

TOWN OF FORESTBURGH PLANNING BOARD
MINUTES
October 27, 2020

The meeting was called to order at 7:00pm by Chairman Richard Robbins at the Forestburgh Firehouse.

Members Present: Katherine Barnhart
Anthony Cardoso
Alan Devlin
Vincent Galligan
Susan Hawvermale
Richard Robbins, Chairman
Robert Sipos

Town Attorney: Jacqueline Ricciani

Recording Secretary: Billie Jean McGinnis

The Forestburgh Planning Board is conducting this meeting at the Forestburgh Firehouse following all CDC guidelines put in place due to the COVID-19 pandemic.

Public Comment on Agenda Items for The Antlers Hunting and Fishing Club

There is no public comment.

Approval of Minutes

Minutes for the Forestburgh Pond SEQRA Public Hearing were reviewed. These were tabled from last meeting.

Motion made by S. Hawvermale to approve the minutes. Seconded by A. Cardoso.

Vote: All in favor.

Minutes for the Public Hearing for site plan approval for Forestburgh Pond were reviewed.

Motion made by K. Barnhart to approve the minutes. Seconded by V. Galligan.

Vote: All in favor.

Minutes from the September 29th Planning Board meeting were reviewed. S. Hawvermale identified typographical errors which were provided to the recording secretary. They will not change the substance of the document.

Motion made by S. Hawvermale to approve the minutes as amended. Seconded by R. Sipos.

Vote: All in favor.

The Antlers Hunting and Fishing Club LLC

Barbara Garigiano, Esq presented on behalf of The Antlers Hunting and Fishing Club, LLC. This is an application for a natural subdivision. There are 75 acres on one side of County Route 49 and 11 acres on the other side. The road has existed for more than 80 years and was taken over by the county in 1947. This is a natural subdivision. She is seeking to have the mylars signed and the subdivision allowed. They are going through the process. They do not believe it is necessary but are happy to comply.

S. Hawvermale asked about the ownership of the parcels and why there is a separation of parcels if there is only one owner? Ms. Garigiano explained that both parcels have been owned by The Antlers Hunting and Fishing Club since 1942. The 11 acre parcel has improvements on it and is useful. The other parcel is useless as it has many cliffs.

J. Ricciani read the Town’s definition of “natural subdivision”. She added that this is not subject to an environmental review. The Board determined that this application meets the definition of a natural subdivision.

Chairman Robbins mentioned that an approval will be conditioned upon payment of all fees.

Motion made by S. Hawvermale to approve this application. Seconded by A. Cardoso.

Roll Call Vote:

K. Barnhart	Aye	V. Galligan	Aye	R. Sipos	Aye
A. Cardoso	Aye	S. Hawvermale	Aye		
A. Devlin	Aye	R. Robbins	Aye		

The application has been granted.

Forestburgh Pond

Chairman Robbins read aloud correspondence received, which has been posted to the website. Chairman Robbins asked for any additional public comment for this application. There are no comments.

Alan Lord presented the application for Forestburgh Pond on behalf of New York Land & Lakes Development.

Parcels A-D have the responsibility to maintain the road. This has been in the deeds since the 1940s. There’s no reason for that portion of the road to be upgraded or maintained by the applicant. Their buyers should not have to pay for maintenance of a road that they don’t use. The applicant will maintain the portion that they will use.

The greenbelt around the lake was offered by the applicant as a way to protect the trees and lake and to keep it looking natural. This was not a Town requirement. The deed restrictions state that brush may be cleared but you cannot cut trees over 6 inches in diameter. This is to prevent homeowners from clear cutting all the way down to the lake. Some current homeowners have already clear cut to the lake and even modified the lake frontage.

Deed restrictions have limited dock construction to 100 feet. Mr. Lord stated that, in his experience, having a dock to access the lake is less intrusive than not having a dock. It's tougher on the shoreline and vegetation to drag your boat into the water. On another project, the EPA is encouraging docks to protect the shoreline.

Chairman Robbins asked if the DEC has a restriction to the disturbance of the bottom of a lake or stream. Would the pounding of pipes to secure a dock violate those restrictions? Mr. Lord answered that anchoring a floating dock is not restricted and the DEC does not require a permit. If excavation is required, a permit is required. If you're installing a standing structure, a permit is required. The streams going into the lake and coming out of the lake are DEC trout streams, but the lake itself is a federal wetland but not a DEC wetland. The deeds are noted that a permit may be required.

Mr. Lord also mentioned that correspondence submitted by a member of the public had a comment about a well. He doesn't have specifics about that well. Records have not shown any issues with well water. There's plenty of well-water in Forestburgh. He reached out to Code Enforcement to see if there were any known well problems. Mr. Lord is not aware of any issues with water.

Chairman Robbins asked if the neighbors wanted to join the homeowner's association, would they be allowed? And if they were members of the HOA, would that give any rights to enforce a covenant should anyone breach a covenant? Mr. Lord responded that they are welcomed to join the homeowner's association. He thinks it would be good for them to be a part of the community. He would need to check with legal, but he thinks that if they join the HOA, they would have some rights. J. Ricciani added that they would have some say in the rules and regulations for the HOA. If they're not a landowner, she'd need to look into whether or not they can enforce the regulations.

Jennifer Langusch, a member of the public asked for, and received permission to make further comment, and stated that she's still not clear on the maintenance of Stag Forest Road. There are three different pieces of road maintenance which makes it complicated and confusing. She feels that it makes the most sense for the applicant to be responsible for the portion of the road that they own. Mr. Lord asked what they're doing now. The hunting camp has been paying for most repairs because the majority of the road is on their land. Ms. Langusch contributes to repairs when it needs to be re-graveled. Mr. Lord doesn't know why the HOA would pay money

to maintain a section of road that they're not using. It doesn't make sense for them to invest the money. Chairman Robbins cannot allow the Board to engage in negotiation between two private landowners over access and rights of a private road. The Board is aware of this issue.

A. Cardoso asked if the applicant would consider adding a covenant that only floating docks may be installed to mitigate any potential environmental impact on the shore. Mr. Lord is hesitant because in some areas they may need to build a boardwalk to get to the dock so they're not walking through the wetland edge. He'll research this some more. The language would need to be very specific.

A. Cardoso asked if any wells have been tested? Mr. Lord has not done any test wells. He was told that the well on Lot 6 used to feed a few cabins.

A. Cardoso confirmed with Mr. Lord that the septic systems will not flow toward the lake. Mr. Lord added that they've been designed to New York State standards.

A. Cardoso asked if the neighbors become members of the HOA, would they consider maintaining the road because it would then be serving members of the HOA? Mr. Lord responded that yes, they'd consider it. S. Hawvermale asked if all current homeowners became members of the HOA, are there any plans to improve the extension of the road to go to their homes. Mr. Lord stated that there are no current plans to improve that portion of the road. If they come to an agreement, it could be done. That section of road is not a difficult section of road to improve.

K. Barnhart is still concerned about the water issue. Is there a way to verify that there is adequate water supply for all lots? This issue has been brought up several times and while there is a response, it's vague. Mr. Lord indicated that our engineer, G. Smith, addressed this issue at a meeting. J. Ricciani added that this was discussed in the SEQRA review. The engineer didn't have any concerns about water. A. Cardoso added the applicant is not building the houses. The lot won't get built if a homeowner isn't able to get water. It won't impact the Town if a lot remains vacant, but he can't imagine not being able to find water. J. Ricciani noted that they're only putting 21 lots on 550 acres. There might be more concern if there were more density. Chairman Robbins added that on an adjacent property, 10-15 new wells were drilled, and no one had a problem getting water. Water has not been an issue in Forestburgh, in this part of town or any other that he's aware of.

V. Galligan asked the applicant to review the provisions of the maintenance of the road. Everything else has been addressed but the remaining big issue is the maintenance of the road. A. Cardoso isn't convinced that this is a site plan approval issue. The role of the Planning Board is not to solve problems of the neighbors. Mr. Lord advised the current residents and the Board that he will work with the existing owners regarding road maintenance.

J. Ricciani added that the role of the Planning Board is to determine if this project complies with the code. The Board doesn't have the power to determine property rights. If the project complies with the code, the Board should approve it. This is their land and there's certain things they're allowed to do on their land that are not implicated by the subdivision code. It seems the interior lot owners want the developer to maintain a portion of road without making a contribution towards it. If they were HOA members, maybe that would alleviate it. If they can come to an agreement, maybe that would help. But if the lots have ingress and egress, that's the Board's concern.

A. Devlin asked if there are any restrictions on lake usage? Mr. Lord stated that there are not. J. Ricciani stated that the deeds have language. The interior lots have deeds that allow boating, fishing etc and there may be a restriction on motors. Their rights are in no way impacted by this project.

S. Hawvermale commented that she understands the role of the Board, but in the spirit of community, it would be nice to come to an agreement privately to address the maintenance of the road. Mr. Lord agrees but doesn't feel it should be part of the subdivision approval.

The Board discussed several conditions to be put in place for preliminary approval. One noted discussion was that A. Cardoso suggested that some of the permitting concepts requested by the Board be added as a condition such as preserving the greenbelt. These covenants were put in place at the Board's request. These were not suggestions; we want them followed. J. Ricciani explained that the maps show a suggested location for the septic. The homeowner may change that. There's nothing stopping the homeowner from deciding to move that septic closer to the road. Whatever conditions put in place must be reasonably related to the health, safety and welfare of the community related to the project. A. Cardoso wants the covenants to bind future owners not just make suggestions. Mr. Lord noted that the covenants in the deed restrictions are specific. Language will be modified to further restrict the greenbelt. Chairman Robbins added that it's in the deed and cannot be ignored. A. Cardoso added that since there are limited parties as to who can sue if covenants are not followed, is there a way to make it a condition of site plan approval so the covenants are enforceable? The Town is not one of those parties who can sue. Mr. Lord shares the same thoughts and will work on more restrictive language.

The Board decided on the following conditions:

1. The parcel shall be conveyed to New York Land & Lakes Development, LLC.
2. The applicant shall substantially complete the improvements to Stag Forest Road and Woodland Drive.

3. The applicant shall permanently close and dismantle the shooting range and remove all structures, including signs, benches, and targets.
4. The applicant shall incorporate the Forestburgh Pond Property Owners' Association, Inc. and provide the filing receipt to the Planning Board Chairman.
5. The applicant shall submit an application to the Department of Environmental Conservation for a permit to repair the dam and shall diligently pursue that application.
6. The applicant shall keep the Planning Board apprised of applications for permits or approvals from other agencies and shall copy the Chairman of the Planning Board on all correspondence, notifications of approvals, denials or conditions with these agencies.
7. All fees shall be paid to the Town of Forestburgh, including escrow fees.

Motion made by V. Galligan to approve this application subject to the conditions decided by the Board. Seconded by S. Hawvermale.

Chairman Robbins commented that from his perspective they've met the requirements under our code. This plan is consistent with the goals set forth in the Comprehensive Plan. Based on the representations made throughout this process, both to the public and the Board, by the applicant, granting this application is warranted. He supports this motion.

A. Cardoso added that opposition has been voiced. The Board tried to mitigate some of the impacts that might occur. Developers have a right to develop their property. In this case, they've chosen to develop it at a much lower density than what could have been permitted. The Board has done what they can to make it consistent with the Town also acknowledging that people do have the right to develop their property.

Roll Call Vote:

K. Barnhart	Aye	V. Galligan	Aye	R. Sipos	Aye
A. Cardoso	Aye	S. Hawvermale	Aye		
A. Devlin	Aye	R. Robbins	Aye		

Preliminary approval has been granted.

Planning Board Member Comments on Items not on the Agenda

S. Hawvermale noted that the application needs to be updated. Chairman Robbins acknowledged this. The January meeting will be held on January 26, 2021 and the deadline for submission is January 12, 2021.

V. Galligan heard that Lost Lake has been sold. Does the Board have anything that needs to be followed such as timelines or code enforcement? Chairman Robbins stated that the Code Enforcement office has been on the job. They have every intention of building according to the specific terms of the plan as approved by the Town Board, with one exception. They will upgrade some of the infrastructure to standards higher than what are in the approvals. They may have to come back to use to get approvals for those. The site plan approval given did not impose time deadlines. In his opinion, they should have, but they did not. A. Cardoso asked what their plan is? Are they are selling lots or selling completed houses? Chairman Robbins stated that they are selling houses.

Public Comment on Agenda Items & Items Discussed During this Meeting

There is no public comment.

Adjournment

Motion to adjourn at 7:50pm made by K. Barnhart. Seconded by A. Cardoso.

Vote: All in favor.