

PLANNING BOARD
REGULAR JULY MEETING
MONDAY, JULY 8, 2024
7:00 PM—TOWN HALL—1529 NYS RTE 12
BINGHAMTON, NY 13901

Present: Brian Donnelly, Chairperson
Thomas Eldridge, Vice Chairperson
Jamie Szenher, Board Member
Maura Cooley, Board Member
Deborah Mastronardi, Board Member
Micheal Boland, Alternate Board Member

Also Present: Alex Urda, Town Engineer
Gavin Stiles, Code Officer
Nathan VanWhy, Attorney

Brian Donnelly: Good evening. I'll call the regular Planning Board meeting for July 8th to order. First off can we have a roll call?

Adam Donahue: Mr. Boland; present, Ms. Mastronardi; present, Ms. Cooley; present, Mr. Szenher; present, Mr. Eldridge; present, Mr. Donnelly; present.

Brian Donnelly: First thing on the agenda is the approval of the minutes of the June 10th 2024 regular meeting. Is there any discussion?

Jamie Szenher: I'll make a motion to approve the minutes.

Thomas Eldridge: I'll second it.

Adam Donahue:	Ms. Mastronardi, Board Member	Voted: Aye
	Ms. Cooley, Board Member	Voted: Aye
	Mr. Szenher, Board Member	Voted: Aye
	Mr. Eldridge, Vice Chairperson	Voted: Aye
	Mr. Donnelly, Chairperson	Voted: Aye

The motion was thereupon declared adopted by a roll call of:

Ayes—5 Nays—0

Brian Donnelly: Under old business we have two items for the Spyros Dimatos application for the solar farm. Both of those have been removed from the agenda tonight as the request from the company that's doing it. They wanted more time or whatever to figure out so they have good answers and whatnot for the project. So we're not doing that tonight.

Thomas Eldridge: It's going to be moved to next month.

Person 1: This was supposed to be a public hearing.

Thomas Eldridge: They would like to postpone it because they were not prepared. They let us know this today.

Person 2: That should tell you everything about them. They're jerking everybody around here.

Thomas Eldridge: We tabled last month for you.

Brian Donnelly: We don't have any control over this. They've decided that they're not going to be here tonight. They need more time, they're considering the whole project and they want to make sure that everything is proper.

Person 3: Can I ask one question, are they following through that 329 from the county? All of the issues that they listed?

Brian Donnelly: I think that may be one of the reasons...

Person 3: Because that is a lot they will have to do and follow.

Brian Donnelly: In order for them to give a proper decision and proper what they're planning on doing, they need more time and so it will be a matter of, and as far as when they reschedule we will reannounce it and we will go ahead with it. It's off the agenda for tonight.

Thomas Eldridge: It will be on the website and it will be in the newspaper.

Person 2: You did not advertise it.

Thomas Eldridge: It is.

Person 2: Tell us where we could've found it.

Brian Donnelly: Under new business we have James Payton, 27 Clearview Pl, application to have four dogs in a residential zone.

Person 2: You're not making it obvious for us how we can come back and give you guys feedback. This is like being sleight of hand.

Brian Donnelly: We don't know when it will happen so we can't tell you when it will happen, so tonight it's not happening. That's all I know, I was just told that this afternoon.

Thomas Eldridge: By law it has to be posted on the website. We are a jury of your peers. If you have a problem with any of this, take it up with the Town Board and not attack us. We are on the same level as you. If you have a problem, sir, please go to the Town Board. They put it on the website whether you could find it or I could find it, it's there and it's in the newspaper. Do I think it's archaic? Yes.

Person 2: That's fair.

Brian Donnelly: We're moving ahead for now, thank you. James Payton, 27 Clearview Pl, application to have four dogs in a residential zone. Mr. Urda?

Alex Urda: The application package included: Planning Board Application w/ permissions. We offer the following comments:

1. Question:
 - a. Where are the Dogs housed?
 - b. Is the yard fenced?
 - c. Types of dogs?
2. SEQR – Defer to legal counsel
3. Project is subject to 239 review within 500 feet of a New York State Ag. District. 239

Review letter had “no comments.”

4. Legal – does a ‘Special Permit’ require an “Agricultural Data Statement?” The “Ag” parcel is to the south @ 096.13-1-44.2,”Cipollina,” 11 Clearview Place; use is noted as “Residential.” We have no engineering objections.

Brian Donnelly: Mr. Stiles, do you have any comments?

Gavin Stiles: No sir.

Brian Donnelly: Is the applicant here? At this point we need to have a public hearing for this so maybe we should go ahead with that first and then we can discuss if we had some questions or whatever afterwards. What I’d like to do is open the public hearing. There’s very few rules, anyone that wants to be acknowledged just raise your hand and I’ll acknowledge you. You’ll tell your name, address and like that. This being a little bit unique situation and then what basically do you have, they normally do five minutes to talk. If you go on past that then we’ll cut you off. Out of concern for the board and knowledge, I’d like if you could just address us briefly to kind of give us an idea of what kind of dogs and like that. I don’t think it was in the paperwork and the reason you need to have four dogs.

James Payton: Sure. My partner and I moved up here about a year ago for jobs. I work at the Raymond Corporation and he works for Eastern Broome Ambulance. We did not realize that there was a dog policy until, we moved here in June and we got our fourth dog in June too. We didn’t know there was a fourth dog policy until then. We have two Huskies. They are very well-behaved, it is a fenced-in yard. We pick up after them just about every single day and make sure that the yard is clean. They were barking a little bit, the neighbor did complain about that but we had brought them in. They were being put in the greenhouse when we were away at work. We brought them inside the greenhouse was just an addition to our house. We brought them inside so that if they do bark they cannot be heard and they don’t bark. I’m there with them at night so they’re not a nuisance like that. We also have a Border Collie and a German Shepard, they’ve never bitten anybody and they’re very well-behaved. I think that pretty much is it on my part.

Brian Donnelly: Does anyone have some comments?

Steve Brundage: My name is Steve Brundage, I live right next door to James at 29 Clearview Pl. First of all, I think four dogs is too many. It should be two or less for such a small area. The houses are close together. It is a fenced-in yard. They are well-behaved dogs but four dogs are way too many for a residential house like that. I have a neighbor next door selling their house tomorrow. If someone new buys that house and they have four dogs and you guys give them that variance for four dogs, I’ll have eight dogs between me and I’m not a dog owner. I don’t want eight dogs between. The houses are close together and I just don’t think it’s the right setting for four dogs. They are well-behaved and he picks up the waste, so far so good, they just moved in. I just don’t think it’s the right area for four dogs. Maybe out in the country or something like that would be much better. I’m afraid of like I said, if someone buys the house on the other side of me and they have three or four dogs, then I’m surrounded by dogs.

Kevin Gildea: I have more of a question, Kevin Gildea, I live across the street. What is the general rule on volume of dogs in residential?

Brian Donnelly: The general rule for the town is three dogs.

Kevin Gildea: If an application for four is approved then it's for that individual only, correct?

Brian Donnelly: Correct.

Kevin Gildea: It doesn't change the general rule. Each one is a one-off exception.

Thomas Eldridge: Yes.

Jamie Szenher: Or that homeowner. If that homeowner leaves then it's not for that house anymore. If you have an extra shed that's staying. That's different, for the shed-type stuff.

Steve Brundage: Do you know how long that has been in effect, that three-dog rule? Is it antiquated?

Nathan VanWhy: It's like 1996.

Michele Locke: Michele Locke, I live next door and this is very uncomfortable because they have given me no reason to complain. My concern is that, very similar to his, is this setting a precedent that there is going to be, I mean I'm a dog owner and I love my dog but it's a lot of work and it's a big commitment not everybody is as ingenuous as I am and he is and others are and these are very small parcels of land. I'm more concerned with the development. If you grant this for him is this going to mean that in this development, is this going to set a precedent that well you gave it to him, why aren't you giving it to me?

Brian Donnelly: We evaluate each case on a case-by-case basis.

Michele Locke: It's a very tough situation. I didn't want to come here, I have nothing against him. I didn't want to cause hard feelings, I have to live next door to them. They've given me no reason to have any hard feelings but when you buy a home and the Chenango Heights development is a beautiful development, you don't want 12 dogs in a small area. Not everybody is a dog lover, you know my father he'd go absolutely crazy. I guess my concern is not for his case, what precedent is this setting?

Janet Kanick: Janet Kanick, 18 Clearview Pl, I don't own a dog and I don't have anything against dogs either. I've lived there for 34 years and I feel the same way, that it's setting the wrong precedent and the neighborhood I've been there long enough to know that it's recreating itself. There's a lot of kids involved in the area now, and does that cause a concern too? I don't know. I'm like the mayor of the neighborhood. That would be my concern as well, setting a precedent.

Person 4: What if the dog had puppies? What does that affect?

James Payton: They are all fixed. All of mine are, but I definitely understand what you're saying.

Michele Locke: Yes, it's not directed at you per se. It's the situation.

James Payton: If it's denied I would have to give up one of my dogs and I do not want to do that. That's my big concern.

Jeffrey Near: Jeffrey Near, 29 Jason Drive. I don't know James. I think we can get a guarantee from the Planning Board that this is a case-by-case situation. If you had a bunch of neighbors come in here complaining that their dogs are out of control, they're jumping over the fence, I think it would be a completely different situation. I think this is dealt with on a case-by-case basis, correct?

Brian Donnelly: Yes.

Jeffrey Near: I don't even live in your neighborhood, I live by the schools, but I think that it can bring more comfort knowing it shouldn't be setting a precedent. If you had a bunch of neighbors coming in like yourselves saying the dogs have jumped the fence, they've dug up my backyard, chased my kids down the street, that would be a completely different situation.

Brian Donnelly: Is there anyone else that wanted to say anything else? Ok, we'll close the public hearing at this point.

Jamie Szenher: We've done these before, I know we've done these before and I think we put caveats on them about it's something to be revisited in the future if Gavin or Alex remembers we put caveats?

Alex Urda: You guys can always terminate the special use permit if something really goes wrong complaint-wise.

Jamie Szenher: If complaints pile up then it gets revisited?

Alex Urda: There have been some sunset terms also, where if the number through attrition drops or something occurs it stays dropped.

Jamie Szenher: I think for the period of a year.

Nathan VanWhy: It was before my time with the town. I would certainly suggest putting it, if you granted it. I would suggest putting conditions on it if you granted it like if the number of dogs present at the property drops to three or less then it shall not be increased to four again. Something like, if a complaint is received by the dog control officer and the complaint results in a finding by the town court that the property owner is in fact in violation of the town's laws regarding control of animals then that might be grounds for revoking the special use permit that you're providing, maybe other conditions like I don't know what's present at the property but of course an adequately sized kennel. You've got concerns. I don't know if there's a fence there. It's hard to say to somebody you've got to get a fence.

Brian Donnelly: He said he's already got a fence.

Nathan VanWhy: So then that he maintain the fence, that he can't just take the fence down all of a sudden and call it a day because you would be potentially relying on the presence of that fence to say ok, we are less concerned that four dogs are going to be really difficult to control. If there is no fencing then that's a problem.

Thomas Eldridge: How did this come to light? Did somebody turn him in? Gavin, did the dog guy come?

Jamie Szenher: Mr. Payton, how were you told to come in and apply for this?

James Payton: The dog control officer said that we have four dogs and we were going to register the fourth one.

Jamie Szenher: So when you went to license the four dogs, that's when it came up.

Thomas Eldridge: So Gavin, the dog control officer was just driving by and saw four dogs?

Gavin Stiles: They came in to license them and they said you can't have more than four and they were like how do we get more than four then we told them how to get more than four.

Thomas Eldridge: So they weren't barking.

James Payton: They were barking at one point, yes they were. I spoke to my partner because they were barking and at one point we were like okay, we won't leave them in our addition anymore, we'll bring them in. Hopefully they haven't been an issue since.

Nathan VanWhy: You could put a condition that where the dogs are being kept now, that they not be kept in the addition it sounds like, if you were inclined to move forward with it. I've been reviewing the SEQR regulations on this, I don't see here a type II action so it would be an unlisted action, so you would need to review SEQR prior to taking any final action on the application for a special permit. Gavin, did they submit a part one form? I didn't see it in the packet.

Brian Donnelly: So we would need to do a part one.

Gavin Stiles: I guess I missed that one, or Kari did or somebody did. I probably did. It was me.

Brian Donnelly: So we definitely can't take any action tonight.

Nathan VanWhy: To do SEQR we really need them to fill out the part one form and then discuss it amongst the board.

Gavin Stiles: These things are so infrequent that it didn't even dawn on me.

Nathan VanWhy: I'm surprised that it's not a type II action actually.

Jamie Szenher: When was the last one, a couple years ago? River Rd?

Gavin Stiles: It's been a while.

Michele Locke: I just have a quick question I wanted to ask. Again, what's going to happen in the neighborhood when someone wants four? What if it becomes a trend like you've got four, I'm getting four. Is this going to be a case by case?

Brian Donnelly: We evaluate each case as it comes in.

Michele Locke: I'm not out to hurt him, I'm just thinking of property value. You're a dog owner, you love dogs. If you don't like dogs, it's a lot.

Brian Donnelly: We evaluate each case as it comes in, that's all I can say.

Jamie Szenher: Each person will have to apply.

Michael Boland: The only worse part is, every neighbor you have can have three.

Steve Brundage: That's too many.

Michael Boland: It's been like that as long as I've been here.

Steve Brundage: That's way too many. Those homes are small, they're close together. The lots are small. It's not a place for four dogs or three dogs.

Brian Donnelly: Moving forward with this, we have to have them submit a part one?

Nathan VanWhy: Have them submit a part one form at the meeting next month so the board can review it again. I would actually recommend keeping the public hearing open until that next meeting also so the public has an opportunity to also review the part one form and then make any additional comments that they might have at the continued public hearing next month.

Alex Urda: Did you guys motion to close it or just informally?

Nathan VanWhy: They did not do a motion, just declared it closed. I think you can do a motion to continue the public hearing at the next meeting and direct the applicant to the part one form.

Person 5: Can I ask a question? I'm not even involved in any of this but I'm getting a little confused and I think there could be a little trouble. You have a public hearing for the solar farm and by regulation you have to announce it and do all these other things. Now out of the blue, you're sitting here telling me about this gentleman's dog and you're saying let's have a public hearing. I've heard it three times. There's no announcement.

Brian Donnelly: It was announced and it was advertised.

Thomas Eldridge: These people here got flyers in the mail because they're within 500 feet.

Jamie Szenher: It was in the newspaper and it was on the website.

Person 5: Ok, I apologize.

Brian Donnelly: This is the legal way that we have to do it.

Person 5: I didn't know that it was, because it's not on the agenda for old business. It doesn't say new business public hearing. That's why I didn't think it was. That's the only reason.

Brian Donnelly: So where we're at at this point is to make a motion to continue the public hearing to the next one. We need to table this at this point because there's additional paperwork that the applicant needs to do and he needs to do his part and we need to do a review for our part of it and that just can't be done tonight because it was a mistake in our ordinance office that they didn't have them do it ahead of time.

Gavin Stiles: Oversight.

Brian Donnelly: That all being said, I'll go ahead and take a motion for extending the public hearing.

Thomas Eldridge: I'll make a motion to extend the public hearing.

Maura Cooley: I'll second.

Adam Donahue: Ms. Mastronardi, Board Member Voted: Aye
 Ms. Cooley, Board Member Voted: Aye
 Mr. Szenher, Board Member Voted: Aye
 Mr. Eldridge, Vice Chairperson Voted: Aye
 Mr. Donnelly, Chairperson Voted: Aye

The motion was thereupon declared adopted by a roll call of:
 Ayes—5 Nays—0

Brian Donnelly: At this point we're going to continue this next month. The public hearing will still be open at that time so any additional comments anybody wants to make they'll be able to make them at that time.

Steve Brundage: How about if I'm not in town?

Brian Donnelly: Then you can submit something in writing.

Thomas Eldridge: You'll have to stop into ordinance to fill out the rest of the paperwork.

James Payton:

Thank you.

Brian Donnelly:

Next on the agenda is Haza Bell of Northeast LLC. It's an application for a site plan review to open a Taco Bell in a PDD-C zone with a short EAF. The applicant is here. Alex, do you have comments while they're setting up?

Frances Gorman:

My name is Frances Gorman, I'm an attorney with Harris Beach and I'm acting as local counsel to Brown, Altman & DiLeo, counsel to Haza Bell, the applicant for this application. Haza Bell of Northeast LLC. I'm here tonight with Sam Burden of Bohler Engineering. We were here before you about a month ago on the project and I'll just summarize it quickly and then get into some details.

The purpose of our application is to get site plan approval for a Taco Bell in a former Speedway gas station. Taco Bell is smaller, there will be more green space and we can also eliminate some of the offsite runoff. Currently the property is three tax parcels. We plan on combining those tax parcels and we also will be going before the Zoning Board of Appeals for a triple area variance for lot size, frontage, and depth. As far as the applicant, the applicant currently operates 100 quick service restaurants in the Northeast. They have 2000 nationally and it's been one of the top 12 franchises in the US so it's a well-known operation. The building itself is going to be 2400 square feet. The current building is closer to 2700 square feet. It's going to seat roughly 32 people, diners, but as you all know since Covid hardly anybody is eating inside, it's all drive-thru. I was at a Dunkin Donuts today and it seemed like it was huge, there were cars in the drive-thru and not one parked. We are going to have parking here, we're going to have 22 parking spaces. The site plan as it sets up, we're going to have eight car stacking and the building is going to be roughly 25 feet high. That's what I have for my part of the presentation and Sam is going to get into some more detail and maybe address some of the comments in the engineer's letter.

Sam Burden:

We just received the engineering letter so we started to walk through that in the parking lot. We can go through the site plan a little bit. 2400 square foot restaurant with drive-thru as F L said. The site plan isn't the traditional layout that you would see as Wendy's down the street with the applicants having to cross the drive-thru or cross a parking aisle to get into the site. This is a more drive-thru centered layout where you have the bypass lane around the building for emergency services and if there's anybody stuck in the drive-thru they can actually get out and circulate. There is a recirculation lane around the front to get back into the main parking area. Our trash corral is striped so that employees can actually get off the sidewalk safely into the trash corral and back.

There is a 10-person patio proposed out front. There will be a canopy and overhang, we have some elevations that you guys looked at. Nothing has changed on the elevations. The site plan since we've been here, the site plan has been updated into more detail. That's why we came to the technical meeting first to really try to nail down the layouts so we didn't change anything. The applicant spent the money to go ahead and do formal full engineering documents, not construction level but they're about a bid level documentation set. Since we've seen you last the application has been circulated to Broome County. We've received a lot of comments. They started pouring in over the last two weeks. With that DOT, BMTS, they commented. We received these comments and we plan on formally addressing all of them. Alex put that in his letter.

The last one I saw that I brought tonight I can send it to you guys digitally or if you want it we have our SHPO letter, a letter of no impact so we can hand that out. Stormwater, we're under an acre and proposing to increase green space so we're just doing retention in the

back of the site, reducing the flow rates to the rear of the site and to the DOT system as required by DEC. A couple comments came back on landscaping and we'd like to get your feedback on that tonight. If there's anything else you see or have questions on on the site plan the applicant is eager to reinvest into this site. I think anybody that drives by it sees that it needs it so we're excited to hear any comments that you have and continue to move this one forward. Anything else?

Frances Gorman: One of the questions that was raised in the engineer's letter is what's the difference between the preliminary site plan and the final site plan? We're hoping that there will be no difference. It's pretty far along.

Alex Urda: It's just based on our review.

Frances Gorman: We'd like to get site plan approval subject to any variances that we'll need and then we'd like to have the Planning Board declare themselves as lead agency, we do have a short form EAF on our application.

Michael Boland: Why does the state want you moving over to the streetlight? Did I see that in the 239?

Sam Burden: I saw that they made a comment where they thanked us for shutting down the access closest to the traffic signal.

Michael Boland: At one point I saw that they wanted you to work something out on the north side and try to get out over there.

Sam Burden: There was a comment regarding shared access in regards to the signalized intersection. What we're proposing right now I think is the safest and most efficient way. DOT has not really raised too many concerns. We actually sent something to them right at the beginning because we wanted to vet these things out. DOT is notoriously long in their review process. The access that was closest to the intersection was what they considered unsafe and they thanked us for closing it. The access that we have, what we have is two dedicated outbound lanes so a dedicated left turn lane and a dedicated right turn lane. DOT says that that doesn't follow their specification. They want one outbound lane.

Michael Boland: Then they won't want you to take a lefthand turn.

Sam Burden: The feasibility of this project relies on the applicant having their own dedicated driveway. When we were out there on the site today walking the site at 5:00 there were cars leaving this plaza stacked all the way, both lanes, to the back. We actually have a picture of it and that would mean anybody coming in would be stuck potentially in this intersection trying to turn and that's a long way for somebody who's here to navigate into the site all the way around back through the drive-thru and then either have to recirculate back out, the feasibility just doesn't work with the site plan. With that there's a large transformer here that you can't see that services the entirety of this plaza or a portion of it. We would have to push our entire site plan back. The entire building, parking, drive-thru and then that would affect that cemetery that's in the rear which we're avoiding doing right now. I don't think anybody wants to get involved in that. SHPO just signed off on our application. We're going to work with Binghamton Metropolitan who also recommended it as well as DOT. We have to provide justification. We've reached out to the landowner of the former sushi business there. At first they said absolutely not we don't want shared access and then we were

aware that there was some discussion brought to the town about shared access. It's not in the benefit to the applicant to do that.

Frances Gorman: And there's a vacant building there that is about 10,000 square feet and like Same had said when we were out there it was 5:30, quarter to six, and the stacking was backed way up here and that's without this building filled up and then we're also talking about a box truck that will be bringing in the supplies to Taco Bell. Then you're going to have to worry about the turn arc and then this is a long term lease and I think that the owner would probably be reluctant to lose another curb cut.

Sam Burden: That's all what we will explain to DOT and we have to provide a stage 2 approval before we can pull the permit anyway. I don't foresee that happening as quickly as we'd like it to. That could potentially be a condition of approval or something that we could address along the lines.

Alex Urda: I think as long as I know that your proposed design meets their criteria at some point you can argue with them over the other piece.

Jamie Szenher: They want you to close off the entrance to route 12 and just use the other entrance or an additional entrance? I think this application was saying an additional entrance.

Sam Burden: They in the original comments that they provided via email to us as part of their stage 1 review, they said DOT reserves the right to restrict or eliminate the access that we had proposed if shared access is granted which, that's not going to work with the feasibility of the project.

Thomas Eldridge: I'm sure if you explained to them like you just explained to us about people coming in and being trapped in the parking lot, it's going to make perfect sense to them.

Brian Donnelly: It does make sense.

Frances Gorman: I think they're going to be trapped out onto the highway, that's where they're going to be trapped.

Thomas Eldridge: It would be like Dunkin Donuts all over again.

Deborah Mastronardi: Would there be fencing around the proposed patio?

Sam Burden: Yeah, there would be a four-foot black aluminum rail. It's decorative.

Deborah Mastronardi: On the street side?

Sam Burden: On the street side, correct, as well as a pergola. It's tough to see on the elevation but you can see the overhang with the fencing. That's the rear of the building, this is the patio side with the railing. I know it's tough to see. This is the drive-thru side, only one window. There is two lanes but only one of them is used for ordering. It's not a double-lane drive-thru like you see with Mc Donald's.

Thomas Eldridge: Alex, did you want to go through your list?

Alex Urda: They can probably move ahead with advisory to Zoning and Zoning moves things ahead and they can come back to us for final site plan. I can over this stuff with them independently unless you wanted to go over it.

Frances Gorman: Is there anything that stands out?

Alex Urda: Photometrics?

Frances Gorman: Did we not submit any?

Alex Urda: I didn't find any. It's possible I missed them.

Sam Burden: I have a copy of the submission, I could just look at it. I know we did a lighting plan for this.

Alex Urda: I didn't see it, I didn't see it when we finally printed everything out so photometrics, usually we want to make sure that NYSDOT's ok with your entrance. They might stick you with the 30 feet, I'm not sure how you work around that other lane. NYSDOT's detail 30-ft commercial entrance. Sometimes you can keep two at 30.

Sam Burden: Our understanding is it's gas stations are really the only ones that you'll see two driveways.

Alex Urda: Come in and go back out.

Sam Burden: Exactly. Truck circulation.

Thomas Eldridge: I remember last time Gavin said something about the number of signs because one faces the highway, one faces east direction, and one faces forward. It was something to do with that.

Alex Urda: Just to make sure that if you're going to put one to the highway, you might be stuck for a variance when the time comes.

Sam Burden: When we dove into the code, the code just specifies the amount of signage so we do have the fourth sign in the back but we're below the square footage.

Thomas Eldridge: I just don't want you to get jammed up at the end, as long as you know.

Sam Burden: We're on those paths as well currently with the ZBA.

Alex Urda: If you're at all close just make sure you go through it with him to make sure his numbers match yours, like if he's looking at the bell.

Sam Burden: Yeah we submitted with the application the sign permit, the sign cut sheets that go through each square footage and how they're calculated basically.

Alex Urda: The only other thing from me was if you have it somewhere, I'd like to see the sewer and water on there.

Sam Burden: We've engaged sewer and water, reached out for some record mapping, seeing if they could mark it out for us.

Alex Urda: DOT should have it. Check with them tomorrow, or remind me. I have it, maybe.

Sam Burden: There's a sewer that runs through the back of the site.

Alex Urda: It runs behind Valvoline.

Sam Burden: Is there sewer at the front as well?

Michael Boland: I don't think so.

Alex Urda: I don't think so, that's what kind of triggered me to double check stuff. It runs all the way through Wendy's and one of the car dealers it comes out front.

Sam Burden: You gave us a name, Greg?

Alex Urda: Greg is here in house.

Sam Burden: Ok.

Alex Urda: DOT would probably have water records out on the streets and so would Greg and Greg and I can help you with sewer behind you.

Sam Burden: Perfect.

Alex Urda: Just so you get your inverts right, make sure there isn't a hiccup. I know you're picking the building up. They get sewer to go out before.

Sam Burden: Are there specific permits for water and sewer as well?

Alex Urda: Backflow preventer, we want to see your grease interceptor.

Sam Burden: Does backflow have to go through the county, DOH?

Alex Urda: Through Greg. I don't think it goes through DOH.

Sam Burden: The only thing that they had mentioned was a food service permit which is standard.

Alex Urda: What did you end up with for fuel tank information? Phase 1, phase 2, all clear?

Sam Burden: We actually have a letter of no further action.

Alex Urda: That's on the spill.

Sam Burden: Oh I'm sorry, as in what the current status of phase 1 and phase 2 came back as?

Alex Urda: I didn't know where you left off with that for tanks that are still there.

Sam Burden: The tanks are all removed.

Alex Urda: I thought that's what you said last meeting but I couldn't remember.

Sam Burden: Tanks are all gone. We did provide the letter of no further action but the tanks have been removed.

Alex Urda: Did you do a phase 1 ESA?

Sam Burden: I'll check on that. I think they provided it.

Alex Urda: If you have one and it's all clear just give us the general overview of that or the conclusions of it. You don't have to give us the whole thing. That was one of the other county comments early on and I don't know that it ever got answered but it didn't show up in his letter.

Sam Burden: Yes, we did.

- Nathan VanWhy: Tonight that applicants ask that you declare lead agency and do a coordinated review. The town's Planning and Zoning boards don't have a standing understanding as to who acts as lead agency for purposes when there's a coordinated or the need to potentially coordinate a review. I think we mentioned this before, we can have another discussion about whether or not you want to formally ask that the Zoning board concede to all things coming before you both that you be lead agency and then you can dispense with the need to formally notify them that you want to be lead agency versus them. I would recommend that you do uncoordinated reviews for this purpose because if we do coordinated, technically you still have to notify the ZBA that you want to be the lead and we push it back a full extra two weeks whereas if the Zoning board uncoordinatedly reviews theirs at their next meeting you can uncoordinatedly review yours at your August meeting which is the earliest that I think we've otherwise been probably taken final action anyway given how you usually do things. In any event tonight it's really just issuing your recommendation on the advisory opinion, whether you have a positive or negative referral to them. Otherwise asking any other questions you might have, given everything you've heard and looked at to date.
- Brian Donnelly: So pretty much just do the advisory.
- Sam Burden: If the ZBA does the lead agency does there need to be another 30 day period? Because that would push us past your August meeting.
- Alex Urda: They should do it that night.
- Nathan VanWhy: What I would imagine is that the ZBA, if they were acting as lead agency, would review it at their next meeting in a couple weeks but what I'm proposing is just an uncoordinated review so the Planning Board can review SEQR tonight on your own if you wanted to or you could do it at your August meeting when you would be taking final action or you could theoretically take final action tonight if you also reviewed SEQR tonight however I know that typically you folks like to get the final decision on a variance before you finally approve site plan. So, you would not be taking action until August in your normal course.
- Michael Boland: That's only four weeks, that's not bad. The beginning of August.
- Sam Burden: We appreciate it either way, whatever the board's decision is.
- Nathan VanWhy: If you do an uncoordinated it's not going to affect their timeline. I do believe that we should have a standing resolution from the Planning and Zoning boards that the Zoning Board concedes to you acting as lead agency on all matters coming before you both for review so that way you could just immediately do everything with confidence on SEQR anyway tonight.
- Michael Boland: By then you'll have all the rest of his final answers.
- Brian Donnelly: Tonight we just need to address the advisory opinion to do an advisory opinion to the ZBA, so a motion to do a positive advisory for the area variance. Did you have anything else to say about the variances and like that?
- Alex Urda: Area variance wise I didn't comment on it because it's just general cleanup in the PDD-C, similar to what we've done before. The county had concern that we were setting a precedent but I think we've done a few of these every year for 20 years, or at least 12 years.
- Thomas Eldridge: I'll make a positive referral advisory to the ZBA.

Jamie Szenher: I'll second.

Adam Donahue:	Ms. Mastronardi, Board Member	Voted: Aye
	Ms. Cooley, Board Member	Voted: Aye
	Mr. Szenher, Board Member	Voted: Aye
	Mr. Eldridge, Vice Chairperson	Voted: Aye
	Mr. Donnelly, Chairperson	Voted: Aye

The motion was thereupon declared adopted by a roll call of:
Ayes—5 Nays—0

Brian Donnelly: We're sending it to the ZBA with a positive advisory and so you can convince them.

Alex Urda: If you can get anything from DOT sooner than later...

Sam Burden: Yeah, we have a resubmission with all of their comments addressed. We were just waiting to make sure that the board had any additional concerns.

Brian Donnelly: We'll see you next month. That leaves us one advisory opinion for Lilian Rosales, 8 Brook Ave, application for a garage addition to house with a side yard setback from 10' to 3' in a Residential zone with a short EAF. Is the applicant here?

Jamie Szenher: No.

Brian Donnelly: Alex?

Alex Urda: From my understanding they are looking to replace an existing garage in the same position.

Gavin Stiles: They already did.

Alex Urda: This is a review for the referenced application for a garage addition to a house with a side yard setback from 10' to 3' in a Residential zone.

1. Confirm replacement is in-kind match (height and footprint).
 2. 239 Review: parcel is within 500 feet of State/County road (NY Route 12). Review letter had "no comments"
 3. SEQR is Type 2. EAF has multiple errors but if Type 2 it's a non issue. |
 4. Building department requires a building permit.
- If this is a replacement of an existing attached garage we have no engineering objections.

Brian Donnelly: Mr. Stiles, do you have any comments?

Gavin Stiles: They tore the garage down so they lost their preexisting, nonconforming ability and then they didn't get a demo permit, they didn't do anything and then replaced it and it's not a garage anymore. It's a living space. And then continued out back, there's setback stuff. I had a couple complaints from the neighborhood, do they have a permit for that? I went over and said look, here's your Stop Work Order. You have to come get a variance, you're way too close to your neighbor, please don't do any more work and figure it out. That's about where we are.

Brian Donnelly: Anybody have other questions or comments?

Gavin Stiles: It's a bummer, they've got a lot of money tangled up in it. If it gets denied and they've got to take it down it's going to be a bummer.

Alex Urda: In that instance my only thought would've been checking the two houses. If one has three and one has more, do they at least have combined, our typical setback for habitable spaces? You don't want to see and three and a three and then they have to have fire walls.

Gavin Stiles: The ZBA denied one up the street here about a quarter mile. They were asking for from 10' to 2' or something like that and they said no way. I don't know.

Nathan VanWhy: I know when this came before the Zoning Board last time, I looked the deed up and apparently that subdivision area there's a restriction that no housing be built closer than three feet or maybe it's additions but basically no buildings closer than three feet. I wouldn't be surprised if a lot of those buildings over there are within that distance because it was all presumably constructed around the same time.

Thomas Eldridge: I was going to say that a couple of them, like two houses, not the house right next to it to the west but the following one, the fence has got to be a foot or two off the house.

Gavin Stiles: They're all jammed up over there, she kind of blew it when she tore the other one down and then restarted. This one up here, they got denied and I just said don't tear it down. Don't take it off until you talk to the ZBA because if the ZBA says no you can work within the envelope you have. Theirs is already gone.

Thomas Eldridge: Realistically their neighbor to the east has got to be really close to three feet already.

Alex Urda: I just worry about a three and three and a total of six. Is that a different construction type?

Gavin Stiles: They have to add sheetrock, a couple layers of 5/8 or whatever they got. Without having the code book in front of me, but I know a garage dwelling separation I think is like three feet. If it's just your house your garage can be three feet away from your house then you just have to have half inch rock or 5/8 rock on one side or something like that to contain.

Nathan VanWhy: Those are construction concerns.

Gavin Stiles: Yeah, it's not a ZBA thing.

Nathan VanWhy: The variance could be granted and then they find out that it costs too much to conform to the code and then they don't even use it.

Jamie Szenher: Have the neighbors said anything?

Gavin Stiles: Yeah, that's the only reason I went over there.

Jamie Szenher: They're complaining then.

Thomas Eldridge: The neighbor right next to them I would assume.

Gavin Stiles: Across the street, one down, asking if they had a permit so I drove over and they said no permit so I said all right, stop.

Brian Donnelly: So really they were complaining because they didn't have a permit and they were building something. They weren't necessarily complaining about where they were building it.

Jamie Szenher: Is it the same footprint as the old garage?

Gavin Stiles: -ish.

Jamie Szenher: By a lot?

Gavin Stiles: They've done a tremendous amount of work that I have not inspected.

Alex Urda: Two stories or one?

Gavin Stiles: Just one. A lot of concrete got poured, I don't know what kind of bar is in it. I don't know what they did. They can have an engineer stamp off on it but I'm not going to say it's okay.

Michael Boland: Did the engineer do the inspections?

Gavin Stiles: If they got somebody that wants to come behind and roll the dice and bang their stamp on it they can do it.

Jamie Szenher: Are they doing it themselves or is someone building it?

Gavin Stiles: It's her brother.

Jamie Szenher: So, not a builder.

Gavin Stiles: No. I know nothing about it. No permit, no nothing, zero.

Jamie Szenher: The builder should know that he needs a permit before starting anything.

Gavin Stiles: I gave him a Stop Work Order but last I heard they were still working so they kind of ignored that.

Thomas Eldridge: At the end of the day the application is for the side yard setback so as far as we're concerned it's got to go to the Zoning Board.

Brian Donnelly: Our decision right now is whether or not to give them a positive or negative recommendation.

Gavin Stiles: For the record, why is this here? Isn't this ZBA?

Thomas Eldridge: It's just an advisory. I would say based on what Nate says about the deed, if it says down to three feet I guess personally I would say we would have to give them a positive advisory to go to the Zoning Board. It says down to three feet.

Nathan VanWhy: The Town Zoning Code can trump it. I imagine the entire neighborhood, it sounds like, is like that.

Brian Donnelly: We can make a motion to that and then each person can vote the way they feel is comfortable.

Thomas Eldridge: I'll make a motion for a positive advisory to the Zoning Board and they can do with it what they wish.

Deborrah Mastronardi: I'll second it.

Adam Donahue: Ms. Mastronardi, Board Member Voted: Aye
 Ms. Cooley, Board Member Voted: Aye
 Mr. Szenher, Board Member Voted: Aye
 Mr. Eldridge, Vice Chairperson Voted: Aye
 Mr. Donnelly, Chairperson Voted: Aye

The motion was thereupon declared adopted by a roll call of:
 Ayes—5 Nays—0

- Alex Urda: Anytime they get over three feet, I want to know what the overhang is and what the footers are because sometimes those are over the line.
- Thomas Eldridge: In a situation like this, even if the Zoning Board approves it, if you can't inspect it what do you do then? How does that work?
- Nathan VanWhy: It's a violation of the building code. The Uniform Building Code is enforced by the town so Gavin would then not issue them a Certificate of Occupancy for the structure until they're able to comply with the inspections and that might require them to partially destroy some portions of the structure in order for him to actually see that in fact the construction happened appropriately.
- Gavin Stiles: I'd probably require them to have a design professional come in to look at what's already been done and bang a stamp on it saying what they have to do to make it right. I can't tell people how to build things. I'd love to help them through it if the Zoning Board says okay. I'd be more than happy to be helpful.
- Nathan VanWhy: Ultimately it's just going to cost them more money whether Gavin gets a design professional to come in, look at everything and give him, as the code officer, an independent report to rely on to then potentially issue...
- Gavin Stiles: To give me a plan.
- Nathan VanWhy: That's not the question for you tonight.
- Brian Donnelly: Is there anything else anybody wants to bring before the Board? We want to welcome Deborah Mastronardi, our new member. We look forward to much insight from her. We do have something else on the agenda. We've been asked by the Town Board to give an advisory to the five local laws that they're proposing to vote on and so I think what were going to do is have Nate read through them. He's more knowledgeable about them than anybody else in the room and he'll give us a review of them.
- Nathan VanWhy: There's five local laws. The background to this is the PDD-R, Planned Development District Recreational in the Town. It's currently applies to the Chenango Commons area of the town as well as the Dimmock Hill golf course and the archery range. There have been problems with PDD-R in that it doesn't allow all of the uses that are presently existing in those areas. Is a golf course allowed in PDD-R?
- Gavin Stiles: Yes.
- Nathan VanWhy: Ok, that's a big one. It doesn't allow a bar or restaurant, chiropractor, any number of businesses that are present over there. That resulted in some code enforcement issues when the prior code officer interpreted the zoning code over there to not allow particular issues. That appears to me how it came to a head to the Town Board that they needed to resolve this in some fashion. That was several years ago.
- Alex Urda: 2021 this started so I think you guys have seen it a couple times.
- Nathan VanWhy: The present package attempts to comprehensively resolve this by first rezoning all of the PDD-R in the town to either Agricultural or Neighborhood Commercial. Second, relatedly, on River Road there's several Residential parcels that are surrounded by the PDD-R currently that the Town Board feels should also be rezoned to Neighborhood Commercial to make that River Road corridor through where the park entrance is Neighborhood

Commercial. That's been identified in the Comprehensive Plan as a goal of the Town Zoning update for years and is being implemented as part of the review of the whole problem. Up on Dimmock Hill, those two parcels are going to be rezoned Agricultural. That's also, the Town Board feels, appropriate based on the surrounding parcels and the type of uses that are existing in that area as well. Just rezoning doesn't solve all the problems though because the Ag district and the Neighborhood Commercial district do not allow golf courses, archery range, gun range and expressly as an accessory use skating rink is another one for Neighborhood Commercial.

There's two local laws that rezone, one to Ag and Neighborhood Commercial and the other addresses those residential parcels. There's two local laws that update the zoning schedules, one for the Ag district, one for the Neighborhood Commercial to allow the Neighborhood Commercial golf courses and skating rinks and then the Ag district golf courses and archery gun ranges. The last local law came up in a conversation with the Town Board as they were talking about the issue of preexisting nonconforming uses when zoning enactments are enacted.

So, preexisting, nonconforming use you may or may not know is a use that was in existence before the zoning changed. Because it existed before the zoning change occurred, maybe there was no zoning and the Town enacted zoning and now it's not allowed there or it was in a particular district and the Town Board through the grace of God chose to change the regulations and now it's not allowed there anymore. It can continue until it ceases use for a period of 12 months. After that 12 months you can't do it anymore, you're then bound by the current regulations. The Town Board has decided that they don't really like that and the reason is because to expand your preexisting nonconforming use, if you wanted to make more use of your property in some fashion then you have to come back for a use variance every single time.

If you have an existing commercial facility and it's a preexisting nonconforming use and you want to add an 800 square foot addition you have to get a use variance and the neighbors will fight you over it if you don't do it correctly. The Town Board has directed us and that's the last local law to change their nonconforming use section of the code so that now it says that instead that you can't expand a nonconforming use without a use variance you can enlarge or expand an unconforming use to the border of the parcel's boundaries at the time that they existed when the use became nonconforming just so that you don't have to go back for use variances every single time your preexisting nonconforming use is an issue. It's going to make a bit of a headache for code to keep track of that because he's going to have to know when somebody applies for a building permit, what was the boundary, border regulations in effect at the time that is became preexisting nonconforming and try to sus that out.

Alex Urda: We don't keep tax maps like we used to. We used to keep a hard copy and we would update them so you could actually take the sticky off of it and look at how the parcel changed. We're essentially going to have to do that in some format again the day that this is authorized. Gavin will have to have a map of the parcels on that date just so something weird doesn't happen in thirty years.

Thomas Eldridge: It's a small percentage that could fall under that.

Nathan VanWhy: It shouldn't be a lot and from the Town Board's perspective...

Alex Urda: The Red and White has been one of the main headaches.

Gavin Stiles: Is this going to somehow clean up all the cessation stuff? There's so many layers to that.

Nathan VanWhy: No, I think the cessation issue will still be present because that's a different section of code.

Alex Urda: The map piece is just tricky.

Nathan VanWhy: It's an administrative headache but I believe the Town Board, and they haven't said this but I believe what they want is to make it easier for people to make use of their property in a way that they weren't authorized to do it before the Town changed its law. It might be burdensome on code but the Town's the one that did it anyway so the Town should be responsible for keeping track of its own changes like that. That, I believe, is part of their rationale anyway. Those five things combined together are meant to comprehensively address these issues. Any questions that you might have, and it just occurred to me that I might possibly have to update the Neighborhood Commercial district permitted uses because we don't have something in it like the golf course accessory uses like we've outlined in the Ag district. I'll have to look at that again just to understand why I didn't do that.

Michael Boland: This is the same one, they had the little parcels on River Road that surrounded and they came in and they had a public hearing because they were concerned that all of sudden one of the little houses, if you sold your house or if somebody bought the house and they wanted to turn it into a little mini grocery store or whatever they could but if they did something then they couldn't remain a house...

Thomas Eldridge: And the other one was a duplex where it's three apartments and if they ever sell it, it has to be a single family home. There was a bunch of catch-22s.

Michael Boland: That was years ago.

Alex Urda: I think the Red and White still has the issue of having an apartment upstairs right? So, that's still not conforming.

Thomas Eldridge: And they asked us for a list of things that we'd want to add to them and one of the things we had to add to Ag was like a Beer Tree or something, but it must be they didn't do that. Like you can't have a bar/recreational restaurant in Ag.

Nathan VanWhy: That was not added, not as part of this. It'd still be a good suggestion.

Thomas Eldridge: It was a really good suggestion.

Michael Boland: They had an argument because they wanted a restaurant and they couldn't have a restaurant or they had one where they weren't supposed to have one and the bow place was the same thing...

Thomas Eldridge: They could have a golf course but not a restaurant.

Michael Boland: The bow and arrow place was in the same boat because they wanted to do something but they couldn't have a restaurant to eat or do something it was one thing and it was Ag and it wasn't allowed to have it. You couldn't go up there and eat. You had to go back out in your car and eat. It was something like that.

Nathan VanWhy: Specifically with Ag for the permitted uses accessory, the Board felt it appropriate to much more clearly list the types of customary accessory uses that are allowed as accessory to a golf course and so it allows, at least as it's drafted currently, an event space, bar, restaurant,

driving range, vehicle barn, concession stands, and bathrooms. Now there's a valid question which I think might've been part of the concern about, when does an accessory use become a second principal use? Most places you're only allowed to have one principal use. You can have a bunch of accessory uses and so eventually it'll be like saying your golf course has an event problem as opposed to your event center has a golf course problem. What is the primary purpose of it but it is very customary for golf courses to host tournaments and then you use the event space for the dinner afterwards and that seems pretty normal to me but if the events space started doing weddings every single weekend and it wasn't really golf-focused then you might have a problem where it's become something different potentially. You'd have to really understand what's the balance between the principal and the accessory use and did one suddenly consume the other.

Brian Donnelly: Does this address that?

Nathan VanWhy: You're always going to have that problem, it's really case by case. It's up to code to monitor that type of thing. One of the things I've said to the Board because it appears to have happened in the past, is there's the idea and a lot of things for whatever reason stopped it from even partially getting fixed. Even tonight, I said maybe for Neighborhood Commercial we want to add clearly accessory golf courses uses as well like we've done with Ag district. I'm going to recommend to the Board that they still move forward with adopting what we have so that it's largely fixed and if we've got some tweaks as I view it, that's fine. Local laws, your town code, is meant to be a living breathing thing and it's not etched in stone. You should be willing to change it when you identify a problem that you believe needs to be corrected.

Thomas Eldridge: Do we just have to say yeah, we think this is good? They're just looking for our opinion?

Nathan VanWhy: Yeah, it's just an advisory opinion.

Thomas Eldridge: I think it's great they they're finally doing something. This has been a long time.

Michael Boland: This stuff was years ago we sat here and did all this stuff.

Nathan VanWhy: Alex had a good reminder to me. The Town Board opened the public hearing on this at its last meeting and this was my fault, I should've flagged to all the involved groups like yourself, that we're moving forward with this and tried to make sure that it had been on your agenda at the last meeting, not this meeting. So the Town Board held open their public hearing to the meeting this Wednesday at which they would anticipate closing the public hearing and then taking final action on this stuff in the current state of things. The public hearing is open. At the public hearing that they did start at the last meeting nobody came and spoke out against it. The only person that I really remember speaking on it was the owner of Dimmock Hill. He just wanted to know if he could still do all his golf course stuff up there. I think the Town Board was surprised at the lack of participation. They were thinking they'd need to hold the hearing in the Town garage, they cleared out all the tables, filled this place with seats, and then there was just the normal crowd and nobody had any real problems with it. There was more public presence demanding to know what was going on with commercial self-storage facilities than anything else.

Alex Urda: In time we're trying to figure out apartment issues also but that's for a later date.

Brian Donnelly: What we need to do tonight is give the Town Board, and we can do it all in one package, just say that we do agree. Does somebody want to make a motion?

Maura Cooley: I'll make a motion. To proceed as is.

Thomas Eldridge: Second.

Adam Donahue:	Ms. Mastronardi, Board Member	Voted: Aye
	Ms. Cooley, Board Member	Voted: Aye
	Mr. Szenher, Board Member	Voted: Aye
	Mr. Eldridge, Vice Chairperson	Voted: Aye
	Mr. Donnelly, Chairperson	Voted: Aye

The motion was thereupon declared adopted by a roll call of:
Ayes—5 Nays—0

Brian Donnelly: We're sending the Town Board to go for it.

Jamie Szenher: What's happening with the storage malls? Are they working on that too?

Nathan VanWhy: Yeah that will also be a zoning change and that will also come back to you for an advisory opinion on that as well. I'm anticipating that being introduced at the Town Board meeting on July 24th, two weeks from Wednesday, and it's just going to add commercial self-storage to all the districts that you folks had recommended. And then we'll have to come up with the definition for it just to try and be clear like what we really mean by this. This is not new so I'm going to steal it from somewhere else and go from there, basically.

Jamie Szenher: Fencing and lighting.

Alex Urda: They wanted it back to these guys though for defined...

Nathan VanWhy: I don't think that they did. They wanted it just moved forward to adopt it. They're, as I recall, comfortable with the existing bulk setback regulations in all the districts and they felt that if that other piece of it needed to be addressed then that would be a separate issue than just allowing it to move forward under the existing bulk regulations.

Thomas Eldridge: Motion to adjourn.

Jamie Szenher: Second.

Respectfully submitted,



Kari Strabo