

Town of Highland Planning Board
Meeting Minutes January 24, 2024

Chairman opens the meeting at 6PM
Pledge to the Flag
Chairman states the minutes are being recorded
Secretary takes Attendance.

Attendance:	Norm Sutherland (Chairman)	Present
	JT Vogt (Co-Chair)	Present
	Jeffrey Spitz	Present
	Steve Bott	Present
	Tim McKenna	Present
	Frank Monteleone (alternate)	Present
	Bernard Kozykowski (alternate)	Present
Board Secretary:	Monica McGill	Present
Town Attorney:	Steve Mogel	Present
Code Enforcement:	Debra Dalto	Present

Motion to approve the December 20, 2023 meeting minutes:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Correspondence: Norm Sutherland reads the email received by the town supervisor, and wants to enter into record that he does not have a political agenda. He has been a resident of the town for over forty years, is a firefighter, and owns his own construction company. He states the board works together as a team and not a single entity and politics have no business in their decisions. (please see attached)

The chairman and the board welcome Frank Monteleone and Bernard Kozykowski as the new planning board alternates, as well as Steve Mogel as the new Town Attorney, and Debra Dalto as the new Code Enforcement Officer.

Attorney Steve Mogel advised the Board that, in his opinion, short-term rentals are properly characterized as Type II under SEQR pursuant to 617.5(C)(18) and, therefore, are not subject to further environmental review including, but not limited to, completion of Part II of the EAF. . Attorney Mogel stated that the criteria most proper for the Board to consider on such applications would be the basic criteria for Special Permitted Uses and Site Plan Approval listed in the zoning codes at 190-73. After discussion, the Board agreed with Attorney Mogel’s characterization of short-term rentals and the procedure recommended by counsel.

Application #38-2023 Karen MacIntyre Short Term Rental Public Hearing:

Motion to open the public hearing on application #38-2023:

Motion: Tim McKenna Second: JT Vogt All in favor

Secretary reads the public notice posted in the local newspapers

There were (8) letters mailed to the surrounding neighbors and (5) returned.

Correspondence: Email received by the applicant stating Peter Pope will attend the meeting in their absence.

Public Comment: None

Board Comment: None

Motion to close the public hearing on application #38-2023:

Motion: Tim McKenna Second: Steve Bott All in favor

Motion to approve Application #38-2023 with the condition of quiet hours 10PM to 7AM:

Motion: Tim McKenna Second: Jeff Spitz All in favor

Applicants fire inspection was completed and passed.

Application #39-2023 DKS Properties (Sobel) Short Term Rental Public Hearing:

The applicant was not present for their public hearing and the board asks that the application be taken off the table until the applicant completes the process. The applicant has not completed their fire inspection.

Application #44-2023 Naha Sabnis Short Term Rental Public Hearing:

Motion to open the public hearing on application #44-2023:

Motion: Steve Bott Second: Tim McKenna All in favor

Secretary reads the public notice posted in the local newspapers.

There were (10) letters mailed to the surrounding neighbors and (9) returned.

Correspondence: None

Public Comment: None

Board Comment: None

Motion to close the public hearing on application #44-2023:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Motion to approve Application #44-2023 with the condition of quiet hours 10PM to 7AM:

Motion: Tim McKenna Second: JT Vogt All in favor

Fire Inspection completed and passed.

Application #46-2023 Vinh Chau & Jude Bornstein Short Term Rental Public Hearing:

Motion to open the public hearing on application #46-2023:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Secretary reads the public notice posted in the local newspapers.

There were (7) letters mailed to the surrounding neighbors and (6) returned.

Correspondence: None

Public Comment: None

Board Comment: None

Motion to close the public hearing on application #46-2023:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Motion to approve Application #46-2023 with the condition of quiet hours 10PM to 7AM:

Motion: Steve Bott Second: JT Vogt All in favor

Fire inspection completed and passed.

Application #47-2023 Terrell Canton Short Term Rental Public Hearing:

Motion to open the public hearing on application #47-2023:

Motion: JT Vogt Second: Jeff Spitz All in favor

Secretary reads the public notice posted in the local newspapers.

There were (22) letters mailed to the surrounding neighbors and (10) returned.

Correspondence: None

Public Comment: None

Board Comment: None

Motion to close the public hearing on application #47-2023:

Motion: Tim McKenna Second: Jeff Spitz All in favor

Motion to approve Application #47-2023 with the condition of quiet hours 10PM to 7AM:

Motion: Jeff Spitz Second: Steve Bott All in favor
Fire inspection completed and passed.

Application #48-2023 Ger Flood Short Term Rental Public Hearing:

Motion to open the public hearing on application #48-2023:

Motion: Steve Bott Second: Tim McKenna All in favor

Secretary reads the public notice posted in the local newspapers.

There were (16) letters mailed to the surrounding neighbors and (14) returned.

Correspondence: None

Public Comment: None

Board Comment: None

Motion to close the public hearing on application #48-2023:

Motion: Jeff Spitz Second: Tim McKenna All in favor

Motion to approve Application #48-2023 with the condition of quiet hours 10PM to 7AM:

Motion: Tim McKenna Second: Jeff Spitz All in favor

Fire inspection completed and passed.

Application #45-2023 Andrew Kinsey Short Term Rental

Mr. Kinsey owns a three-bedroom home at 89 Split Rock Drive. He resides on the property fifty percent of the year, and rents when the property is not in use. Mr. Kinsey states that when his daughter graduates' high school he will be moving to the property full time.

The board has reviewed the application and ask that Mr. Kinsey provide the declaration page of his insurance policy.

Mr. Kinsey will need to schedule a fire inspection with the code office.

Motion to schedule a public hearing on application #45-2023 to be held on February 28, 2024 @ 6PM:

Motion: Tim McKenna Second: Steve Bott All in favor

Application #7-2023 211 Mail Road – Site Plan Review/Special Use Permit

Attending on behalf of the applicant:

Attorney Steven Barshov and Architect John Fuller

Correspondence: Report from Fusco Engineering (not read into record) see attached.

Attorney Steve Mogel states for the record that he does not have to recuse himself from this application. He was involved with previous applications submitted by the previous owners. Mr. Mogel and Mr. Barshov will schedule a meeting to discuss further.

The application has not stated specifically the use intended. The board at the December 20, 2023 meeting requested the applicant come back with a more clear and defined use for the property. The application submitted for this meeting has defined the use as a religious retreat.

The board asked if the property will only hold religious retreats in the summer or year-round? Will the property be available to all religious groups? What activities will be taking place? Will the occupants be adults, children, or both?

Steven Barshov addresses the questions by stating that the property will be used mainly during the summer months and periodically during the remainder of the year. The property will be available to other religious groups, but states he is not sure those groups would be comfortable using the facility. The activities will vary, and the facility will be used by children as well as adults.

Mr. Barshov feels at this point the applicant has supplied all the necessary information to schedule a public hearing. All technical issues have been addressed. Mr. Barshov also reminds the Board that the approvals he seeks are protected by federal law, i.e., RLUIPA (Religious Land Use and Institutionalized Persons Act), and alleges that RLUIPA dictates that the Board has no discretion with regard to this application, but rather must approve it in its current form.

The board feels that there are still too many gray areas and that the public has the right to all information prior to a public hearing being scheduled. As per Steve Mogel if the board cannot determine the use , the applicant can apply to the ZBA (Zoning Board of Appeals) for a hearing. Once the Zoning Board reviews and makes their decision the applicant can return to the Planning Board.

Motion to have the applicant submit a hearing application to the Zoning Board:

Motion: Jeff Spitz

Second: Tim McKenna

All in favor

Motion to adjourn the meeting:

Motion: JT Vogt

Second: Steve Bott

Meeting adjourned

Motion to close the meeting:

Motion:

Second:

Meeting adjourned

Code

From: Norm Sutherland <ngs_construction@yahoo.com>
Sent: Wednesday, January 24, 2024 5:41 PM
To: Code
Subject: Fwd: Meeting before the Meeting

Norm Sutherland
NGS CONSTRUCTION

Begin forwarded message:

From: Supervisor <supervisor@townofhighlandny.com>
Date: January 15, 2024 at 11:59:27 AM EST
To: Steven Mogel <smogel@sullivancountylawyers.com>
Cc: ngs_construction@yahoo.com
Subject: Re: Meeting before the Meeting

Norm, can you get back here? You wanted input and have requested to be part of the process, but have yet to respond to a meeting set up for the benefit of the board? Is the town your priority or is this part of some political agenda?

I'd like to give you the benefit of the doubt but you're making it very difficult. I've requested meetings with you personally, Laura and Tom requested you reach out and set up a meeting to no avail. Like it or not, I was elected by a landslide and Steve is the attorney for the town and the ZBA and the planning board. You were an appointment. The people didn't elect you nor should they be held in contempt of your aggression.

§ 617.5 TYPE II ACTIONS

- (a) Actions or classes of actions identified in subdivision (c) of this section are not subject to review under this Part, except as otherwise provided in this section. These actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, article 8. The actions identified in subdivision (c) of this section apply to all agencies.
- (b) Each agency may adopt its own list of Type II actions to supplement the actions in subdivision (c) of this section. No agency is bound by an action on another agency's Type II list. The fact that an action is identified as a Type II action in an agency's procedures does not mean that it must be treated as a Type II action by any other involved agency not identifying it as a Type II action in its procedures. An agency that identifies an action as not requiring any determination or procedure under this Part is not an involved agency. Each of the actions on an agency Type II list must:
 - (1) in no case, have a significant adverse impact on the environment based on the criteria contained in section 617.7(c) of this Part; and
 - (2) not be a Type I action as defined in section 617.4 of this Part.
- (c) The following actions are not subject to review under this Part:
 - (1) maintenance or repair involving no substantial changes in an existing structure or facility;
 - (2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;
 - (3) retrofit of an existing structure and its appurtenant areas to incorporate green infrastructure;
 - (4) agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming;
 - (5) repaving of existing highways not involving the addition of new travel lanes;
 - (6) street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;
 - (7) installation of telecommunication cables in existing highway or utility rights of way utilizing trenchless burial or aerial placement on existing poles;
 - (8) maintenance of existing landscaping or natural growth;

- (9) construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;
- (10) routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area and school closings, but not changes in use related to such closings;
- (11) construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in paragraph (13) of this subdivision and the installation, maintenance or upgrade of a drinking water well or a septic system, or both, and conveyances of land in connection therewith;
- (12) construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;
- (13) extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list;
- (14) installation of solar energy arrays where such installation involves 25 acres or less of physical alteration on the following sites:
 - (i) closed landfills;
 - (ii) brownfield sites that have received a Brownfield Cleanup Program certificate of completion ("COC") pursuant to ECL § 27-1419 and 6 NYCRR § 375-3.9 or Environmental Restoration Project sites that have received a COC pursuant to 6 NYCRR § 375-4.9, where the COC under either program for a particular site has an allowable use of commercial or industrial, provided that the change of use requirements in 6 NYCRR § 375-1.11(d) are complied with;
 - (iii) sites that have received an inactive hazardous waste disposal site full liability release or a COC pursuant to 6 NYCRR § 375-2.9, where the Department has determined an allowable use for a particular site is commercial or industrial, provided that the change of use requirements in 6 NYCRR § 375-1.11(d) are complied with;
 - (iv) currently disturbed areas at publicly-owned wastewater treatment facilities;

- (v) currently disturbed areas at sites zoned for industrial use; and
 - (vi) parking lots or parking garages;
- (15) installation of solar energy arrays on an existing structure provided the structure is not:
- (i) listed on the National or State Register of Historic Places;
 - (ii) located within a district listed in the National or State Register of Historic Places;
 - (iii) been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law; or
 - (iv) within a district that has been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law;
- (16) granting of individual setback and lot line variances and adjustments;
- (17) granting of an area variance for a single-family, two-family or three-family residence;
- (18) reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses, where the residential or commercial use is a permitted use under the applicable zoning law or ordinance, including permitted by special use permit, and the action does not meet or exceeds any of the thresholds in section 617.4 of this Part;
- (19) the recommendations of a county or regional planning board or agency pursuant to General Municipal Law sections 239-m or 239-n;
- (20) public or private best forest management (silviculture) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management, clear-cutting or the application of herbicides or pesticides;
- (21) minor temporary uses of land having negligible or no permanent impact on the environment;
- (22) installation of traffic control devices on existing streets, roads and highways;
- (23) mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;

- (24) information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any Type I or Unlisted action;
- (25) official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s);
- (26) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
- (27) conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;
- (28) collective bargaining activities;
- (29) investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;
- (30) inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;
- (31) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials;
- (32) license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities;
- (33) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;
- (34) engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this Part have been fulfilled;
- (35) civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;
- (36) adoption of a moratorium on land development or construction;

- (37) interpretation of an existing code, rule or regulation;
- (38) designation of local landmarks or their inclusion within historic districts;
- (39) an agency's acquisition and dedication of 25 acres or less of land for parkland, or dedication of land for parkland that was previously acquired, or acquisition of a conservation easement;
- (40) sale and conveyance of real property by public auction pursuant to article 11 of the Real Property Tax Law;
- (41) construction and operation of an anaerobic digester, within currently disturbed areas at an operating publicly-owned landfill, provided the digester has a feedstock capacity of less than 150 wet tons per day, and only produces Class A digestate (as defined in 6 NYCRR § 361-3.7) that can be beneficially used or biogas to generate electricity or to make vehicle fuel, or both;
- (42) emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part;
- (43) actions undertaken, funded or approved prior to the effective dates set forth in SEQR (see chapters 228 of the Laws of 1976, 253 of the Laws of 1977 and 460 of the Laws of 1978), except in the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental impacts, or to choose a feasible or less environmentally damaging alternative, the commissioner may, at the request of any person, or on his own motion, require the preparation of an environmental impact statement; or, in the case of an action where the responsible agency proposed a modification of the action and the modification may result in a significant adverse impact on the environment, an environmental impact statement must be prepared with respect to such modification;
- (44) actions requiring a certificate of environmental compatibility and public need under articles VII, VIII, X or 10 of the Public Service Law and the consideration of, granting or denial of any such certificate;
- (45) actions subject to the class A or class B regional project jurisdiction of the Adirondack Park Agency or a local government pursuant to sections 807, 808 and 809 of the Executive Law, except class B regional projects subject to review by local government pursuant to section 807 of the Executive Law located within

the Lake George Park as defined by subdivision one of section 43-0103 of the Environmental Conservation Law; and

- (46) actions of the Legislature and the Governor of the State of New York or of any court, but not actions of local legislative bodies except those local legislative decisions such as rezoning where the local legislative body determines the action will not be entertained.

§ 617.6 INITIAL REVIEW OF ACTIONS AND ESTABLISHING LEAD AGENCY

(a) Initial review of actions.

- (1) As early as possible in an agency's formulation of an action it proposes to undertake, or as soon as an agency receives an application for funding or for approval of an action, it must do the following:
 - (i) Determine whether the action is subject to SEQR. If the action is a Type II action, the agency has no further responsibilities under this Part;
 - (ii) Determine whether the action involves a federal agency. If the action involves a federal agency, the provisions of section 617.15 of this Part apply;
 - (iii) Determine whether the action may involve one or more other agencies; and
 - (iv) Make a preliminary classification of an action as Type I or Unlisted, using the information available and comparing it with the thresholds set forth in section 617.4 of this Part. Such preliminary classification will assist in determining whether a full EAF and coordinated review is necessary.
- (2) For Type I actions, a full EAF (see section 617.20, Appendix A, of this Part) must be used to determine the significance of such actions. The project sponsor must complete Part 1 of the full EAF, including a list of all other involved agencies that the project sponsor has been able to identify, exercising all due diligence. The lead agency is responsible for preparing parts 2 and 3.
- (3) For Unlisted actions, the short EAF (see section 617.20, Appendix B, of this Part) must be used to determine the significance of such actions. However, an agency may instead use the full EAF for Unlisted actions if the short EAF would not provide the lead agency with sufficient information on which to base its determination of significance. The lead agency may require other information necessary to determine significance.
- (4) For state agencies only, determine whether the action is located in the coastal area. If the action is either Type I or Unlisted and is in the coastal area, the provisions of 19 NYCRR 600 also apply. This provision applies to all state agencies, whether acting as a lead or involved agency.



Consulting Engineers

Alfred A. Fusco, Jr.
P.E. Principal

Alfred A. Fusco, III
General Manager

January 23, 2024

Norman Sutherland, Planning Board Chairman
Town of Highland
4 Proctor Road
Eldred, New York 12732

RE: 211 Mail Road
Preliminary Review
Town of Highland
SBL 15-1-70.1 and 70.2
Our file #HL-004

Dear Chairman Sutherland,

We have reviewed the material submitted to us by John Fuller, P.E., and are providing this review as the Town of Highland Planning Board Consultant.

Project: Applicant – John D. Fuller, P.E. for Yeshiva Ohr Shraga Veretzky
Address: 211 Mail Road
SBL: 15-1-70.1 and 70.32
Zone: Agricultural – Residential – R2
Request: Special Use Permit – Change of Use
Material reviewed: Site Plan prepared by John Fuller dated 1/11/24, cover letter prepared by John Fuller dated 1/10/24, Traffic Assessment Report prepared by Stephan Maffia dated 11/29/23
Project Info: Religious Retreat with two (2) 6,800 square foot dormitories, one 1,200 square foot Mikvah, a 9,500 square foot multi-purpose building and additional use as a place of worship. It is our understanding that the existing hotel/motel will be used for religious and educational purposes for the congregation and will not be open to the public.

Comments - SEAF:

1. Applicant has prepared a list of involved and interested parties. Town was to mail to the interested parties.

Comments – Zoning for Bond Information:

1. Under Chapter 190, Schedule 2, District Schedule of Use Regulations R2 District:
 - a. Hotel/Motel is listed as a Special Use Permit and is required for the intended use.
 - b. Multi-Purpose building is not specifically listed in R2 but is part of the Special Use Permit (SUP).
 - c. Place of Worship is listed in R2 and requires a Special Use Permit from the Planning Board. This would also include the Mikvah, Religious Retreat, and religious education.

Applicant says all existing and proposed buildings shall be utilized for proposed use as outlined in the narrative.

2. The above shows that this project can be considered by the Planning Board as a combination of Special Use Permits; mainly due to the Place of Worship designation and the New York State and Federal RLUIPA 2000 legislature. The Planning Board must determine carefully if the Place of Worship and religious education are the basis of the application. A narrative has been created by the project attorney clarifying how existing and proposed buildings will be used.

The attorney has sent a recent letter to the Board along with the previous memorandum of law for review by the Board and new attorney after preliminary approval.

Comments – Site Plan:

1. Soils testing to be witnessed by NYSDOH.
2. Our office witnessed percolation and deep soil testing on November 16, 2023. The testing indicated that the soils would support septic disposal systems and are now on plan.
3. The shallow trench systems have been eliminated; a conventional Eljen to be installed.
4. The plan indicates that the mikvah would only discharge 640 gallons per day. The pool is emptied once per month – 400 gpd is for 40 people. The mikvah treated as bath house – 10 gpd per person.
5. Pump chamber provided due to the length of laterals exceeding 500 LF.
6. Previous items 6-10 have been adequately addressed.
7. NYSDOH approval is required for water and sanitary systems.
8. NYSDEC SPEDES permit is required for sanitary systems.
9. Revised plans shall be submitted by the applicants engineer to the local fire department.
10. The Highway Superintendent should review the revised plans for the proposed driveway locations prior to approval; the driveways will need to be staked.
11. Previous items 15 and 16 have been adequately addressed.
12. Applicant provided a Stormwater Pollution Prevention Plan that demonstrates adherence to code 164-7, this should be a separate document from the site plan that is to be approved by the Planning Board and are under review by our office.
13. Provided drainage calculations on the sizing of the stormwater infrastructure and are under review.
14. Rain garden changed to bioretention and is under review.
15. Finalization of the SWPPP must also include SWPPP Acceptance Form for Town signature and submission of a completed eNOI. Prior to any land disturbance acknowledgement of SPDES Coverage by the NYSDEC shall be demonstrated to the Town has been forwarded.

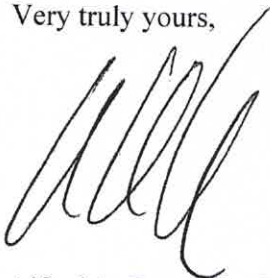
16. Escrow account required for inspections of public improvements.
17. Please revised the site plan pages of the plan to clarify the use of each building, the motel in particular should be labeled as "Sleeping Quarters".
18. Board comments.

Action:

Consider setting a public hearing.

Please advise if you have any questions.

Very truly yours,



Alfred A. Fusco, Jr., P.E.
Fusco Engineering &
Land Surveying, D.P.C.

Cc: Town Clerk
Building Department
Michael Davidoff
John Fuller, P.E. Alfred
A. Fusco, Jr., P.E.
Todd Maurizzio