

**Town of Danby Planning Board
Minutes of Regular Meeting
May 21, 2015**

DRAFT

Present:

Joel Gagnon
Anne Klingensmith
Frank Kruppa
Ted Melchen
Steve Selin
Naomi Strichartz

Absent:

Jim Rundle

Others Present:

Secretary Patty Jordan
Town Board Leslie Connors
Town Planner C.J. Randall
Public Carolyn Klass, James Reagan, Randy Ingall, Charlie Tilton, David Hall,
 Rusdi Sumner, Nancy Medsker, and others

The meeting was opened at 7:04 p.m.

C. J. Randall, Town of Danby's new part-time Planner, gave a brief overview of her background. She attended the University of Buffalo and has a master's in City and Regional Planning from Cornell. She currently runs her own firm downtown. She also sits on the City of Ithaca Planning and Development Board. Paul Hanson, the new Code Enforcement Officer, will be transitioning to full-time by the fall.

The Public Hearing was opened at 7:05 p.m.

Consider granting a Special Permit for the proposed change of the building known as Oasis Dance Club, located at 1230 Danby Road, from a night club to a commercial production kitchen with associated retail, dining, office, a preexisting apartment, an outdoor farmers' market, and a 3,000 +/- sq. ft. future addition. Tax Parcel 2.-1-8.1, 3.87 acres total, Commercial Zone "B". Pamela Kaminsky, Owner, David Hall, Applicant.

Kruppa read the public hearing notice. Hall gave an overview of his plans for Oasis. He said that it is an outgrowth of his Gunderman Road plans. He is working on an agri-business support facility. People will be able to process product right at the facility. He realized that Oasis was for sale and it already has a commercial kitchen. That would save him the expense of putting a kitchen in at Gunderman. He would expand the Oasis building if it's needed and said that he is getting a lot of requests already. He also plans to add a post-and-beam pavilion to host a farmers'/public market – he said that it would not be limited to produce. He hopes to make it into a destination and wants to build up the aesthetic and make it a place for kids as well.

Inside the building, in addition to the processing areas, he wants a tenant that would run a "fish & chips" type establishment. People could go to the counter and order food, and he may also stock staples, and have some retail space for local products. He said it would be similar to Brookton's Market in Brooktondale.

In addition, he wants a tavern-style liquor license. He realizes that there has been a history of friction coming out of the Oasis property. The property has been grandfathered as a night club but he does not intend to run it as one. He would close earlier than Oasis and would have it more as a “tasting arena” for local ciders and beers.

He said that he is aware that the noise outside the building has been disruptive in the past. He would like to have a measure of outdoor activity including kids’ shows and music during the farmers’/public markets. He has met with neighbors, mentioning Reagan and Ingall specifically. Hall wants amplification of sound but would not throw the sound outward. Hall handed out a document that compared decibel levels from various sounds, such as from a jet engine to human breathing. The document also had a chart stating the decibels produced by certain levels of watts. Hall indicated that he had talked to Hiway HiFi in downtown Ithaca to get their recommendations. Hall requested that the PB consider putting a watt limit on the speakers as a way to mitigate the sound.

Hall said another complaint he heard from neighbors is the content of the sound that traveled to their property. They indicated that it was objectionable and what Hall described as “filthy.” Hall said that he intends to keep all sound “G” rated, and that it will mostly be children’s puppet shows and some jazz music.

Hall said his preferred hours of operation would be open until 9 p.m. on weekdays and until 10 or 11 p.m. on Friday and Saturday. He said the farmers’/public market would be open on weekends and maybe one afternoon/evening a week during good weather months. Carolyn Klass, 36 Comfort Road, asked who the kitchen users would be and how it would impact traffic. Hall replied that truck deliveries would not go up compared to now. There is a shortage of shared-use kitchens. Hall said there would be multiple tenants using the certified kitchen in the existing building. The addition would happen if he gets some anchor tenants.

Randy Ingall, 1240 Danby Road, spoke to say that he is pretty happy with Hall’s plans. He would like a border that is adequate to keep people, dust, noise, and lights away from their property. He said that he feels Hall’s plan is a big plus for the neighborhood; more family and kids and less drinking. He does not want any amplified sound outside without restrictions. He would want small speakers facing away from their property. He indicated that dust is a big deal and wants it taken care of especially if there will be a lot of cars. He would also like the lighting not to shine on their property. He said that they will see an increase in truck traffic and wants the entrance and exit to remain on Comfort Road, not on 96B. He stated that he would like a very large, stout fence with vegetation on one or both sides that is taller than the fence that will absorb sound. He wants a heavy duty fence in order to keep the need for their involvement at a minimum. He also prefers that the dumpsters be kept away from their property.

Hall said he was okay with keeping the dumpsters away and that he will keep the dust down. He is also happy to make the lighting in the parking lot more benign. He feels that truck traffic shouldn’t be dramatically more than it is now. The service entrance off 96B would only be used if the pavilion is built to provide access to the building while there are farmers’/public markets, and then it would be used for service and emergency vehicles only. He said that there would not be any nocturnal truck traffic. There may be a few tenants that come in after hours with their personal vehicles.

James Reagan, 1240 Danby Road, said that he is pretty optimistic about the changes and feels like Danby could use it. It would bring people in to Danby to spend money. He said that he feels like they can talk to Hall if they have issues. He said that they do not want to have to enforce the rules as they’ve had to do in the past with Oasis. He did wonder who would be overseeing/managing the new business. Overall he sees it as positive and likes that it will be family-oriented.

David Moore from Steven Lipinski LLC represents the seller of Oasis and said that David Hall has been wonderful to work with. He feels it's an asset that Hall is someone from the community. He said the transaction is ready to close except for the one last hurdle that's in the PB hands. He indicated that he has some back up offers but that he thinks this is a good thing.

Nancy Medsker, one of the new owners of the Danby Market, said that they don't know yet what they are doing with the Danby Market building. They are thinking of a café but are not sure there is enough traffic. She said that everyone wants something in Danby and that Hall's plans are a positive way to bring more people into Danby.

The Public Hearing closed at 7:36 p.m.

The Regular Meeting opened at 7:36 p.m.

Privilege of the Floor/Additions and Deletions to Agenda

There were no comments received and no additions or deletions to the agenda.

Approval of Minutes

MOTION – Approve April 16, 2015 Minutes.

Moved by Klingensmith, Second by Gagnon.

In Favor: Gagnon, Klingensmith, Melchen, Kruppa.

Abstain: Selin, Strichartz.

The motion passed.

Consider Public Hearing

Melchen feels overall positive about the project. Gagnon said that when he was on the Town Board it was difficult to come up with a resolution regarding Oasis that could be enforced, particularly with respect to noise. He said that is why they said sound could be inside but not outside. He said that clear guidelines that can be enforced are needed. He was also concerned that the proposed addition would be so close to the road that trucks using the service entrance would have to back up into traffic on Route 96B. Hall said that there could be a gravel turn around for that. Klingensmith pointed out that Hall's proposal is actually in stages: 1. occupy what is there, 2. build an addition, and 3. build a pavilion and hold events outside. It's at stage 3 that dust, noise, and light issues have to be solved. She also pointed out that decibel levels can be measured, even on people's ipads. Ingall said that he thinks monitoring the noise level should be a part of the mitigation. There was discussion of what the maximum decibel should be. Hall stated that he believes this is his special permit and if he sells, the new owner would need to come before the PB for their own special permit. There was discussion of whether this is true. Randall said that a special permit can be made conditional and the conditions remain in effect until the owner sells. She suggested making a condition that the owner must provide a stamped landscape plan from a registered landscape architect that allows for a reduction of a specific decibel amount, paired with a fence that is high, dense, and visually opaque.

Kruppa suggested that the PB go through the SEQR. They discussed Part 2 - Impact Assessment, marking all as "no, or small impact may occur." The PB wondered if the curb cut on Route 96B is a curb cut of record. It was decided that Hall must do due diligence with the NYS Department of Transportation to find out if the curb cut is in compliance. They also reviewed Part 3 and checked the appropriate box. There was some discussion of water usage with general agreement that there hasn't been a problem in past.

**RESOLUTION No. 5 of 2015
SEQRA**

**Town of Danby Planning Board
New Moon Harvest
Town of Danby Tax Parcel No. 2.-1-8.1
1230 Danby Road
May 21, 2015**

WHEREAS: this action is a Special Permit for the site improvements for the New Moon Harvest project, located on the southwest corner of the Danby Road (NYS Route 96B) and Comfort Road intersection, Town of Danby Tax Parcel No. 2.-1-8.1, Commercial Target Area, Commercial Zone “B” by Pamela Kaminsky, owner, and David Hall, applicant, and

WHEREAS: the applicant is proposing interior and exterior renovations to the existing commercial building which includes the Oasis Dance Club to a commercial production kitchen with associated retail, dining, office, a preexisting apartment, an outdoor farmers’ market, and a 3,000 +/- sq. ft. future addition. The proposed restoration of the pre-existing curb cut on NYS Route 96B requires a NYSDOT highway work permit, and

WHEREAS: this is an Unlisted Action under the State Environmental Quality Review Act, and is subject to environmental review, and

WHEREAS: this Board, acting as Lead Agency in environmental review, has on May 21, 2015 reviewed and accepted as adequate: a Short Environmental Assessment Form, Part 1, submitted by the applicant, and Part 2, prepared by Lead Agency and Town Planning staff; drawings entitled “Survey Map: No. 1230 Danby Road,” prepared by T.G. Miller, P.C., and dated 9/18/2009; and “Site Plan L102,” prepared by STREAM Collaborative Architecture + Landscape Architecture, D.P.C. and dated 5/1/2015; and other application materials, *now, therefore, be it*

RESOLVED: that the Town of Danby Planning Board determines the proposed project will result in no significant impact on the environment and that a Negative Declaration for purposes of Article 8 of the Environmental Conservation Law be filed in accordance with the provisions of Part 617 of the State Environmental Quality Review Act.

Moved by Klingensmith, Second by Melchen.

In Favor: Gagnon, Klingensmith, Melchen, Selin, Strichartz, Kruppa.

The resolution passed.

Motion – Approve the Special Permit with conditions to be discussed and added.

Moved by Gagnon, Second by Strichartz.

There was extensive discussion regarding whether the special permit conveys. Klingensmith and Strichartz felt it should not. Hall wondered how that would impact the resale value given that there would be no assurance for a new owner that they could continue. Kruppa said that what is currently happening is a change in use and that is what brings it back to the Planning Board. Randall said that if Hall sold it, the new owner would have to abide by the conditions stated in the special permit. Klingensmith said that conveyance has been an issue in the past and the PB has added a condition that the special permit does not convey. Klingensmith feels there should be an abundance of caution given the history of the property. Randall said the underlying zoning always applies and the PB should delineate the impacts and then set the conditions. Kruppa suggested the PB see what the conditions are and then decide if the special permit conveys.

Hall said that he has spoken to the neighbors that live at 35 Comfort Road, behind the proposed pavilion. He said they are one of the parties that have had problems with the sound coming from Oasis. He said the pavilion will be a sound buffer that will direct the noise to the Oasis building so that it will not be directed to the neighboring properties. Randall suggested the PB require a

stamped landscape plan from a registered landscape architect to include native or noninvasive vegetative screening that is dense and thick enough to be a visually opaque barrier that results in a reduction of 3-5 decibels per 100 feet of the length of the barrier. She said it can be paired with a fence. Klingensmith feels the buffer to the South should be given special consideration. Randall pointed out that there is no noise ordinance so there is no way to enforce a specific limit to the decibel level.

The PB decided to discuss the conditions as they apply to each stage and started with stage 1, the existing building and patio. The existing patio is not used for amplified sound presently, but Hall would like to be able to have some amplified sound. Melchen suggested not allowing anything over 25 watts. Hall said that when he spoke to Hiway HiFi, they said 100 watts should not bother neighboring properties and Selin agreed that 100 watts is not much. Ingall and Reagan said that some music is acceptable as they will even sit on their deck and listen to it. Randall suggested that the applicant could be required to submit to the Town a list of the equipment he plans to install. Klingensmith suggested the wording, "small speakers, inwardly directed." Ingall wondered if there could be test events and if no complaints, it would be allowed to continue. Melchen suggested the wording "allow limited amplification of acoustic music." There was general agreement that the speakers must be inward facing.

The PB also discussed exterior lighting, dust, dumpster location, and driveway location. Klingensmith suggested "lighting that is compatible with dark-sky standards." Ingall indicated that the existing parking lot and deck lights are the ones currently causing concern. There was agreement that new lighting must be compatible with dark-sky standards and existing lighting must be examined and shielded to limit light trespass to the neighbors. The same dust mitigation that is already in place for Oasis must be continued or improved. The dumpster is to be located on the Northeast quadrant of the property and hidden from view of the public. It was agreed that the driveway access is from Comfort Road only.

The PB discussed stage 2, the addition. All of the conditions from stage 1 are to be included in stage 2. There was discussion of the service entrance from 96B. It was agreed that the applicant will do due diligence with the State Department of Transportation to make sure that the curb cut on Route 96B is legal. If it is, the service entrance will be limited to trucks and no through traffic will be allowed. A truck turn-around must be installed to prohibit vehicles from backing up onto Route 96B. Ingall said that the fence is important and should be a part of stage 2. He wondered if there was some way to revisit the fence issue at the beginning of each stage. Randall suggested that at each stage a stamped landscape plan from a registered landscape architect be submitted for administrative review. At that time, the neighbors within a 200 foot radius would also be informed. Randall said that at any time an administrative review comes up, the PB can also review.

Stage 3, the pavilion, was discussed. All conditions from stages 1 and 2 apply to stage 3. The Board agreed that the applicant must prevent pedestrian traffic access from Route 96B. The hours of operation for outdoor events other than those on the existing patio will be Sunday through Thursday closed at 9:00 p.m., Friday and Saturday closed at 11:00 p.m. The PB agreed that there is no requirement that stage 2 come before stage 3 and Gagnon suggested that this be stated explicitly in the resolution.

The PB discussed conveyance again and Kruppa suggested that as long as the conditions are met, the special permit would continue with the property regardless of the owner. Klingensmith said that the PB is happy to grant the special permit to Hall because he's shown that he has a business plan and is willing to work with the neighbors, but a new owner may not. She feels that new owners should have to come back to the PB. Gagnon said that once the PB says the special permit is in perpetuity, there is no mechanism for review. Randall said that most of the conditions will be a part of the construction. The fencing and lighting would be there, but one

thing that could be an issue is the noise. Gagnon said there will be no way to beef up the conditions set on the noise level with a new owner if the special permit conveys. Selin suggested a 1-year probationary period for a new owner but Randall said that is a question for the attorney. There was also question as to whether the special permit could be “renewable” and Randall said that it could not as far as she knows. Kruppa said that if the PB does anything other than convey or not convey, they will need legal advice and approval must wait until next month. Randall said the special permit, by default, does not convey.

**RESOLUTION No. 6 of 2015
Special Permit**

**Town of Danby Planning Board
New Moon Harvest
Town of Danby Tax Parcel No. 2.-1-8.1
1230 Danby Road
May 21, 2015**

WHEREAS: this action is a Special Permit for the site and building improvements for the New Moon Harvest project, proposed to be located at 1230 Danby Road, on the southwest corner of the Danby Road (NYS Route 96B) and Comfort Road intersection, Town of Danby Tax Parcel No. 2.-1-8.1, Commercial Zone “B,” Pamela Kaminsky, owner, and David Hall, applicant, and

WHEREAS: the applicant is proposing interior and exterior renovations to the existing commercial building which includes the Oasis Dance Club to a commercial production kitchen with associated retail, dining, office, a preexisting apartment, an outdoor farmers’ market, and a 3,000 +/- sq. ft. future addition; and where the proposed restoration of the pre-existing curb cut on NYS Route 96B requires a NYSDOT highway work permit; and

WHEREAS: this is an Unlisted Action under the State Environmental Quality Review Act, and is subject to environmental review, for which the Town of Danby Planning Board, acting as Lead Agency, made a negative determination of environmental significance after having reviewed and accepted as adequate a Short Environmental Assessment Form, Part 1, submitted by the applicant, and Part 2, prepared by Lead Agency and Town Planning staff; and

WHEREAS: the Planning Board at a Public Hearing on May 21, 2015, reviewed and accepted as adequate application materials, including drawings entitled “Survey Map: No. 1230 Danby Road,” prepared by T.G. Miller, P.C., and dated 9/18/2009; and “Site Plan L102,” prepared by STREAM Collaborative Architecture + Landscape Architecture, D.P.C. and dated 5/1/2015; and other application materials; *now, therefore, be it*

RESOLVED: that the Town of Danby Planning Board hereby grants a Special Permit for the New Moon Harvest development, finding that the standards of Article IX: Special Permits § 904 of the Town of Danby Zoning Ordinance and NYS Town Law § 274-b have been met; and

BE IT FURTHER RESOLVED: that the Town of Danby Planning Board finds that, as proposed, the outdoor activities will not be a nuisance and/or injurious to the use and enjoyment of neighboring properties;

BE IT FURTHER RESOLVED: that the Town of Danby Planning Board hereby grants said Special Permit, for Stages 1, 2, and 3, subject to the following conditions: (with no requirement that Stage 2 must come before Stage 3):

Stage 1: Existing conditions (Use of the existing Building, patio / dining area, and exterior areas outside of patio / dining area)

Sound – Limit amplification of sound to small speakers, inward-facing, to limit the impact to the neighboring properties. The applicant will provide the Town with the technical specifications of the sound equipment to be installed.

Noise Buffer – A stamped landscape plan from a registered landscape architect for review and approval by the Planning Board to include native or non-invasive vegetative screening that is dense and thick enough to be a visually opaque barrier, with special consideration given to the South side of the property. This vegetative screening is to be paired with fencing. The noise buffer must result in a reduction of 3-5 decibels per 100 feet of the length of the barrier and prevent loud and/or unusual noise in accordance with § 701 of the Town of Danby Zoning Ordinance.

Lighting – New lighting must be compatible with Dark Sky standards. Existing lighting must be evaluated by these standards and shielded, if necessary, to limit light trespass to the neighbors, especially those to the West and South.

Dust – The same dust mitigation that is already in place for Oasis must be continued or improved as described in Town Board Resolution No. 47 of 2005, in conformance with Town of Danby Zoning Ordinance Article VII § 706, Off-Street Parking.

Dumpsters – The dumpsters must be located in the Northeast quadrant of the property and hidden from public view.

Driveway – Access from Comfort Road only.

Hours of Operation and Amplified Music – Abides to applicant's stated hours of operation for outdoor events in Stages 1, 2, and 3: Sunday through Thursday closed at 9:00 pm.; Friday and Saturday closed at 11:00 pm.

Stage 2: 3,000 sq. ft. addition

All of the conditions listed above for Stage 1 also apply to Stage 2.

Service Entrance – The proposed restoration of the pre-existing curb cut on NYS Route 96B requires a NYSDOT highway work permit. The service entrance will be limited to trucks and no through traffic will be allowed. Vehicles are prohibited from backing up onto Route 96B.

Noise Buffer – A stamped landscape plan from a registered landscape architect and a detailed final site plan must be provided to the Town of Danby Planning Board. All neighbors within 200 feet of the property must be notified. Applicant agrees to prevent loud and/or unusual noise in accordance with § 701 of the Town of Danby Zoning Ordinance.

Hours of Operation and Amplified Music – Abides to applicant's stated hours of operation for outdoor events in Stages 1, 2, and 3: Sunday through Thursday closed at 9:00 pm.; Friday and Saturday closed at 11:00 pm.

Stage 3: Market booths, pavilion / stage, and exterior areas outside of patio / dining area

All of the conditions listed above for Stage 1 and Stage 2, including but not limited to an updated, stamped landscape plan to the Town of Danby Code Enforcement Office for administrative review and neighbor notification, also apply to Stage 3.

Pedestrian Traffic – Prevent pedestrian traffic access directly from Route 96B.

Hours of Operation and Amplified Music – Abides to applicant’s stated hours of operation for outdoor events in Stages 1, 2, and 3 will be Sunday through Thursday closed at 9:00 pm.; Friday and Saturday closed at 11:00 pm. Applicant agrees to prevent loud and/or unusual noise in accordance with § 701 of the Town of Danby Zoning Ordinance.

Moved by Gagnon, Second by Strichartz.

In Favor: Gagnon, Klingensmith, Melchen, Selin, Strichartz, Kruppa.

The motion passed.

Adjournment

Kruppa waived the rest of the agenda and adjourned the meeting at 9:46 p.m.

Patty Jordan, Planning Board Recording Secretary