a simple explanation of how they proceed with that equation without a back and forth, to respect the Board's time. He proceeds, the density average equation, there's several references throughout the zoning code about its application and where it applies, be it subdivision or certain type of cluster, subdivision or generically apply to all projects. He cites the definition by the Zoning Board of Appeals where they said that the density average is determined by dividing the total developable area of a parcel by the acres required per use. He addresses the Chairman and continues, minimum lot size is determined by applying Health Department standards for well, septic system, and then adding the minimum required setbacks, and references back to the first sentence where it specifically references density average. M. Mahalek adds, looking at that definition in the use schedule of the Zoning Code, there are certain uses that are going to be present on their site, plain reading of the zoning code lists out these uses, also lists a 5 acre per use requirement, those uses include the mobile homes, the residential facility where the owner of the farm resides, and a category for Agribusiness. He references the

resolution, farm stay units and the Agribusiness definition. He continues, looking at the number of acres per use, each of those use categories would have required at least 5 acres, working with 50 plus acres and narrowing that down to areas that have no slopes or less ecological features, they estimate 37.4 acres that is potentially buildable. He comments that the precedent is difficult to apply to similar projects, adding the potential interpretation, they think is extremely impractical, and what they are concerned about. M. Mahalek notes from their perspective on the application of the equation, this is a uniquely large site with significant open space, with proposed uses downhill, away from Sharptown Road, away from neighboring uses, they expect to have a significantly minimal impact, particularly in light of the nature of some other similar uses in town, such as the Somerset Landing Mobile Home Park. T. Hotaling confirms they take that under advisement, and The Board will ask another enforcement officer to provide a document with appropriate provisions to give them guidance.

T. Rappleyea advises to get the assistance of the town engineer for help with guidance that is independent from both the applicant and any opponents.

T. Hotaling adds for the record, this is the second time we have met he you have a revised plan that has not been forwarded to our engineer because we haven't got that far, but it will be sent to him for review. He continues, the next meeting is scheduled for December 26th, and asks if there is any objection to scheduling the next meeting for January. T. Hotaling notes that between now and then the Board will provide the information to them, citing compliance with the number of units.

M. Mahalek, T. Hotaling, and T. Rappleyea discuss the Board declaration as lead agency.

H. Leiser observes from what he understands, they are looking to do agritourism on a dormant farm, and all the analogies he has seen, it has to be an operating farm before it can be called agritourism.

M. Mahalek responds that having had significant discussions with the Zoning Board of Appeals about what's happening at the site and what's planned, the Zoning Board has found that we fall under agribusiness, which is a permitted use in this agricultural zoning district and so that conversation after many months before the ZBA has been addressed respectfully.

H. Leiser and M. Mahalek discuss agribusiness and agritourism.

M. Mahalek adds there were discussions with the ZBA about the application state, regulations, laws and how they differ from this determination at the global level.

T. Hotaling clarifies that the nature of the agricultural operations there are not necessarily subject to other benefits derived by large working farms tax wise.

M. Mahalek counters that the conversations, be it with state designations, those are conversations with the state and conversations with taxing bodies about taxing their cultural use that's going to be dependent on conversations with those bodies by how they treat our use, they are simply before the local land use boards in terms of compliance of the zoning code.

T. Hotaling confirms he is aware, but thought initially they said it was not their intention to go down that road.

Mr. Rudolph states he hears their concern with the dormant farm, they do have a lease with Bell Town Farms and is being farmed as it has been for the last decade, they are in front of the Board to become that bigger farm, the right to become that active farm that has a programmatic experience for the people who will be visiting.

M. Mahalek adds it has been consistently represented that certain exemptions, for example from site plan review or zoning review were not requested, they have been going through the full process, there are certain exemptions from state law for certain agricultural uses and that path was not taken.

J. Belline asks if he can speak. He proceeds, he feels it's going to be more tax revenue to our Town, he doesn't want to see 20 units in there, but if they could, do half of that and make revenue, that would support our Town.

T. Hotaling observes the no one has considered not being able to develop the property

J. Belline and H. Leiser discuss doing the planning in stages.

T. Rappleyea reiterates that Joe can of course talk but asks to back up as Joe had previously recused himself because he was working for the farmer who owns the property or at least farming the property. He asks to clarify there is a new recoil, he is no longer working for them. He continues, the conflict of interest that he had no longer exists, and so therefore he can essentially UN recuse himself for the record.

T. Hotaling tells T. Rappleyea Joe did not do that directly at the beginning of the meeting and he has excused himself from the meeting, the Board will address that as a housekeeping issue in January. A member of the audience introduces himself as a resident of the Town and asks if there is an escrow account setup as the County reviews this and he is just concerned.

T. Hotaling states it has already been done.

A woman in the audience makes a point about agribusiness, whether it is guided by state law or town law, it simply appears in our supplemental regulations, as shall be permitted within the New York State Agricultural District, there's no guidance at all in the use regulations. She adds she is confused since this initial filing about what the use is now, as Mr. Mahalek thinks that a type of use is a use, page 4 changed from 23 residential uses to two because now, as his letter explains, he believed that the mobile homes, the residents and all the atu's comprised 3 uses to be divided over 58 acres.

T. Hotaling address the audience and states everybody is welcome to participate, this is a community thing, people who were here in July when the Board did their informational session, they hope that was helpful and if anybody would like copies of that session, the PowerPoint those can be made available. If you have a comment and you'd like to air that through the board in writing, send it to town hall to Trish DeLong's attention.

M. Mahalek states he could respond certain points, but also respects the board's time.

T. Hotaling affirms that at some point he will be able to do that. He points out that the resolution is what they are operating on from here forward.

M. Mahalek recaps what he stated in the meeting and talks about a site visit.

T. Hotaling affirms he has discussed that, they are still in the workshop phase, and not anywhere near having the application being finalized.

J. Belline comes back into the meeting and states, I un-recuse myself Tal.

T. Hotaling continues, at some point, he thinks they would need to do a site visit that would be subject to the open meetings law but does not feel they are there yet.

T. Hotaling and M. Mahalek discuss the site plan visit and section 9 of the code sketch review.

M. Mahalek states in regard to the density average application there is a definition of density averaging and it specifically references creating lots, parcels or sites and utilizing a mathematical equation that divides land by the minimum lot size of the zoning district, also section 8 of zoning code references. density averaging added specifically articulating intended in that section to create smaller size lots than would be required by conventional subdivision, and then again, density averaging applied under section 15 of the zoning code, which is a specifically a type of subdivision regulation section addressing different types of subdivisions and how you reach minimum lot sizes. He explains the change in the AF was due to the ZBA resolution.

T. Hotaling observes the ZBA did note in the resolution that they understand that it is an imperfect application of the law, but it is the only tool they had to get their point across. He refers to the document and explains they already recognize and understand it's an imperfect tool for the task they had at hand but that was the one that they thought was a tool they had to use.

M. Mahalek states it is their perspective that the ZBA did offer their opinion and they did tie that section specifically to agritourism, which he states they said they did not fall under that use category, that they didn't come back with a different perspective on number of units and deferred to the Planning Board. He adds that under a plain reading of that perspective, as explained earlier, they fall under that.

equation but we look forward to further communication with the board and the zoning enforcement officer.

A resident in the audience asks about the application being complete.

T. Hotaling explains it is in the law, in section 9 that what we are engaging now is under that a sketch plan review, the board use it colloquially as a as a workshop because the word application workshop is more expansive to what the process is. He continues, the process itself can go for many months, sometimes longer than that through many revisions, there's a point when a number of prerequisites or other requirements are met that they would deem an application complete. He clarifies, the application is acceptable, it's being worked on, to be deemed complete means all of the boxes in every legal and technical sense are met, and at that point is when it triggers the requirements for public hearings.

Motion: to adjourn the meeting, made by H. Leiser; seconded by K. Schneider. All in Favor

Adjournment: 8:01 pm

Respectfully submitted.

Patricia DeLong
Planning Board Secretary