

Danby Town Board
Minutes of Public Hearing and Regular Meeting
August 18, 2014
Draft

Present:

Supervisor: Ric Dietrich
Councilpersons: Rebecca Brenner, Leslie Connors, Jim Holahan, Jack Miller

Others Present:

Town Clerk Pamela Goddard
Code Officer Susan Beeners
Town Attorney Guy Krogh
Public Gladys Verona-Lacey, Barbara and Charles Robinson, Kevin Lacey, William Kuhns, Selene Kuhns, Linda Hansen, Vince and Nancy Kotmel, Theresa and Russell Klinger, Ted Crane, Ronda Roaring, DeAnna DeMark, Erick Palmer, Ted Melchen, Dan Klein, Garry Huddle, Verna Little, Naomi Strichartz, and several others - 23 in total.

The Danby Town Public Hearing was opened at 7:04pm

Public Hearing to Consider an Appeal to the Danby Town board by William E. Kuhns, III related to a denial by the Planning Board of a Special Permit for a proposed Automotive Repair Shop, 1753 Danby Road, Commercial Zone "C", Tax Parcel 7.-1-93. William E. Kuhns, III, Owner/Applicant. On June 16, 2014 the Town of Danby Planning Board held a Public Hearing to consider granting a Special Permit to William E. Kuhns, III for a proposed Automotive Repair Shop, 1753 Danby Road, Commercial Zone "C." At a special meeting on July 2, 2014 the Danby Planning Board was unable to achieve a vote approving the request for special permit, resulting in a default denial of the special permit request. William Kuhns has filed a letter of appeal with the Town Clerk, as per the appeal process in Section 907 of the Town of Danby Zoning ordinance.

William Kuhns spoke in support of his appeal regarding the July 2 denial of a Special Permit by the Planning Board. He noted that the area is zoned "Commercial C" and that his proposal and agreements meets all of the requirements.

Gladys Verona-Lacey spoke in opposition to a reversal of the PB special permit denial.

Erick Palmer spoke in support of the Eagle Automotive permit approval.

Charles Robinson, a neighbor across the street, spoke in support with the view that this is an appropriate business on a major highway.

Ted Crane asked a procedural question about the Planning Board deadlock on interpretation of the Zoning Ordinance language "injurious to use and enjoyment," in regard to a commercial zone.

Vince Kotmel, Kuhns' next door neighbor, spoke in opposition to approval of the Eagle Automotive special permit.

Another resident spoke in support stating that, as this is a major highway, she did not think that there would be substantial additional impact.

Garry Huddle stated that he could understand both sides of the argument, but that he would be unhappy with an auto repair shop 25 feet from his property line.

Verna Little stated that while she supports "positive" commercial activity she feared that "negative" commercial activity would attract yet more "negative" business.

Selene Kuhns spoke in support of the Eagle Automotive appeal.

Naomi Strichartz spoke as a Planning Board member, in support of upholding the denial of Special Permit. She stated that while this was a difficult decision, her primary concern was to protect residents quality of life against potential negative impacts.

Another resident spoke in support of overturning the denial of Special Permit. Since the area is zoned commercial, and since there are already commercial enterprises in this block, such as McLane construction, they did not see how the Town Board could deny this request.

Sue Beeners spoke about the difficulties the Planning Board weighed in its consideration of this decision. Privacy concerns, parking concerns, site plan concerns were all considered. She reported that the Planning Board focus was on the question, "Is this too close such that it will cause injury?"

There was a question from a resident regarding parking and screening of this parking. Kuhns responded that there will be fencing. He would prefer to have parking in the rear, so as to minimize the visual impact from the road.

The Public Hearing was closed at 7:30pm

The Danby Town Board Regular Meeting was opened at 7:32pm

Privilege of the Floor

Leslie Connors reported on two topics. Otters are using Jennings Pond. There was a recent week-end effort to repair and clean headstones in the West Danby cemetery. The first effort was five hours of work. Additional work will be done on other cemeteries and the group will be seeking help.

Consider Public Hearing - Eagle Automotive

There was an extensive discussion of the Eagle Automotive public hearing matter.

Questions were asked regarding the enforcement procedure and process. How mitigating are conditions if they are not enforced? Beeners outlined the process in cases of code violations. She stated that a key factor in the case of the proposed PB resolution to approve were a list of unambiguous written mitigating conditions. Having clearly defined mitigating conditions adds to the ability of the Code Office to enforce. If the TB were to vote to reverse the PB denial, Beeners encouraged the Board to include such a list in the resolution.

Dietrich moved a resolution to reverse the PB denial and grant a Special Permit for Eagle Automotive with a list of terms and conditions. Holahan seconded this motion. There was further extensive discussion.

There was a discussion regarding impacts of water quality and noise levels related to automotive repair. Kuhns and his partners responded to these concerns. The building will be sound insulated and the compressor in a soundproof box. Discussion of noise levels related to automotive repair and general highway noise. Regarding water protection, the area is above a confined aquifer (implying that less vulnerable to contamination) and there are strict regulations for the storage and disposal of automotive fluids. State inspection happens several times during the year.

Nancy and Vince Kotmel commented that, as adjacent neighbors they have concerns beyond noise. They are concerned that their property value may decrease and this would make it difficult to sell should they choose to do so.

Additional discussion of where the parking will be and for how many cars. Brenner expressed a concern that cars not park on Route 96B. Kuhns stated that there will be sufficient on-site parking with no parking on the road. There will space for cars in two bays and two additional exterior parking spaces. Kuhns stated that he would like additional, screened parking in the back for those cases when someone wants to drop their vehicle off early or pick it up late. He is concerned about appearances so that his property stays looking nice. There is no intention to sell cars from this location.

The Town Attorney responded to the question of potential negative impacts on "use and enjoyment" of neighboring properties in relation to an automotive repair shop. Does the fact that this is in a commercial zone make a difference in the expected level of use and enjoyment? Does the fact that an automobile repair shop is specifically mentioned as an allowed use alter the mitigating factors that may be required?

Krogh stated that, rather than using his own words, he would cite the words of the official commentators for the State of New York statutes and decisions of the courts. He presented information that there is a strong legal presumption that an allowed use in a zone is presumed to be harmonious with other uses in that zone. Krogh cited specific legal cases related to this question. If something is an allowed use, a special permit may not be legally denied on the basis of conditions that are generic or common to that specific use. Automotive repair is specifically stated as an allowed use in Danby Commercial Zone, type "C". Any denial must be based on evidence, not on generalized speculation.

Krogh further stated that the Town Board was free to adopt any or all of the conditions proposed by the Planning Board, to the extent that they are legal.

There was a discussion of mitigating conditions proposed by the Planning Board for this proposed Special Permit. Each of the mitigating conditions was reviewed individually with the applicant. Kuhns and his partners agreed to all conditions with the exception that the "doors of the repair bays remain closed at all times." They would like the option to have the doors open during the heat of the summer.

There was a brief discussion of the need to review the zoning code across the Town.

RESOLUTION NO. 86 OF 2014 - EAGLE AUTOMOTIVE APPEAL – WILLIAM E. KUHN, III, 1753 DANBY ROAD

Whereas, on June 16, 2014 the Town of Danby Planning Board held a Public Hearing to consider granting a Special Permit to William E. Kuhns, III for a proposed Automotive Repair Shop, 1753 Danby Road, Commercial Zone "C," Tax Parcel 7.-1-93, and

Whereas, at a special meeting on July 2, 2014 the Danby Planning Board was unable to achieve a vote approving the request for special permit, and

Whereas, as per Section 907 of the Town of Danby Zoning Ordinance, the applicant may appeal the Planning Board's decision to the Town Board, and

Whereas, a letter advising the applicant that his application for special permit was effectively denied as a result of the Planning Board vote, and advising the applicant of his right of appeal, was transmitted to the applicant on July 17, 2014, and

Whereas, William Kuhns on July 18, 2014 did file a letter of appeal with the Town Clerk, stating the reasons for appeal and signed by the applicant as per the appeal process in Section 907 of the Town of Danby Zoning Ordinance, and

Whereas, the Town Board has reviewed the record of the deliberations related to said Special Permit application, including the General Considerations provided in the Zoning Ordinance related to all Special Permits, and

Whereas, the Town Board of the Town of Danby has held a public hearing for August 18, 2014 in the Danby Town Hall to hear said appeal, and

Whereas, the Town Board of the Town of Danby has reviewed with the applicant various terms and conditions, which are listed as follows:

1. There shall be a fence between the properties located at 1753 Danby Road and 1763 Danby Road that shall be as high as allowable by law and that maintains a continual barrier (no visibility between fence slats) for the entire length.
2. The hours of operation (repair of vehicles) shall be limited to the hours stated in the Special Permit request of Monday – Friday, 8:00 a.m. to 5:00 p.m. and Saturday 8:00 a.m. to 12:00 noon, by appointment only.
3. All automotive repair work shall be conducted during the stated hours of operation (see number 2 above).
4. The air compressor shall be enclosed and located on the North side of the building.
5. There shall not be a car bay facing the South side of the property.
6. A sound-insulated interior wall shall be installed on the South side of the building.
7. All exterior lighting shall be downcast and shall illuminate only the subject property.
8. There shall be no parking spaces located behind the structure.
9. Parking spaces shall be limited to the four that are on the Site Plan.

10. The Special Permit shall be personal to the applicant, and not transferable unless a modified Special Permit is granted by the Planning Board.

11. The structure shall be guttered and all drainage directed to the West of the property toward the ditch on Route 96B.

12. The dumpster shall be maintained in a sanitary manner such that no noxious odors are present.,

Now, Therefore, Be it

Resolved, that the Town Board of the Town of Danby finds the following: that the Town Board is unable to find that the Planning Board's decision on July 2, 2014, effectively denying said Special Permit application, was in compliance with the requirements of the Zoning Ordinance, and it is

Further Resolved, that the Town Board reverses said Planning Board decision, and it is

Further Resolved, that the Town Board finds that said Special Permit application is in compliance with the requirements of the Zoning Ordinance, and it is

Further Resolved, that the Town Board hereby grants a Special Permit to William E. Kuhns, III for a proposed Automotive Repair Shop, 1753 Danby Road, Commercial Zone "C," Tax Parcel 7.-1-93, and approves the submitted site plan as reviewed.

Moved by Dietrich, Second by Holahan. The motion passed.

In Favor: Brenner, Connors, Holahan, Miller, Dietrich

Marsh Road Extension Request - Execute Developer's Agreement

There was extensive discussion and Q&A regarding a motion to execute a "Developer's Agreement" between the Town and Erick Palmer for a road improvement project on Marsh Road. This agreement facilitates funds being placed in an escrow account for this project. The Agreement specifies an escrow deposit of \$4,358,000.

The Board answered several procedural questions from Dan Klein. Sue Beeners provided information in response to a question about the timeline for this project. The Town Board will need to set a public hearing to enact a local law. If such a local law is adopted this year, the road classification will not be effective until June 15, 2015. The Highway Department would decide when to start work, any time after the local law is passed.

Ronda Roaring asked questions specifically regarding conservation easements related to this project and regarding a general policy of whether or not to hold public hearings for future conservation easements. Attorney Krogh advised that whether or not to hold public hearings for conservation easements would be a policy decision of the Board. This choice would need to weigh public interest against privacy concerns of a landowner.

DeAnna DeMark asked for clarification of the need for an additional public hearing related to the Marsh Road improvement project. Information was shared that a public hearing is a standard part of adoption a local law. A local law is required to change a road classification. DeMark and Palmer were advised that a pole barn for their horses can be constructed at any time. A building permit for a new house could not be issued until a new road classification in effect.

Beeners informed the Board that copies of the Palmer and Melchen Conservation Easements, the draft local law, and other related documents will be prepared for Town Board review prior to its next meeting in September. It was recommended that members of the Conservation Advisory Council and Town Board meet to review SEQR documents and draft easements. This will take place prior to or during the next Town Board meeting.

RESOLUTION NO. 87 OF 2014 - AUTHORIZE SUPERVISOR TO EXECUTE DEVELOPER'S AGREEMENT IN RE: MARSH ROAD IMPROVEMENT PROJECT

Whereas, Erick Palmer, of 127 Marsh Road, Ithaca, New York 14850 (the "Developer", which term includes all successors, assigns, and heirs of the Developer) is the Developer of a road improvement project to install roadway improvements and a new turnaround upon Marsh Road (the "Road Improvements"), so as to facilitate the future development of his land, including a residence and barn (the "Project"); and the Developer desires to facilitate the review and approval of the Project, including by meeting defined SEQRA mitigation impacts and supporting the proposed local law to reclassify a portion of such Marsh Road (the "Local Law") based upon the Developer's proposal to pay the costs of the Road Improvements to support the Project and to further achieve Town Law § 280-a qualification to also support the Project, and

Whereas, the Town of Danby, an incorporated municipal corporation of the State of New York, with offices at 1830 Danby Road, Ithaca, New York 14850 (herein, the "Town"), will oversee the Developer's plans and agreements relative to such Project, including the environmental review thereof, the mitigation of any potential negative minor environmental impacts, and the preparation and adoption of the Local Law, and

Whereas, the Developer needs permits, approvals, and the adoption of the Local Law (collectively, "Approvals") to obtain building permits, construct roadways or access ways, and to otherwise develop the Project in accord with the description set forth in the Application (as hereafter defined) relating to the Road Improvements, and

Whereas, the Town, by law, cannot commit general funds for the benefit of the Developer, even though certain preliminary engineering and legal reviews are needed for the Project, and to also assure that the Developer has deposited funds sufficient to pay for the necessary Road Improvements, which the Developer has here-to-fore asked, and now again asks, the Town Highway Department to install on his behalf and at his expense, and

Whereas, if the Developer agrees to reimburse the Town for the reasonable expenses of engineering and legal review, and other reasonable costs of examining the Project including the costs of the Road Improvements, the Town and Developer may each proceed more efficiently in accord with law, thus providing for earlier Approvals, if granted, for the Project,

Now, Therefore, Be it

Resolved, that the Town Board of the Town of Danby authorizes the Town Supervisor to execute an agreement with the Developer in form and substance approved by the Town Attorney related to the Marsh Road Improvement Project.

Moved by Dietrich, Second by Holahan. The motion passed.

In Favor: Brenner, Connors, Holahan, Miller, Dietrich

Amend Resolution #77 - Hill Road Renumbering

The Board took action on a topic that had been fully discussed during its meeting on August 11.

RESOLUTION NO. 88 OF 2014 - AMEND RESOLUTION NO.77 - HILL ROAD RENUMBERING

Whereas, the renumbering of #11 Hill Road was not included as one of those to be renumbered in an initial proposal for renumbering addresses on Hill Road, and

Whereas, the residents at #11 Hill Road were not included in the discussion of renumbering Hill Road and were not notified of this change until after Resolution #77 of 2014 had been passed, changing #11 to #7 Hill Road, and

Whereas, the residents at #11/7 Hill Road have sufficiently proven that there is insufficient road frontage to permit a legal building lot between their property and #3 Hill Road, that there is insufficient road frontage at the Paucke property (#15) for an additional building lot, leaving #13 as a possible address should #11 be subdivided, and

Whereas, the residents at #11 Hill Road strongly oppose the resolved renumbering and have requested an amendment to Resolution #77 of 2014 reversing this renumbering,

Now Therefore, Be it

Resolved, that the Town Board of the Town of Danby AMENDS Resolution #77 of 2014 such that #11 Hill Road will not be renumbered but will stay as currently designated.

Moved by Brenner, Second by Dietrich. The motion passed.

In Favor: Brenner, Connors, Holahan, Miller, Dietrich

Adjournment

The meeting was adjourned at 9:35 pm.

Pamela Goddard, Town Clerk