

TOWN OF SARATOGA
PLANNING BOARD DRAFT MEETING MINUTES*
July 26, 2023

Chairman Walter Borisenok called the meeting to order at 7:00 p.m.

Planning Clerk Linda McCabe called the roll: Chairman Walter Borisenok – present, Joseph Lewandowski – present, Christopher Koval - present, George Olsen - present, Patrick Hanehan – present, Robert McConnell – present, Laurie Griffen – absent.

Also attending: Craig Dempsey, Jesse Schwartz, Jim Vianna, Patience Davidson, George Bull, Linda, Maribeth & Chris Macica, Steven Winney, Mr. & Mrs. Fueston, Maxine Lautenberg, Paul Murphy, Terri Korb, Mr. & Mrs. Farone, Hub Miller, Jennifer Clayton, Gil Albert. (Sign in sheet is on record in the Clerk’s office)

A motion was made by Chairman Walter Borisenok, seconded by Patrick Hanehan, to accept the meeting minutes of June 28, 2023 as written. Chairman Walter Borisenok – aye, Robert McConnell – aye, Christopher Koval – aye, George Olsen – aye, Joseph Lewandowski – aye, Patrick Hanehan – aye, Laurie Griffen – absent.

Carried 6 - 0

Approved

Public Hearing for Special Use Permit

Craig & Corey Dempsey #23-04
727 Rt. 29
Saratoga Springs, NY 12866
S/B/L 155.-1-63.2 Rural Residential

Applicant seeks a special use permit to open a restaurant.

Attorney Jesse Schwartz appeared on behalf of the applicant. He summarized the history and approvals of the previous applications for the property and stated his client is seeking a special use permit for a restaurant. He said the ultimate goal is to open a restaurant, specifically ‘to utilize the barn as a building where food and beverages are sold to the public for consumption on the premises.’ That definition is straight out of the Town’s zoning code book and exactly what applicant Mr. Dempsey is seeking. This is a perfect location for a restaurant, being located between Saratoga Springs and Schuylerville, it’s a very attractive location and he believes many customers will like it and that it can be very successful. The town previously looked at and approved parking spaces for 40 vehicles. It will be a casual restaurant with dining inside and outside on the patio. The applicant may partner with a local brewery to have a tasting room in the barn as well. This will be a seasonal restaurant at first, open spring, summer, fall and ultimately open year-round. To begin, Mr. Dempsey will be open 2 – 3 days each week; Fridays, Saturdays and Sundays, maybe Thursdays, and expand as it becomes better established. Hours of operation will be 9 a.m. – 10 p.m., with limited hours in the beginning. The barn currently has no kitchen and due to the costs of installing a commercial kitchen, they seek the permit before going into that expense; a commercial kitchen can run over \$100,000.00, let alone the time it will take. Currently there is one restroom with plans to put in another ADH restroom per NYSDOH regulations. They’d like approval for maximum of 80 seats.

He said they object to a one-year permit renewal. There is nothing in the regulations stating such.

Patrick Hanehan stated the one-year renewal's always been at the discretion of the Board and is part of the approval in case of complaints. If all goes well, it'll be renewed with no issue and then it's permanent.

Attorney Jesse Schwartz stated it's not legal and it's unreasonable to put that limit on it. If reason is complaints, you can issue violations, but don't ask the Applicant to invest \$100,000.00 with a one-year renewal.

Christopher Koval stated that is why we do it, to avoid issues such as Maranville's.

George Olsen questioned how can they approve without a kitchen; what if the Board doesn't like how it's vented? They've seen no design for this. He's uncomfortable.

Attorney Jesse Schwartz stated it's not in your code, you can't do that. Prior to obtaining a C.O. and opening, Mr. Dempsey will have to present plans to the Code Enforcement Officer/Building Inspector. If it's not to code, he won't be allowed to open. He'll have to comply with all codes prior to opening.

Chairman Walter Borisenok stated correct; he'll have to obtain a C.O. first, he'll need a NYSDOH permit and he'll have to meet all NYS Building Codes prior to opening. This is a new special use permit application for a restaurant. Problems with the prior owner should not be held against this applicant. Enforcement action can be sought if needed.

Christopher Koval questioned how the Board can approve for 80 guests if he only has one bathroom; that only covers half that amount.

Chairman Walter Borisenok responded with one bathroom he can have 40 customers and if going forward with the second bathroom, he can have 80 once that is completed.

Attorney Jesse Schwartz responded 40 is correct with the current bathroom. If another is installed, he can have up to 80 customers.

Walter Borisenok stated at that point the Board needs to know it is in compliance.

Attorney Jesse Schwartz responded correct and that will be up to your Code Enforcement Officer/Building Inspector to be certain he is in compliance.

Robert McConnell stated he's uncomfortable without the one-year renewal.

Chairman Walter Borisenok said he will reach out to the Board's attorney concerning clarification of the one-year renewal. Once the Board obtains that information, they'll make a decision. For now, he'd like to open the public hearing if there are no further Board questions or comments; there were none.

Proof of Notice having been furnished by newspaper on July 16, 2023, Chairman Walter Borisenok went through the Rules of the Board and opened the Public Hearing at 7:19 p.m., asking those wishing to speak to the Board to please stand at the podium, state their name and address. The following spoke in opposition to the application:
Louis & Alicia Farone – 717 Rt. 29, Marybeth & Chris Macica - 120 Brown Rd.,
Jen Clayton – 687 Rt. 29, Terri Korb – 17 Hill Rd. and Hubert Miller – 97 Brown Rd.

Seeing as all those who wished to be heard by the Board were heard, **Chairman Walter Borisenok closed the Public Hearing at 7:48 p.m.** *Let it be noted that the Clerk, in error, asked for a motion to close the public hearing. The Board graciously accommodated this request; however, it was unnecessary. Apologies to the Board.

Motion was made by Patrick Hanehan, seconded by Christopher Koval to close the public hearing at 7:48 p.m. Chairman Walter Borisenok – aye, Robert McConnell – aye, Christopher Koval – aye, George Olsen – aye, Joseph Lewandowski – aye, Patrick Hanehan – aye, Laurie Griffen – absent.

Carried 6 – 0

Chairman Walter Borisenok then read the findings of the Saratoga County Planning Board:

“Re: SCPB Referral Review #23-115 - Special Use Permit - Dempsey

A new Special Use Permit is being sought for opening and operating a restaurant as the primary/principal use on an existing 5.28-acre parcel in an existing structure (barn-like) under a new SUP. The restaurant will operate out of the same location and structure as was previously reviewed (approved locally) in November, 2016 for a special use permit in the name of Maranville/Crames. That SUP was granted for an ag educational business with a farm-to-table (FTT) eatery and small FTT weddings. This SUP is being submitted solely for a restaurant use which upon approval will trigger the extinguishing of the original SUP. There are no indicated proposed changes to the site. Capacity is/will continue to be limited to a maximum of 80 patrons with 40 parking spaces. There appear to be existing curb cuts providing access to NYS Rt. 29 and Wooley Road.

Location: NYS Rt 29 (w/in Ag. Dist. #1)

Tax Map #: 155.-1-63.2

Rural Residential Zoning District

Received from the Town of Saratoga Planning Board on July 14, 2023.

Reviewed by the Saratoga County Planning Board on July 20, 2023.

Decision: No Significant County-wide or Intercommunity Impact

Comment: Application for the new Special Use Permit is for the restaurant use alone. There is a handwritten description in the Town SUP application which notes “and/or Farm Brewery” – not indicated elsewhere in the SCPB Referral or in the EAF which requires clarification before the local PB.

The currently existing SUP for FTT w/weddings is to date a permitted/valid SUP *as was originally approved in 2016/17 for an ag educational use with small supplementing Farm to Table eatery and weddings.*

The initial 2016 SUP application was considered by the t/o Saratoga Planning Board and was favorably approved 7-0 for an agricultural education business w/small supporting FTT fundraisers and small FTT weddings. In November, 2016 the SCPB recommendation for the same was that there were No Significant County-wide or Intercommunity Impact(s). Issues or concerns then noted were in regard to the full use of the property for weddings/events: such as traffic, increased vehicles in the area, site lighting, and raised levels of noise. The then-owners sought to amend or expand that approved SUP in July 21, 2023 Page 2 of 2 2017 but this was ultimately abandoned. Town Planning Board members noted then that the initially intended use was for FTT education for school children w/occasional FTT weddings to financially supplement the primary use.

From a reading of the record, we recognize that the subject property was purchased by Mr. Dempsey (current applicant) in 2020 for weddings and events uses, with no regard to agriculture. It is also understood that a neighboring property owner or owners was opposed to the 2020 use as being in a manner not allowed under the 2016 SUP. It appears that opposition emanates from the property seen as being used solely as a wedding venue, not as was originally planned and permitted.

We note there being either discussion had or correspondence of record about the applicant having to submit a new application if his intent was/is to use the property as wedding venue, being that this would require a use variance for a use not listed as principally permitted use in the Rural Residential Zoning District. Hence, the property owner's current application for a SUP for operation of a restaurant.

We understand that if (and we agree as such) an SUP is granted for a restaurant use, the existing SUP is to go away, AND that the applicant cannot have just weddings or just events as the purpose of this new SUP is solely and consistently for a restaurant operation under an SUP which is suggested to have a 1-yr renewal requirement. It should be recognized that the County Planning Board recognized there to be no noticeable impact of a countywide or intermunicipal nature and that the narrative provided here is to record past and present reviews associated with the currently existing use and with that which is being applied for. We do, however, recognize – based upon the site plan submitted – that the proposed parking layout is in need of a site plan review by the town planning board with consideration of existing rights of way and access from either state and/or local roads as relates to legal traffic access and circulation.

Sincerely,
Michael Valentine, Sr. Planner
Authorized Agent for Saratoga County”

Chairman Walter Borisenok then led a discussion with the Board.

Christopher Koval questioned if they need to look at the parking again and Patrick Hanehan stated it's now down to 40 people.

George Olsen stated he'd like to see some more information on the previously submitted site plan, such as location of dumpsters and to clarify parking spots.

Chairman Walter Borisenok responded he did submit his site plan previously and Engineer Ken Martin agreed there was a previous plan that was approved.

Applicant Mr. Dempsey said at the pre-submission conference he'd been told he didn't need to do a new plan, that he could draw on the old one, which he did, showing the addition of the bathroom.

Chairman Walter Borisenok stated that's correct and it is with the submittal.

Applicant Mr. Dempsey said yes and the septic has been inspected, 1250 gallons and flow of 1,000 gallons. He will seek NYSDOH approval. He was told by NYSDOH that with limited occupancy at 40 it's good. He reviewed the current system with Nolan Engineering and was told the 1250 was standard when it was installed. If NYSDOH doesn't feel that is the right size, he will do what is required and upgrade. He said the Board has his submittals, County said NYSDOT must review ingress/egress as well and he'll get that completed.

Christopher Koval wants to be sure this is a restaurant.

Chairman Walter Borisenok summarized terms of condition:

- ❖ Open 3 days a week
- ❖ Hours of operation – between 9 a.m. – 10 p.m.
- ❖ Occupancy – 40 people for now
- ❖ Noise – violation of Town Code without compliance leads to voidance of permit
- ❖ NYSDOH approval and permits must be obtained prior to opening
- ❖ Comply with all pertaining NYS Codes
- ❖ Complete NYSDOT review & obtain permit
- ❖ Receive C.O. prior to operating
- ❖ Once in receipt of SUP for restaurant, old/original special use permit will be voided
- ❖ Phone numbers & emails of on-site person must be on file in case any issues arise.

Applicant Mr. Dempsey stated in respect to noise violation and one-year renewal, revoking the permit is like a nuclear option. If issues come up, they can deal with that with the Zoning Code Officer.

Chairman Walter Borisenok stated noise studies have been completed by the Town Board on site and from different locations around the site; all seem to comply with Town Code Noise Ordinance. He doesn't think there will be any issue with that and if, for some reason there is, we have mechanisms in place. He believes the applicant will be responsible of that.

Patrick Hanehan added it would have to be a valid complaint of noncompliance.

Robert McConnell stated he is unsure that 3 days a week will be viable, but Patrick Hanehan stated he believes, to begin, it can be and the applicant plans to expand as it grows.

Attorney Jesse Schwartz said this is a restaurant first and foremost and is the focus of his business.

George Olsen questioned if NYSDOH can issue certificates without the kitchen in and Zoning Officer/Building Officer Gil Albert responded NYSDOH may approve satellite kitchens.

Chairman Walter Borisenok stated if NYSDOH issues permit to be a restaurant, then it's a restaurant. As far as a C.O., he'll have to comply with Zoning Code Officer/Building Inspector Gil Albert to obtain that. He asked if there were any further comments or questions of the Board; there were none.

A motion was made by Patrick Hanehan, seconded by Christopher Koval, to table the application to give the Applicant time to submit a clean site plan and for the Board to receive information from the Town attorney. Chairman Walter Borisenok – aye, Robert McConnell – aye, Christopher Koval – aye, George Olsen – aye, Joseph Lewandowski – aye, Patrick Hanehan – aye, Laurie Griffen – absent.

Carried 6 - 0

Tabled

Chairman Walter Borisenok stated the applicant needs to clean up the site plan, obtain NYSDOT review and consider the one-year renewal permit.

Attorney Jesse Schwartz thanked the Board.

Returning

Minor Subdivision Decision

**David Skrinik #23-05
475 Rt. 32 S.
Schuylerville, NY 12871
S/B/L 168.-2-74 Rural District**

Applicant seeks a two-lot subdivision of his 5.143+/- acre parcel. Lot 1 will be 80,000 sq. ft., on which he plans to build a single-family home and Lot 2 will be a 3.306+/- acre parcel with the existing home.

Jim Vianna, PLS, appeared on behalf of the applicant.

Chairman Walter Borisenok stated the public hearing was opened and closed last month and the Board will now go through the SEQR process. He read through SEQRA, line by line, with the Board. The Board found in favor of the applicant.

A motion was made by Chairman Walter Borisenok, seconded by Christopher Koval, to declare SEQR review complete and to make a negative declaration. Chairman Walter Borisenok – aye, Robert McConnell – aye, Christopher Koval – aye, George Olsen – aye, Patrick Hanehan – aye, Joseph Lewandowski – aye, Laurie Griffen – absent.

Approved 6 – 0

Chairman Walter Borisenok made a motion, seconded by Robert McConnell, to approve the subdivision as presented. Chairman Walter Borisenok – aye, Robert McConnell – aye, Christopher Koval – aye, George Olsen – aye, Patrick Hanehan – aye, Joseph Lewandowski – aye, Laurie Griffen – absent.

Approved 6 – 0

Jim Vianna thanked the Board.

Sketch Plan for Minor Subdivision

**George Bull #23-06
138A Homestead Rd.
Saratoga Springs, NY 12866
S/B/L 155.-1-78 Rural Residential**

Applicant seeks to subdivide a 2.3+/- acre lot from his 16.78+/- parcel for a single-family home.

Applicant George Bull appeared before the Board and reviewed his application, noting he knows he doesn't have enough frontage.

Chairman Walter Borisenok stated that is correct and even if a variance is given by the Zoning Board of Appeals, he'd be creating two non-conforming lots and that's not allowed. He questioned the applicant's intent.

Applicant George Bull replied to build a house and sell it or sell the property.

Chairman Walter Borisenok stated they can have a second home on the property, but even with

variances, he cannot subdivide it. If the applicant decides to build a second home, he questioned if it will be a shared driveway or two separate drives, stating sight distance testing would need to be completed if adding another driveway.

George Olsen stated even with two houses on it, it can only be sold as one property.

Patrick Hanehan said building a second home on it will increase the property value and George Olsen added he could rent the second house as well.

Applicant George Bull thanked the Board for the information.

Old Business: Patience Davidson, 876 Rt. 4 S, spoke passionately to the Board concerning the constant noise of the preparation for the sawmill business across the road from her home. She said she's done decibel testing and they are beyond allowable noise levels, adding it's an illegal business and the sound is mind numbing, can be heard throughout her home with windows closed and doesn't understand how the Board approved this business being there. She believes it's the Board's job to maintain peace and tranquility of life for Town residents. This had a one-year review and should have been done last month. She asked for help with this and the name of someone who can help her.

Chairman Walter Borisenok told her it is an allowable use in that district and she should contact Gil Albert, Town Zoning Code Officer. He can go out to her home, complete a noise decibel test and if it violates the noise ordinance of the Town, he will use mechanisms in place for compliance.

New Business: None

A motion was made by Chairman Walter Borisenok, seconded by Patrick Hanehan, to adjourn the meeting at 8:43 p.m. Chairman Walter Borisenok – aye, Robert McConnell – aye, Christopher Koval – aye, Patrick Hanehan – aye, George Olsen – aye, Joseph Lewandowski – aye, Laurie Griffen – absent.

Carried 6 - 0

Meeting Adjourned

The next regular meeting will be held Wednesday, August 23, 2023 at 7:00 p.m.

All submittals must be to the Clerk no later than 8:45 a.m., August 9, 2023 to be on the agenda.

Respectfully submitted,

Linda A. McCabe
Planning Clerk

~Minutes are not verbatim~