



TOWN OF SOUTHPORT

1139 Pennsylvania Avenue • Elmira New York 14904

PLANNING BOARD Regular Meeting

**Monday, June 4, 2018
Meeting Minutes**

Minutes of a regular meeting of the Town of Southport Planning Board held at the Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on Monday, June 4, 2018 at 7:00 p.m.

Board Members Present: Larry Berman
Dan Collins
Jacquelyn French
John Hastings
Chris Parsons, Vice Chairman
Trish Peterson
Tim Steed, Chairman
Chad West, Alternate

Board Member Absent: none

Others Present: Peter Rocchi, Code Enforcement Officer
Michelle Murray, Secretary
Kathy Szerszen, Deputy Town Supervisor

Chairman Steed called the meeting to order at 7:00 p.m. He asked if the Board Members had any comments, questions, concerns or corrections about the May 7, 2018 minutes. Hearing no comments, the Board accepted the minutes as presented.

Public Hearing - Special Use Permit application of Donna Monroe to operate a nutrition counseling practice located at
1491 Caton Avenue, Elmira, New York
Tax map #109.07-4-40
Zoned Residential 3 (R3)

It was noted that the publication was in order then the public hearing was opened for comment. No one wished to be heard. The public portion of the meeting was closed at 7:02 p.m.

Ms. Monroe did not have any changes to her Special Use Permit application.

The Board did not have any further comments. Board Member Berman made a motion to accept the Special Use Permit as presented; Board Member Peterson seconded the motion. SEQR was declared an Unlisted Action negative declaration. There was no discussion on the motion.

Resolution No. 008-2018 PB

SPECIAL USE PERMIT GRANTED TO DONNA MONROE TO OPERATE A NUTRITION COUNSELING PRACTICE LOCATED AT 1491 CATON AVENUE, TOWN OF SOUTHPORT, COUNTY OF CHEMUNG, STATE OF NEW YORK, TAX MAP #109.07-4-40 ZONED RESIDENTIAL 3 (R3)

Resolution by: Berman
Seconded by: Peterson

WHEREAS, on or about April 17, 2018, Donna Monroe submitted an application to the Code Enforcement Officer for approval from the Town of Southport Planning Board for a Special Use Permit to operate a nutrition counseling practice located at 14971 Caton Avenue, Elmira, (Town of Southport), tax map # 109.07-4-40 zoned Residential 3 (R3); and

WHEREAS, the application was submitted to the Planning Board to operate as a cottage industry per the Town Code 525-108 (B); and

WHEREAS, the Planning Board held a duly noticed meeting on May 7, 2018, at which the Applicant presented information about the project; and

WHEREAS, the Planning Board conducted a public hearing on Monday, June 4, 2018 at 7:00 p.m., or as soon thereafter, and after due posting and publication of the same was made, was in compliance with the Town of Southport Municipal Code; and

WHEREAS, at that public hearing, any and all individuals wishing to be heard were then and there given the opportunity to do so; and

WHEREAS, it was determined that this was an Unlisted Action and will not have a potentially significant effect on the environment; and after due deliberation, investigation and consideration it is

RESOLVED, that the Planning Board hereby grants approval for the Special Use Permit of Donna Monroe.

AYES: Berman, Collins, French, Hastings, Parsons, Peterson, Steed
NOES: None
ABSENT: None
MOTION CARRIED.

Public Hearing - Site Plan of Bohler Engineering on behalf of McDonald's USA, LLC for renovations to the interior and exterior of the existing restaurant located at 1600 Cedar Street, Elmira, New York
Tax map #109.12-1-11
Zoned Commercial Regional (CR)

It was noted that the publication was in order then the public hearing was opened for comment. No one wished to be heard. The public portion of the meeting was closed at 7:06 p.m.

Steve Wilson with Bohler Engineering presented the application to the Board. He explained that the drive through has been modified to meet the town's requirements. He explained that the storage container was in litigation and cannot be moved without a court order until the litigation is complete. He described the type of landscaping that would be used in the island and would consist of 10% of landscaped area. They would add new red maples along the perimeter of the parking lot.

The Board discussed the storage container and that it would be a violation of the site plan and the site plan could be revoked. That may move the litigation along. This site plan did not show the container on it therefore it would not be part of this site plan approval. The container will be addressed as a Code Enforcement issue.

The Board did not have any further comments. Board Member Collins made a motion to accept the Site Plan as presented along with the letter that was submitted on May 15, 2018 that shows revisions; Vice Chairman Parsons seconded the motion. SEQR was declared an Unlisted Action negative declaration. Discussion on the motion was to exclude item 2, Storage Container, from the revision letter which is not part of this site plan.

Resolution No. 009-2018 PB

SITE PLAN GRANTED TO MCDONALD'S USA, LLC FOR RENOVATIONS TO THE INTERIOR AND EXTERIOR OF THE EXISTING RESTAURANT LOCATED AT 1600 CEDAR STREET, TOWN OF SOUTHPORT, COUNTY OF CHEMUNG, STATE OF NEW YORK, TAX MAP #109.12-1-11 ZONED COMMERCIAL REGIONAL (CR)

Resolution by: Collins
Seconded by: Parsons

WHEREAS, on or about April 18, 2018, Bohler Engineering submitted an application to the Code Enforcement Officer on behalf of McDonald's USA, LLC for approval from the Town of Southport Planning Board for a Site Plan to renovate the interior and exterior of the existing restaurant located at 1600

Cedar Street, Elmira, (Town of Southport), tax map #109.12-1-11 zoned Commercial Regional (CR); and

WHEREAS, the application was submitted to the Planning Board to review the drive through uses per the Town Use Regulation Table; and

WHEREAS, the Planning Board held a duly noticed meeting on May 7, 2018, at which the Applicant presented information about the project; and

WHEREAS, the Planning Board conducted a public hearing on Monday, June 4, 2018 at 7:00 p.m., or as soon thereafter, and after due posting and publication of the same was made, was in compliance with the Town of Southport Municipal Code; and

WHEREAS, at that public hearing, any and all individuals wishing to be heard were then and there given the opportunity to do so; and

WHEREAS, it was determined that this was an Unlisted Action and will not have a potentially significant effect on the environment; and after due deliberation, investigation and consideration it is

RESOLVED, that the Planning Board hereby grants approval for the Site Plan of McDonald's USA, LLC as presented along with the revision letter excluding item number two "Storage Container."

AYES: Berman, Collins, French, Hastings, Parsons, Peterson, Steed

NOES: None

ABSENT: None

MOTION CARRIED.

Next was review of the site plan of the Spaniel Association of Western New York to host the National Cocker Championship to be located on Lewis Road, Pine City, New York tax map #129.00-1-1.5 and #129.00-1-1.6 zoned Agricultural Residential (AR). A representative was not present therefore the Board tabled the site plan review until the July 2, 2018 meeting.

Next was review of the site plan of Bohler Engineering on behalf of Franklin Land Associates, LLC for a retail store project located at 1825 Pennsylvania Avenue, Pine City, New York tax map #127.00-1-15.211 and #127.00-1-15.22 zoned Commercial Neighborhood (CN).

Bob Gage with GBT Realty Corporation presented the application. Mr. Gage explained the project was for a 9,100 square foot retail store with 30 parking spaces. He explained this was a concept plan and a final plan with more details will be submitted by the next Planning Board meeting.

Mr. Rocchi said he had to review the parking in front of the store with the Town Attorney. It may require a variance per the form-based code in CN zone. There are three layers in form-based code. The first layer has no parking and a minimum of 25 feet. The applicant could relocate the parking or request a variance. The Board of Health would require a designed system for the septic.

The Board discussed the plot plan that was presented which shows the property line cutting across part of Jodi Wheeler's Ice Cream store parking lot. The Board mentioned that Ms. Wheeler would have to amend her site plan if her parking spaces were reduced. Mr. Gage would confirm the parking with Ms. Wheeler.

The Board discussed the setback issues with a well and septic, that a highway permit from New York State Department of Transportation is required, the tractor trailer delivery and truck turn, and the Stormwater requirements.

Final plans would be submitted by June 20, 2018 or as soon as the Code Officer gets an answer from the Town Attorney.

There were no further comments from the Board. Chairman Steed set a public hearing for Monday, July 2, 2018 at 7:00 p.m. or as soon thereafter as it can be heard.

The Board discussed the site plan application of UpState Tower Co., LLC and Buffalo-Lake Erie Wireless Systems to construct a telecommunications tower at 532 Budd Street, Elmira, NY Tax Map #109.07-5-45 Zoned Industrial (I). The Board had not received the requested information from UpState by the Planning Board deadline of May 16, 2018. The Board of Appeals, at their May 16 meeting, denied the variance based on insufficient information. The site plan is predicated on the zoning variances. The Town Attorney advised that the "shot clock" had expired. The Planning Board could table the application or deny the application based on the fact that the zoning variance was denied and the "shot clock" expired and the information was not submitted or received for the June meeting.

Board Member French made a motion to deny the site plan application of UpState Tower Co., LLC and Buffalo-Lake Erie Wireless Systems due to the Board of Appeals denial of the variances, the "shot clock" had expired, and the information requested by the Planning Board was not submitted or received by the May 16, 2018 deadline for the June meeting; Vice Chairman Parsons seconded the motion. Discussion on the motion was about the applicant submitting a revised application.

Matt Kerwin, Attorney with Barclay Damon, spoke on behalf of the applicant. He explained that they did not have enough time to submit the

requested information for the joint public hearing that was set in February and again in March. They felt the Town Attorney's invoices were excessive and wrote a letter to the Town Supervisor. The attorney reduced the fees. He thought the denial was invalid. He explained the "shot clock" is intended to protect the applicant and speed the process up. They had provided the Planning Board with the requested information on the day of the Planning Board meeting. He accused the Planning Board of having inner-workings behind closed doors forcing people's hands for this review and felt they were treated differently than well-known providers.

Chairman Steed discussed the strong language used even though Attorney Kerwin said it was not a threat. He explained that there were no inner-workings behind the scene and was surprised that would come from the applicant's representative that is to appear before the Planning Board. He explained that the Planning Board does not have influence on the Board of Appeals and respects their decision to deny the variance. He explained that the application could be resubmitted. He asked Attorney Kerwin what prevented the applicant from submitting the requested information.

Attorney Kerwin said the attorney fees and letter to the Town Supervisor was a concern. He claims they never received a written response. He also stated that they had not received written request for the additional information requested from the Boards.

Chairman Steed explained that it was clearly stated at the January Planning Board meeting for the requested information from the applicant. The information was not submitted at the February, March, April or May meetings. The variance was denied therefore the Planning Board cannot consider it for approval.

Resolution No. 010-2018 PB

**SITE PLAN APPLICATION DENIED FOR UPSTATE TOWER CO., LLC AND
BUFFALO-LAKE ERIE WIRELESS SYSTEMS TO CONSTRUCT A
TELECOMMUNICATIONS TOWER AT 532 BUDD STREET, ELMIRA, NY
TAX MAP #109.07-5-45 ZONED INDUSTRIAL (I)**

Resolution by: French
Seconded by: Parsons

WHEREAS, on June 4, 2018 at the regularly scheduled Planning Board meeting, the Planning Board discussed the site plan application of UpState Tower Co., LLC and Buffalo-Lake Erie Wireless Systems to construct a telecommunications tower at 532 Budd Street, Elmira, NY Tax Map #109.07-5-45 Zoned Industrial (I); and

WHEREAS, at that meeting Board Member French made a motion to deny the site plan application of UpState Tower Co., LLC and Buffalo-Lake Erie Wireless Systems due to the Board of Appeals denial of the variances, the “shot clock” had expired, and the information requested from the applicant by the Planning Board was not submitted or received by the May 16, 2018 deadline for the June 4, 2018 meeting; and

WHEREAS, Vice Chairman Parsons seconded the motion; and a

DISCUSSION on the motion took place with the Planning Board and Matt Kerwin, Attorney with Barclay Damon, who spoke on behalf of the applicant; after due deliberation it is

RESOLVED, that the Planning Board hereby denied the request for Site Plan of UpState Tower Co., LLC and Buffalo-Lake Erie Wireless Systems to construct a telecommunications tower at 532 Budd Street, Elmira, NY

AYES: **Berman, Collins, French, Hastings, Parsons, Peterson, Steed**
NOES: **None**
ABSENT: **None**
MOTION CARRIED.

Next was discussion on the tabled referral from the Town Board to review the proposed amendment to Chapter 525 Zoning, §525-33, §525-5, and Use Regulation Table (Proposed Local Law #2 of 2018).

Mark Watts with the Soil and Water and the Farm Bureau spoke in regards to the amendments, the Ag Districts, and public health and safety. He understands that the ordinance is necessary to protect the Town and the residents.

Chairman Steed made a motion to recommend that the Town Board review and provide a revised draft back to the Planning Board of the proposed changes to amend Chapter 525 Zoning, §525-33, §525-5, and Use Regulation Table; Board Member Peterson seconded the motion.

AYES: **Berman, Collins, French, Hastings, Parsons, Peterson, Steed**
NOES: **None**
ABSENT: **None**
MOTION CARRIED.

A geographic area which consists predominantly of viable agricultural land. Agricultural operations within the district are the priority land use and afforded benefits and protections to promote the continuation of farming and the preservation of agricultural land. In practice, districts may include land that is actively farmed, idle, forested, as well as residential and commercial.

AGRICULTURAL USE, GENERAL

The production, keeping or maintenance of plants and animals, including, but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, lambs, alpacas, or goats, or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees, forest products and forestry uses; and fruits of all kinds, including grapes, nuts, berries and vegetables, unless regulated by other sections of this chapter. Agricultural Uses shall not include vegetable or flower gardens where the produce is for personal use and the products are not for sale. (Refer to §525-33 Special requirements for restrictions)

AGRICULTURAL USE, COMMERCIAL

An AGRICULTURAL USE, GENERAL, that involves over 300 mammals and/or 1000 fowl or is a Concentrated Animal Feeding Operation (CAFO) as defined by the New York State Environmental Conservation Law. (Refer to §525-33 Special requirements for restrictions)

AGRICULTURAL USE, COMMERCIAL STABLE

Any use that involves horses, donkeys, mules, lambs, alpacas, or any similar animals for any related business purpose and/or for compensation, and/or incidental to the operation of any club, association or similar establishment. (Refer to §525-33 Special requirements for restrictions)

AGRICULTURAL USE, INDUSTRIAL

Any milk processing plant; feed storage supply facility; farm machinery or equipment sales and service facility; storage and processing facility for fruits, vegetables and other agricultural products; or similar use directly and customarily related to the supply and service of an agricultural use. Agricultural Use, Industrial, does not include on-farm production, preparation or marketing of crops, livestock and livestock products incidental to a General Agricultural Use or Commercial Agricultural Use. (Refer to §525-33 Special requirements for restrictions)

AGRICULTURAL USE, PERSONAL

Any AGRICULTURAL USE, GENERAL, with a maximum combined total of not more than 5 livestock animals, except for horses as set forth in 525-33(A)(3), and not more than 25 fowl and if the use includes the sale of agricultural products, plants and animals as defined in Agricultural Use, General, those agricultural products for sale must be produced on the lot or from other local growers and such agricultural products shall only be sold from a single on-site temporary roadside stand or off-site market. Except for the sale of animals as defined in Agricultural, Commercial Stable, as such use or related sale shall follow requirements for Agricultural, Commercial Stable. (Refer to §525-33 Special requirements for restrictions)

STABLE, COMMERCIAL

Any establishment where horses, donkeys, mules, or similar animals are kept for training, riding, driving or stabling, for compensation, or incidental to the operation of any club, association or similar establishment.

STABLE, PRIVATE

A building accessory to a residential use, in which horses, cows, sheep and/or other large mammals are kept for private use and not for remuneration.

§ 525-33: Special requirements.

- A. Special requirements for each Agricultural Use identified and defined in §525-5 shall apply as follows:
- 1) An Agricultural Use, General and Agricultural Use, Commercial Stable, shall have a minimum lot area of 7 acres except as otherwise prescribed by this section.
 - 2) The keeping or maintenance of animals or animal waste for any use on any parcel shall be not less than 150 100 feet from any residence located on another parcel unless a written agreement is obtained from the impacted residence.
 - 3) Any use that involves the keeping of horses, donkeys, mules, lamas, alpacas or similar animals requires a minimum lot area of one acre per said animal.
 - 4) Adequate shelter shall be provided to protect all animals on the site and adequate fencing shall be provided to secure and contain all animals on the site.
 - 5) An Agricultural Use, Commercial, shall have a minimum lot area as permitted by a Concentrated Animal Feeding Operation Permit issued by the New York State Department of Environmental Conservation, or as otherwise determined by site plan review.
 - 6) An Agricultural Use, Industrial, shall have lot sizes and minimum setbacks as required by site plan review.
 - 7) An Agricultural Use, Personal:
 - a) Within any R1 zoning district that involves animals shall have a minimum lot of 5 acres.
 - b) Within any AR zoning district that involves animals shall have a minimum lot of 3 acres.
 - 8) These regulations do not apply to properties that are within the legally defined NYS Ag District.

New §525 Use Regulation Table

ACCESSORY USES	AR	R1	R2	R3	CN	CR	I	C
Accessory dwelling unit	S	SUP	S	S	S	S		
Day care – family home	P	P	P	P	P	P	P	P
Day care – group family home	P	P	P	P	P	P	P	P
Home occupation	S	S	S	S	S			
Cottage industry	SUP			SUP	SUP	SUP		
Agricultural Use, Personal	P	S						
Seasonal business	P				P		S	
GENERAL USES	AR	R1	R2	R3	CN	CR	I	C
Airport/heliport	S						S	
Agriculture, General	P						P	S
Agriculture, Commercial	S							
Agriculture, Commercial Stable	S							
Agriculture, Industrial	S				S	S	S	
Antenna	S						S	
Churches	S		SUP	SUP	SUP			
Club – rod and gun	P							
Club, membership	S				S	S		
Day-care center	S				SUP	S	S	
Extraction, private	P						P	S
Golf course, driving range	S							S
Kennel	SUP				SUP			

<i>Nursing home, convalescent home</i>	S			S	S	S		
<i>Private school</i>			S		S	S		
<i>Public/government use</i>	P	P	P	P	P	P	P	S
<i>Public utility</i>	S		S	S	S	S	S	S
<i>Roadside stand</i>	P	P	P	P	P	P		S
<i>Stable, commercial</i>	S							
<i>Stable, private</i>	P							

The Town Board appointed Chad West as the Alternate Planning Board Member. His term will expire May 8, 2021. Chairman Steed welcomed Board Member West.

Vice Chairman Parsons discussed the memo from the Town Supervisor regarding the moratorium on solar and wind energy development plan of action:

- Town will gather other municipalities plans by July 1, 2018
- Town will present them to the Planning Board by August 1, 2018
- Town will receive recommendation by the Planning Board by September 1, 2018
- Town will hold public hearing at the October Town Board meeting
- Town will have implementation at the December Town Board meeting

No other business to come before the Board. Board Member French made a motion to adjourn the meeting; Board Member Berman seconded the motion. All were in favor. The meeting was adjourned at 9:16 p.m.

Respectfully submitted,

Michelle Murray
 Planning Board Secretary

Original on file with Town Clerk

cc: Planning Board
 Town Board
 Town Clerk
 Town Attorney