

**TOWN OF FORESTBURGH PLANNING BOARD**

**Minutes**

**March 26, 2024**

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

Members Present: Katherine Barnhart  
Anthony Cardoso  
Alan Devlin  
Susan Hawvermale  
Arthur Leaney-Levenson  
Richard Robbins - Chairman  
Robert Sipos

Town Attorney: Javid Afzali

Town Engineer: Tim Gottlieb

Recording Secretary: Teresa Collins & Billie Jean McGinnis

**Agenda Amendment**

After the approval of minutes, Public Comments will be heard on Applications on the Agenda.

**Approval of Minutes**

The minutes from the Public Hearing for NY Forestburgh I, LLC were reviewed.

Motion made by S. Hawvermale to approve the minutes as drafted. Seconded by K. Barnhart.

Vote: All in favor.

The minutes from the regular meeting were reviewed.

Motion made by S. Hawvermale to approve the minutes as drafted. Seconded by K. Barnhart.

Vote: All in favor.

**Public Comment on Applications on the Agenda**

There were no comments.

**NY Forestburgh I, LLC**

Mollie Messenger presented on behalf of the applicant. Also in attendance were Melissa Melko and legal counsel, Gardiner Barone. They are seeking approval for a large scale ground mounted solar system on Route 42, approximately one mile from the Route 42 and Hartwood/Forestburgh Roads intersection.

Chairman Robbins provided an update. We've received a submission from DOT. It was a late submission on SEQRA. The Board has opted to not re-open the SEQRA process because there are no substantial concerns and it was analyzed by the County. The applicant also provided an explanation about how the 17% lot coverage was calculated. We've also received approval from the Forestburgh Fire Department.

The Board discussed potential conditions for this application.

Mrs. Messenger asked if clearing can be done without the approval of the building department if all conditions are satisfied. Chairman Robbins stated that clearing is authorized in the site plan approval.

Chairman Robbins read through the resolution.

Motion made by K. Barnhart to approve this application subject to the conditions. Seconded by S. Hawvermale.

Roll Call Vote:

K. Barnhart	Aye	A. Leaney-Levenson	Aye
A. Cardoso	Aye	R. Robbins	Aye
A. Devlin	Aye	R. Sipos	Abstain
S. Hawvermale	Aye		

The application is approved.

Moving on to the Application for Land Division, Chairman Robbins read through the resolution.

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

Roll Call Vote:

K. Barnhart	Aye	A. Leaney-Levenson	Aye
A. Cardoso	Aye	R. Robbins	Aye
A. Devlin	Aye	R. Sipos	Abstain
S. Hawvermale	Aye		

This application is approved.

### **Trips 2 Win LLC**

Board Member, Robert Sipos has a conflict as he is the applicant and recused himself. Attorneys Peter Ng and Chris Ng presented on behalf of the applicant. They're seeking approval of a special use permit for an event barn/clubhouse. They received our engineer's report. They're happy to respond to them but some of the questions require their engineer's input.

T. Gottlieb reviewed his findings. A full survey is required. There are a number of additional items required such as outdoor lighting, parking, signage, dimensions, ADA accessibility and detail for the parking lot, overflow parking access, landscaping and a locked gate for the

footbridge. The existing septic system is undersized for the use and should provide a new one. Area variances are required for front yard and side yard setbacks.

Chairman Robbins stated that what's changed between the initial submission and now is really a separate application. They're seeking a lot line change and there hasn't been an application received for that. Chris Ng explained that a lot line change would be an extreme hardship and cost up front for no guarantee of being approved. He doesn't think the application has changed at all and doesn't understand how it's being seen by the Planning Board as different.

Chairman Robbins stated that they're making an application for the use of property that is not owned by the applicant. One of the requirements for a clubhouse is a 5 acre parcel. This is not a 5 acre parcel. They've represented that they're going to purchase the property but there's no documentation to substantiate that. Chris Ng disagrees. Chairman Robbins stated that there's requirements for the applicant to provide evidence. They have not presented an owner's proxy.

J. Afzali added that if the application is going to impact other property not owned by the applicant, an owner's proxy is required. Also, he doesn't see in the application what the social and recreational use or purposes of this clubhouse are going to be. Detail needs to be provided in order to determine if this is a proper application.

Chairman Robbins stated that they've heard nothing about what the social organization is nor the related recreational facilities are. J. Afzali stated that it's unclear what these uses are. Is this going to be used by a social organization to hold group meetings or will this be where the property owner, for commercial and business purposes, rents it out to third parties for profit for commercial gain? These are two different things.

Chairman Robbins stated that without an owner's proxy and a description of the use of the property, this is an incomplete application. He offered to table the application to allow time to complete the application OR turn this into a sketch plan review where they outline the issues that they'll be facing. Mr. Ng doesn't understand how the application is incomplete but agreed to a sketch plan review.

There were disagreements about a few definitions in the Town Code.

J. Afzali wants to know what types of activities that they propose to undertake? S. Hawvermale clarified that we need more details as to the types of activities such as bar mitzvahs, weddings, political events etc. J. Afzali stated that those are not the types of social or recreational events that would be held in a clubhouse. Those events would be held in an event center which is not what a clubhouse is. This is something that is not authorized as a special use.

A Cardoso asked if these weddings are being conducted for members of the Trips 2 Win social organization or are they rented to people that want to have a wedding at a barn? Chris Ng stated that this is a business and hosting a wedding is a social purpose. Nothing in the Town Code excludes the proposed use. The issues with setbacks, seem to be an area question, not a use question.

Chris Ng stated that his client has already spent money to transform this property under lawful building permits. Chairman Robbins stated that the building permits issued, were for a storage

facility. The completion of the permit was denied. Mr. Ng asked about the building permit for a porch. Chairman Robbins explained that yes, a building permit for a porch to a storage facility and the C of O that was applied for was denied due to multiple violations. Things were built on the property for which there was no permit. The building department file does not show a permit for a bathhouse but these are side issues. Chris Ng stated that the bathhouse isn't even part of that building. Chairman Robbins went on to say that you claim you have a legal permit for what's been built there, that's a contested issue.

A. Cardoso stated that the application incomplete and missing documents. The Board has identified that the application cannot be considered today. There's a lot of issues with the application but at minimum, you're missing the documents that the engineer has identified before we can proceed to the next step. There's no point in continuing this argument.

Chris Ng stated that they will get an owner's proxy. Chairman Robbins stated that also need to submit an application for a lot improvement. Chairman Robbins stated that the application needs additional materials in order for it to be determined to be complete. Without it being complete, the Board is not in a position to be able to proceed.

Motion made by K. Barnhart to table this application. Seconded by A. Cardoso.

Discussion:

S. Hawvermale asked what else the Board can tell the applicant that they don't know?

A. Cardoso stated that the engineer has provided his report and they can take into account the feedback received tonight. They have the information they need to submit an application.

A. Devlin wants to see something showing membership tied into this social organization. You cannot have a clubhouse without having a club.

S. Hawvermale clarified that the statute says either/or. Chairman Robbins stated that "clubhouse with related recreational facilities" is the category they're seeking special use permit under.

Vote: The motion carries 5 aye, 1 nay.

The application is tabled.

Chairman Robbins asked if the applicant would like to proceed with a sketch plan meeting and hear feedback on what they believe is required in order to successfully apply for the special use permit, site plan approval and lot line change. Chris Ng opted to continue with the sketch plan tonight. T. Gottlieb stated that he'll need to submit an application for a lot line change.

Peter Ng doesn't know why the engineer comments include NY licensed surveyor to do a metes & bounds description. Can they make it contingent upon approval? Chairman Robbins explained that with an owner's proxy and seeking a lot line improvement, you have to be able to submit a completed application which includes a survey. Peter Ng understands the need for an owner's proxy but doesn't understand why a survey. T. Gottlieb stated that Mr. Smith cannot produce a survey. A survey is needed to do a lot line change. It's a specific requirement of the Code.

A Cardoso explained the issues already identified and mentioned a few potential issues they may run into such as if the parking lot is adequate for the number of cars expected, is the parking lot allowed so close to the brook, is a use variance required? An area variance?

There's a few disagreements between the Board and the applicant regarding interpretation of definitions and requirements. J. Afzali stated that if there's a question of interpretation of the Code, the Zoning Board of Appeals has the jurisdiction to render an opinion. If the Board or Applicant is not clear, maybe the proper procedure would be to go to the ZBA for their interpretation and if the proposed use falls within the clubhouse designation and their schedule of uses. Chairman Robbins agreed that this may be the best next step. The applicant will need to go to the Zoning Board anyway for the area variances.

Chairman Robbins suggested they can get a use variance which he understands they've already made an application for. That application has been tabled with the Zoning Board. The applicant is seeking to avoid a use variance by characterizing the plan as fitting under the exception for the permitted special use for a clubhouse for social organizations with related recreational facilities. Whether or not that's going to be granted, we're not issuing an advisory opinion. In the context of a sketch plan, we're saying it's not automatic, it's a stretch. The applicant may want to go to the Zoning Board and make arguments there and have them make a determination. The other issues mentioned in the engineer's report such as the environmental issues and threatened species will all need to be contended with in addition to the violation received for the requirements for FEMA, traffic issues and DOH septic issues as well. You cannot have a septic system within 100' of a well or brook. These issues will be the subject of discussion.

This application has been tabled.

### **Other Business**

S. Hawvermale sent an email about the paperwork received from applicants. In the past, it's always been in individual packets. It's impossible to dig through the materials upstairs. Chairman Robbins has advised the applicant's attorney of the requirements. The materials on the flat file will be cleaned up when B.J. returns.

S. Hawvermale asked about online learning that was mentioned at the Town Board meeting. Chairman Robbins has been out of town but will look into this.

### **Adjournment**

Motion made by K. Barnhart to adjourn the meeting at 9:21pm. Seconded by A. Cardoso.  
Vote: All in favor.