

## **TOWN OF FORESTBURGH PLANNING BOARD**

### **Minutes**

**November 28, 2023**

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

Recording Secretary: Billie Jean McGinnis

### **Approval of Minutes**

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

Chairman Robbins abstained as he was not present at the meeting.

Vote: All in favor.

### **Public Comment on Agenda Items**

There are no comments.

### **Finnegan's Tavern**

Patrick Santucci and Kelsey McCoy presented on their own behalf. They are seeking approval of a small tavern on Route 42 next to Forage Pizza. They'll have limited hours and will serve bar food and snacks. Their capacity is around 49.

T. Gottlieb summarized the items addressed in his review. The applicant will need to get approval from and may need to "rent" land from the State to use the right-of-way. He suggested that they meet with the Health Department before they do anything with the septic system. Mr. Santucci said they've spoken to the Department of Health and are arranging an engineer to report on their current system. They've had it inspected twice and both reports were good. The septic inspector said that it looks perfect for what they're trying to do.

T. Gottlieb disagrees. The current septic allows for 980 gallons. This is what they anticipated the design flow was for the restaurant itself, nothing else. There are apartments and a pizzeria. Based on his calculations, they need almost 2,000 gallons per day. A larger septic is required.

There was a discussion about seating vs. occupancy and the DEC regulations for septic. Mr. Santucci said he'll have another engineer review it.

Ms. McCoy reported that the building owner has received a permit from Sullivan County DPW for the access road off County Road 108. T. Gottlieb said this all needs to be on the plan, including final grading, how storm water is going to be affected etc.

Ms. McCoy stated that the building owners will construct the parking. It's not part of their site plan proposal. They are taking care of the ramp, signage and lighting in the front. She asked if their site plan will need all of the detail or can they submit something showing the required number of parking spaces they'd need? Chairman Robbins stated that they have an owner's proxy. For the purposes of presenting the site plan, they are acting as the owners. Their project requires parking but how it gets worked out between them and the owner is not for the Board's review. He confirmed that it should all be part of the same site plan.

Chairman Robbins noted that this is an unusual property in that there are multiple uses going on. The site plan needs to take into account the septic which involves the applicant and other occupants. The Department of Health will need the data for the whole building. They'll need to make sure parking is adequate for everyone in the building. Ms. McCoy stated that there are exceptions because some employees are residents as well.

Chairman Robbins asked about access to the swimming pool and allowance of outside food. Mr. Santucci said their patrons will not have access to the pool. Patrons will not be allowed to bring in outside food.

K. Barnhart asked how parking is determined and how do you account for parking spaces needed for all businesses? T. Gottlieb responded that this is determined by the type of business and dwellings. Patrons must be able to park on site. The pizzeria is listed as takeout only. Mr. Santucci confirmed that there is seating for 9 inside. Chairman Robbins added that there is also outdoor seating on an adjacent parcel.

K. Barnhart asked about the gaps showing on the map. Ms. McCoy explained that the property is on the corner but the gaps represent the county and state right-of-ways. T. Gottlieb stated that everyone is parking on in the state right-of-way.

A. Cardoso asked if the Department of Health told them that 980 gallons was sufficient? Ms. McCoy said they were encouraged to have a review done. The septic inspectors didn't have any concerns at a higher capacity. In his experience, A. Cardoso thinks the septic may not be adequate for this project and should be reviewed. Mr. Santucci explained that it was an operating restaurant in the past with larger capacity. A. Cardoso and T. Gottlieb explained that when you do something new, it has to be brought to code. The engineer will have to evaluate the property and come up with a design.

Chairman Robbins stated that the Board is not in a position to declare the application complete.

Motion made by S. Hawvermale to declare Forestburgh Planning Board as lead agency and classify this as an unlisted action. Seconded by A. Cardoso.

Vote: All in favor.

This matter is adjourned until necessary materials are received.

### **NY Forestburgh I, LLC**

Walter Garigliano, Barbara Garigliano, Mollie Messenger and Melissa Melko presented on behalf of the applicant. They are seeking approval for a large scale ground mounted solar system on Route 42, about a mile from the Route 42 and Hartwood/Forestburgh Roads intersection. The proposed site will be approximately 50 acres of land within a 225.67 acre parcel.

Chairman Robbins disclosed that three members of the Board are members of the Merriewold Club, which borders a portion of this project. One of them is on the Board of Governors.

Mr. Garigliano explained the project. This land was primarily used for hunting and recreation. They plan to install approximately 12,000 585 watt solar panels. The land has very dense growth of rhododendron which will provide natural screening. There are a few trees, mostly white pine and northeastern oak. When the property was logged, the rhododendron were too dense to allow trees to grow.

He explained that solar panels come out multiple times per year. The amount of solar panels may change depending on technology. Typically, they provide a package of conceptual plans and not move ahead with the complicated aspects of design like drainage plans, grading plans stormwater pollution prevention plans until they're sure that the Board is okay with where the project is located within the property. They've submitted FAQs, property maintenance plans and decommissioning plan.

Chairman Robbins stated that the greatest concern is the visual impact. Mr. Garigliano confirmed that the project will not likely have a visual impact and will only be visible from an airplane. This project will not be seen from the road nor from neighboring properties.

Mr. Garigliano is looking for clarification on a line of sight analysis referenced in the Code. It doesn't indicate where they want that analysis from. He's also looking for guidance in the Code where it states they need to provide information about the distance from residences on adjacent properties. Properties across Route 42 are not really adjacent. There is one adjacent home to the north which is many hundreds of feet from the project. There are also lots recently sold within the Forestburgh Pond development. At their last inspection, there was no activity at these lots yet. Chairman Robbins indicated that the property immediately adjacent to theirs, Lot 1 of Forestburgh Pond, has had recent development. Mr. Garigliano will look into this. For computing purposes, they'll use the fence because it's likely that everything will be many hundreds of feet away.

Mr. Garigliano explained that there is one change on the site plan vs what they are now intending. There was an area where stumps would not be cleared. It was recently determined, given the visual screening, that the stumps should be cleared and left with a mowed, grassy area. This will increase the capacity of the panels. Given the nature and scale of the site, it makes sense to maximize the panels.

S. Hawvermale asked that the adjacent residences, including those across Route 42, be added to the plat. K. Barnhart asked if these adjacent residences will be notified. Mr. Garigliano confirmed.

A. Cardoso asked about the current use of the property. A gentleman sold a business in New York City and splits his time in Connecticut and Vermont. He only used the property for hunting and recreation.

A. Leaney-Levenson asked if the property has been cleared. Mr. Garigliano confirmed that nothing has been cleared. The submission shows about 60 acres to be cleared.

A. Cardoso asked about the mix of the forest to be cleared. Mr. Garigliano explained that along Route 42 there are large eastern white pine and poor quality oak trees. He'll provide a forestry report showing that the property is lightly stocked with trees. When they cut the trees, it was so densely covered with rhododendron that new trees never grew. The previous owner removed every tree of value from the property before he sold it. The swampy areas have hemlock but everything else was eastern white pine and northern red oak that wasn't removed years ago.

Mrs. Messenger indicated that the list of adjacent owners was prepared about a month ago. They'll check for updates before notices for hearings go out.

Mr. Garigliano is hoping for the Board to declare its intent for lead agency so they can get the notices prepared. He also hopes that if there's a 239 trigger that the Board refers it in the current conceptual plan stage. They won't ask to schedule a public hearing because there's additional information they want to submit. They don't want to do a grading plan or stormwater pollution prevention plan twice and asked for any questions or concerns. They'd like to address that before going to the time and expense of preparing those plans.

Mr. Garigliano indicated that NY state does not have ground mounted solar stormwater rules. In April, 2018, NY adopted the Maryland stormwater rules as NY's temporary rules for stormwater.

Chairman Robbins explained that a matrix was provided to give organization to the completeness of the application. He is particularly interested in discussion of items 10, 15, 16 and 29 of the matrix.

#### 10 – Residential Structures

Chairman Robbins indicated that a permit has been granted and land has been cleared for lots within the Forestburgh Pond Development. Mr. Garigliano will give the location and distances of adjacent residential structures.

#### 15 – Adjacent Property List.

Mr. Garigliano stated that a list was given in the submittal provided tonight.

#### 16 – SEQRA Part I Full EAF

Mr. Garigliano explained that the changes requested by Tim can only responded to when doing more definitive engineering work

#### 17 – Compliance with the provisions of Town Code Chapter 153 Article VIII

Mrs. Garigliano sent a letter today. They met with the supervisor and will not be seeking a PILOT and will pay full real estate taxes.

Chairman Robbins asked if there was IDA involvement, would there not be a request for a PILOT? Mrs. Garigliano responded that the letter was provided as a requirement for the Town Code. It's different than the IDA PILOT but it's the same concept. A. Cardoso asked if they are not going to seek a PILOT? It doesn't mean that they won't seek a tax exemption through the IDA process. Mr. Garigliano doesn't believe there will be a tax exemption from anybody. That's his expectation and he'll let us know if that changes. He had discussions with the Town Supervisor which convinced them that the Town needs revenue and that the Town would greatly appreciate if the project would pay taxes. A. Cardoso again asked if they're saying that they won't seek a tax exemption? Mrs. Garigliano stated that the letter was submitted to comply with the Town Code. The Code says they need to provide notice if they are seeking an exemption through the Town. They are not.

Motion made by S. Hawvermale to declare the Forestburgh Planning Board as lead agency, classified as a Type 1 listed action. Seconded by A. Cardoso.

Vote: All in favor.

Mr. Garigliano asked for clarification on who sends out the notices. Mr. Garigliano will send them and provide the signatures cards and affidavit.

J. Afzali added that for Item 10, for the adjacent property list that it would be sufficient to use the property lines within 500 feet. He agreed that the changes to the EAF should be made and resubmitted. With the submission of the subdivision application, it may be better to combine it all into one EAF rather than handle it as two separate projects. Item 29 is the visual impact assessment. The completion of these four items would provide a more complete application for purposes of scheduling a public hearing. At some point the remaining items will need to be addressed.

Chairman Robbins confirmed with Mr. Garigliano about combining the EAFs. Mr. Garigliano contemplated one SEQRA. Mrs. Garigliano stated that the boundaries for the subdivision are subject to change as they get more involved in the project. The hydrological studies need to be completed in order to finalize the subdivision location.

Mrs. Messenger presented the decommissioning plan. There is a 90 day removal process in our Code. She's concerned because 90 days is a short time frame to decommission 12,000 panels. It's usually a year long process. Panels are silicon based and are reused in different countries for different purposes. They plan to leave the site with grasslands and graded to a natural state. Fencing will be removed and reused, sold or demolished. Mr. Garigliano added that panels are not recycled, they're reused. They're sold to other countries and will not go to the landfill.

Ms. Melko presented on the operations and maintenance of the site. Vegetation will be cleared using machinery. There will be semi-annual maintenance visits. If there's an emergency with a panel, it sends a signal and someone drives out to that panel and fixes it or has it replaced.

Mrs. Messenger indicated that the site plan will also be provided to the Fire Department. They'll also offer training to emergency personnel by whichever company supplies the inverter. Mr. Garigliano added that emergencies are different depending on the type of technology.

A. Cardoso asked how the power works? Does it go into the local community? Mr. Garigliano explained the process. Once the power from this project goes into the grid, it will go to the nearest draw.

Chairman Robbins asked if there's any anticipation of installing a battery facility? Mr. Garigliano stated that there's no current technology that would make it financially viable at this time.

K. Barnhart asked for clarification on the amount of panels being installed and why that number would change. Mr. Garigliano explained that the government defines a public utility as any company that generates more than 5 megawatts AC of electricity. No one in the renewable energy world wants to be a public utility. The project is designed at 4.998 megawatts AC and there's a limitation on the DC:AC ratio at 1.4.

A. Cardoso asked if the power gets sold to Orange & Rockland and then they sell it back or sell it directly to the customers. Mr. Garigliano explained that there's a complicated formula to determine the value of electricity. The operator sells credits for people to put on their electric bill.

Mrs. Garigliano presented the subdivision portion of this project. They won't know exact dimensions until the geotech is done and they've determined where the panels need to go. All of the panels need to be encompassed within the fence where there's sunlight. Mr. Garigliano explained that they won't make the subdivision application until the grading plan and stormwater pollution plan are approved. Those may require the site to be increased in size.

A. Cardoso asked about the larger part of the parcel and if there are plans for a residential development? Mrs. Garigliano stated that it will remain as is. Mr. Garigliano indicated that he doesn't know what the future owner of that parcel will do. The land will be sold to an affiliate of the solar developer who will then lease that site to the project company and the rest will be sold off.

This matter will be adjourned until additional materials are received. Chairman Robbins confirmed the next meeting date.

#### **Set Dates for 2024 Planning Board Meetings**

Meetings will be held on the 4<sup>th</sup> Tuesday of each month with the exception of the December meeting. That meeting will be held on December 17<sup>th</sup>. Meetings will continue to be held at 7:00pm.

#### **Planning Board Member Comments on Items Not on the Agenda**

There are no comments.

#### **Public Comment on Items Discussed During the Meeting**

There are no comments.

#### **Adjournment**

Motion made by S. Hawvermale to adjourn the meeting at 8:16pm. Seconded by K. Barnhart.  
Vote: All in favor.