

# TOWN OF ONONDAGA

## Planning Board

ALFRED J. FULLER  
4564 Cole Road  
Syracuse, NY 13215

DAVID C. BAKER  
5577 Bull Hill Road  
LaFayette, NY 13084

TOWN HALL  
5020 Ball Road · Syracuse, NY 13215

MARC A. MALFITANO, Chairman  
5155 Jupiter Inlet Way  
Syracuse, NY 13215

LINDA M. CAMPBELL  
4929 MacGregor Lane  
Syracuse, NY 13215

JAMES MAHANEY  
4934 Horizon Terrace  
Syracuse, NY 13215

### Meeting Conducted at 7:30 p.m. November 13, 2017

#### Present:

Marc Malfitano, Chairman  
David Baker  
Linda Campbell  
Alfred Fuller  
James Mahaney  
Nadine Bell, Attorney  
Bill Perrine, Engineer

Chairman Malfitano called the Planning Board to order at 7:33 p.m.

#### **Leubner Subdivision**

Having received the affidavit of publication of the notice of public hearing dated November 5, 2017, Chairman Malfitano called the public hearing to order. Rainer Leubner, applicant, and his son Ed Leubner, appeared before the Town Planning Board requesting the subdivision of the property at 4974 Cedarvale Road into a 2 acre lot which includes a house and adding the remaining 6 acres to the adjacent property at 4962 Cedarvale Road.

Chairman Malfitano asked if the applicant had received the comment letter from Mr. Perrine dated October 25, 2017. Mr. Leubner replied that he had received the letter and all comments are addressed in the revised plan. A copy of the plan was provided to Mr. Perrine for review.

Chairman Malfitano asked for confirmation of the required the front setback line for an R-1 zoned property. Mr. Perrine confirmed that the required setback under the revised law for R-1 zoning is 50 feet plus 15 feet.

There being no further comments or concerns, Chairman Malfitano declared the public hearing closed.

Chairman Malfitano explained that this property is subject to a 3 mile review by the City of Syracuse. There was discussion of the process and Chairman Malfitano suggested that the applicant or a land surveyor on his behalf should refer the matter to the city engineer's office and begin the 3 mile review process.

Mr. Perrine will review the revised plan and this matter is scheduled to appear on the November 27, 2017, Planning Board meeting agenda.

### **Burt Subdivision**

Mr. Jay Holbrook, land surveyor for the applicant, made note to Chairman Malfitano that it is his understanding that the 3 mile review process has changed and now requires final approval from the Town Planning Board prior to beginning the 3 mile review process.

Chairman Malfitano noted that the response from the referral to the County Planning Board regarding the Burt Subdivision, dated October 25, 2017 was received indicating no significant inter-community or county-wide implications.

Mr. Holbrook provided a final plan which has been revised as requested with the owner information and is labeled final plan. Chairman Malfitano noted that the Planning Board is also in receipt of Mr. Perrine's comment letter dated September 26, 2017.

Mr. Fuller then made a motion to approve the preliminary plan, waive further public hearing, and grant final approval for the Burt subdivision Lots 1 and 2, last revised November 13, 2017. Ms. Campbell seconded the motion and with all in favor it passed unanimously.

### **Charles Luchsinger Subdivision**

Chairman Malfitano acknowledged receipt of the response from the referral to the County Planning Board dated October 25, 2017, indicating no significant inter-community or county-wide implications. The following comment was offered by the County Planning Board: The Board encourages the Town to require a 60' right-of-way on proposed Lot 1 to ensure appropriate access to the parcel in the event of any future subdivision of the land.

Mr. Holbrook indicated that the revision on the plan includes adding addresses to Lot 3 and Cherchio's lot as required by the 3 mile review. Chairman Malfitano noted receipt of a letter from the Town Engineer dated September 26, 2017.

Mr. Fuller then made a motion to approve the preliminary plan, waive further public hearing, and grant final approval for the Charles Luchsinger subdivision last revised November 13, 2017. Mr. Mahaney seconded the motion and with all in favor it passed unanimously.

### **State Farm Insurance**

Mr. Tim O'Connell of West Seneca Development LLC and Mr. Matt Roe, State Farm Insurance agent appeared before the Planning Board at the request of the Zoning Department for the review of a sign located at 4856 W. Seneca Turnpike, Syracuse, NY 13215, in the West Seneca Turnpike Overlay District.

It was noted that the current sign poles have been in their current location for approximately 30 years. The sign itself is the only proposed change. The sign is located 24 feet back from the road and also 24 feet from the driveway. Chairman Malfitano confirmed that the requirement is 20 feet minimum from the property line with a maximum size of 32 square feet. He noted that at 24 feet from the road and 18.75 square feet, the proposed sign is compliant with sign requirements.

The Town has received a cut sheet showing the dimensions as 30" x 89" with 3 feet of clearance underneath as a requirement, and is 24 feet from the property line as per code requirement. It was noted that West Seneca Development LLC is the property owner and applicant for the sign.

Mr. Mahaney made a motion to approve the proposed sign at 4856 West Seneca Turnpike dated November 13, 2017, under the West Seneca Turnpike overlay criteria, as presented. With no further discussion, Mr. Baker seconded the motion and it passed with all in favor.

### **Hallinan Meadows**

Mr. Hal Romans, Mr. Michael Bragman and Mr. Michael Bragman, Jr. appeared before the planning board with a revised grading plan for Hallinan Meadows. Mr. Romans referenced an email dated October 31, 2017, from Mr. Perrine regarding revisions that have occurred during the course of the project to the engineering drawings for the grading plan, road profiles and the storm sewer profiles. Mr. Romans referenced the grading plan and noted that there is a cloud shape on the drawing that highlights where the changes are located. The catch basin structures 9 through 15, 17 and 18 rim elevations were raised 3 inches to allow one course of brick to be added under the structures' frame and grade. He further explained that this was needed to get the proper concrete aprons around the base for longevity of the catch basin itself in an effort to avoid failures. As a result of the catch basin rims being raised 3 inches, the grading plan had to be changed also.

Ms. Campbell asked if the grade on the road went up 3 inches. Mr. Romans reference the road profile sheet and noted that the road grade went up approximately 3 inches therefore raising the grade itself as it is all interconnected. Mr. Romans stated that as a result the rims will be raised 3 inches, the center line road elevation for November Lane also had to be raised 3 inches. Ms. Campbell asked if the grade on Hallinan Road also had to be raised. Mr. Romans responded that it would have to be raised.

Mr. Romans referred back to the email and continued reading that, during the time that these changes were made, the developer realized that they raised the finished floor elevations for the homes on lot numbers 7 through 14, and they could avoid having to blast for the basements on these lots. Ms. Campbell asked how much they had to be raised. Mr. Romans responded that they were raised from a low of 3 inches to as much as 24 inches on one lot, with the average adjustment being 21-22 inches.

Chairman Malfitano asked why this was done without prior approval. Mr. Bragman, Jr. responded that many times after the initial approvals are made, they do not work in the field. The changes are not made arbitrarily but after speaking with the Town Engineer, who he believed was making the Town Board aware of the changes. Chairman Malfitano asked if he was referring to these specific changes and Mr. Bragman responded that the grading plans were updated by C&S Engineers at their request as design engineer. Chairman Malfitano asked why they made such a significant change without coming back to the Planning Board. Mr. Bragman responded that they did not know they needed to come back to the Town as the concept and layout stayed the same. He additionally stated that if they had known that raising the foundations up in the field to avoid blasting needed approval, they would have sought approval.

Chairman Malfitano asked if they obtained approval from C&S as the Town Engineers before making the changes on the lots. Mr. Bragman responded that they did. Chairman Malfitano asked Mr. Perrine if approval was requested. Mr. Perrine responded that it was treated as a field change and he did not communicate to reaffirm the grading plan. Chairman Malfitano asked if by raising the lots and adding more fill, the assumption is that there does not need to be blasting. Mr. Bragman confirmed that would be true for the foundations, but there would still need to be blasting for the utilities. Chairman Malfitano noted that the agreed process was that the necessary blasting would be done as part of the development phase. Mr. Bragman agreed. Chairman Malfitano asked if when they get to the final plan, will there be any problem agreeing

that there will be no more blasting on this site, period. Mr. Bragman agreed, but added as long as all home contractors and home buyers follow the exact grading plan. Ms. Campbell noted that the applicant had multiple meetings with the Planning Board where blasting was discussed. She asked for an explanation as to why it wasn't as critical at that time but now it is critical. Mr. Bragman responded that at times the original plans change once in the field. He added that you can't blast 2 feet out of a foundation without over blasting, so their rational was that it's better to have a house on stable footing rather than worry about over blast. Mr. Bragman also noted that if they had known they were required to come before the Planning Board with these changes, they would have.

Chairman Malfitano stated that as he reviews the numbers, they all have an 8 foot floor-to-floor difference for the basement and therefore if a homeowner wanted a 13 course basement they would not have that option. Mr. Bragman agreed. Mr. Romans added that they cannot go deeper than what is shown on the plan. Chairman Malfitano added that they should not be permitted to go higher either. Mr. Bragman responded that there is plenty of opportunity for that on some of the southern lots, also noting that this is a very unique site.

Chairman Malfitano noted that for a number of the lots there has been a significant amount of fill. He asked if when that fill was put in, it was compacted as structural fill. Mr. Bragman responded that it was not. Chairman Malfitano clarified that he was referring to the lots. Mr. Bragman replied that it was not put in as structural fill on the lots. Chairman Malfitano stated that there is a risk that if someone is anticipating a standard excavation, it may not be possible because there is fill and they will have to go down to bearing soils which may require additional foundations. Mr. Bragman said that they met with Mr. Ben Vincent, Codes Officer, and discussed this subject and it was noted that some of these home sites will require a structural pad. Mr. Baker asked if such consequences will be known to the home buyer and be in black and white. Mr. Romans responded that the language he has seen in the contract is black and white. Chairman Malfitano stated that he would like there to be some notes on the plan to these issues.

Mr. Michael Bragman, Sr. asked to join the discussion and stated in regards to Chairman Malfitano's question that they knew this was a difficult site that would necessitate the importation of a large amount of fill. He noted that they already have more than 25,000 yards of fill and they knew that from the mid point to the northern boundary that there were approximately 9 lots that would be impacted by rock and they knew they would have to do some blasting and digging of that rock. As a result and coupled with that, there was a need for additional fill. Mr. Bragman, Sr. continued, stating that they have made it clear to buyers from the beginning, and he presented a copy of their contract that he stated spelled everything out. Included in the contract is everything that has been discussed including the fact that they will be filling the lot, the fact that the buyer will be completing their work with the structure and the final grading according to the required grading plan, that they will have received a copy of the grading plan, that they will have inspected the lot where we have offered to do test digs before they would have executed any contract, that they would be aware that those 9 lots would be subject to filling with fractured rock and that some of that rock would not be suitable for backfilling the foundations or for final grading and that they would be responsible for that, and they had to excavate and they had to dispose beyond backfilling, beyond landscaping and they would be responsible for any fill that was not on site, unless an agreement was made with the builder. Mr. Bragman advised that a copy of the contract was provided to Mr. Vincent. He further noted that this has not just been a verbal discussion with potential lot buyers, home buyers or home builders; everything is written into the contract and nothing that has been discussed today is not written into the contract, including the opportunity for them to be on site for a test dig on those 9 lots so they can actually see what is a part of the excavation of the foundation.

Ms. Campbell asked if this part of the contract is only for the 9 lots. Mr. Bragman responded that it is for any lot that is impacted with stone. There is a second contract for lots not subject to stone impact but would be subject to fill. Mr. Bragman, Jr. added that for any of the lots offered for sale in this subdivision, there is language in the contract stating that there is a grading plan approved by the Town Planning Board and they need to follow it. Mr. Bragman, Sr. stated that he was uncomfortable with the previous discussion for the record, that the burden of their not coming back to the Board should not be placed on the Town Engineer as they have enough experience to know they should have asked if they should be coming back to the Planning Board. Mr. Bragman continued noting that no blame should be cast, if there is any blame, solely on the shoulders of the Town Engineer, he should have asked and he didn't and he therefore apologizes.

Chairman Malfitano stated that he has a follow up question related to having seen the site as recently as today, and that Lot 19 has a lot of big rock being covered over with dirt and that is not suitable. Mr. Bragman responded that this is a lot that had a severe change in elevation and as a result some of the larger rock has been placed in there and there is still 3 to 3.5 feet of fill that will go on top of that rock. Chairman Malfitano stated that his comment is, the potential that a lot of the large rock is placed in areas that will have to be excavated for the foundations and isn't going to be suitable backfill. There has not been a situation before when there has been as much quantity or risk of unsuitable materials being placed on lots in areas of footprints that the Planning Board has had to deal with and Chairman Malfitano is concerned that this is not something that the Planning Board feels is appropriate.

Mr. Bragman explained that in Lot 1 there are branches, debris and rock that is their intention to remove to construct a berm for ornamental purposes for the monument entrance sign from Howlett Hill Road and place some ornamental rocks on top of that. Looking back at Lot 19, he noted that they will continue to bring in fill and they understand that on Lot 19 as they continue to excavate if there is rock that is not suitable, that will have to be disposed of and traditional fill will be made available and will be part of that lot foundation construction. Chairman Malfitano replied that his question is why unsuitable fill is being placed near the footprint of the house in the first place. Mr. Bragman, Jr., responded that Lot 19 required so much fill regardless and they will not be able to get down to virgin ground without burying block. Chairman Malfitano responded that he knows about the concept of buried block in the foundations, however, you are putting in material that shouldn't be there in the first place and justifying it by saying it will have to come out to get to suitable ground.

Ms. Campbell noted that they are covering over unsuitable fill and then transferring the cost expenditure to remove it and replace it with suitable fill to the buyer. Mr. Bragman responded that in regard to the 9 lots to the north where they will be putting fractured rock in as a part of the fill material, they have written into the contract that anything that is not suitable for back filling close to the foundation or backfilling on the lot, or for the utility trenches, if something has to be excavated and disposed of it is the responsibility of the buyer and is part of the financial equation.

Chairman Malfitano asked where the unsuitable material will be disposed of. Mr. Bragman responded that they fill to the grading plan and often times the spoils from the foundation is the responsibility of the buyer, builder or contractor who may take them off site or use them for ornamental purposes. Chairman Malfitano clarified his concern for fill is with the primary structure and where decks or swimming pools will be built. He is not as concerned about the perimeter of the lot if not interfering with swales and grading plans. Chairman Malfitano noted that with Lot 19, when he saw the amount and the size of the rocks, he was surprised it would be placed near a building envelope and then covered over with the risk transferred and the possibility of it being dumped in swales by lot owners. Chairman Malfitano stated that the applicant gave us a plan and then shifted the plan in terms of the risk of blasting without coming

back to the Planning Board. Originally they were going to handle all of the blasting with no risk to anyone and as part of the contract. The Planning Board's concern was a builder coming before the Board seeking approval to blast near other new foundations. Chairman Malfitano continued noting that the applicant has shifted the risk of any additional blasting or rock excavation to the buyer and the Planning Board has a legitimate concern of the risk of anyone stating they need to blast more. Mr. Bragman replied that all of the blasting has been done for the storm drainage, sanitary sewers, storm facilities and utilities; and the point of discussion here today as far as the field changes are concerned allowed them to take the position that there would be no more blasting and it is incorporated into the contract. Chairman Malfitano reminded the applicant that originally the plan was that all necessary blasting would be done as part of the development process so there was no risk of blasting to any of the envelopes in the future. Mr. Bragman inquired as to why the Planning Board would believe they would be allowed to do more blasting now. Chairman Malfitano responded that they are concerned because the applicant has decided that they are now not blasting in those areas but are raising the grades on these lots by up to 2 feet and are therefore going to assume that there is no need for blasting and have quoted a contractual provision that shifts the burden to the buyer which is not what the applicant's company and the Planning Board agreed to.

There was continued discussion as to the original expectations and the current situation. Ms. Campbell stated that it will be necessary to have labeled on the plan that there will be no further blasting on the site. She read from prior Planning Board meeting minutes that Chairman Malfitano made a motion to approve the preliminary plan for Hallinan Meadows last revised April 4<sup>th</sup> and the construction drawings as follows; included in that list was a grading plan. Ms. Campbell noted that the approval of this Board was conditioned upon the grading plan that was in place April 5<sup>th</sup>, not one that changes the grading plan.

Chairman Malfitano asked if there were other areas that the applicant wanted to address. Mr. Romans responded that there was a revision to the swale. Chairman Malfitano noted that he had been consulted regarding moving the swale because the neighbors next door were concerned about the cutting of the trees. Ms. Campbell asked if the changes will have an impact on drainage. Mr. Perrine responded that they were all positive impacts because the houses have been raised, the downside being that more fill will be needed. Ms. Campbell asked if there would be an impact to homeowners in surrounding subdivisions and Mr. Perrine replied that there were no negative impacts to Autumn Ridge or the existing homes north on Onondaga Road or on the east side of the creek.

Mr. Bragman asked if Chairman Malfitano could suggest what would be acceptable to the Board in regards to Lot 19. He continued to explain that what was seen on Lot 19 is not what is found on the 9 lots which contain fractured fill and smaller rock. Chairman Malfitano responded that the Planning Board will take this matter under advisement and then come back and figure out what they should more formally condition or change rather than giving a partial answer at this time.

Mr. Bragman, noting that the economics of the project is of no concern to the Planning Board, explained that because of the flood plain they originally reduced from 22 lots to 19 lots and have been working on this project for over a year, have made tremendous progress including the possibility of having the asphalt down in the next week, and want to forge ahead. He noted respect for the Planning Board's concerns but ask for as little delay as possible in proceeding to a final plan. Chairman Malfitano wants to further review the revised plan and would like to have Hallinan Meadows appear on the November 27, 2017, Planning Board meeting agenda.

Mr. Perrine asked if the developer can continue moving forward with the road. Chairman Malfitano noted that there was significant fill for the road and he never saw evidence that the road was compacted. He noted his concern for the road settling. Mr. Perrine responded that

inspections had been made during the roadway construction and his question was more for construction and scheduling, and was it the intention for the developer to wait for the November 27<sup>th</sup> meeting to continue. Chairman Malfitano responded that he is not suggesting that. He added that the rock near the building footprint on Lot 19 should not be there. There was discussion as to the potential use for the rock.

### **Planning Board Minutes**

A motion was made by Mr. Baker, seconded by Mr. Fuller, that after minor changes, the Board approve and accept the meeting minutes of the October 23, 2017, meeting. The motion passed unanimously.

A motion was made by Chairman Malfitano, seconded by Ms. Campbell, that there being no further business to come before the Board the meeting be adjourned. The motion passed unanimously and the meeting was adjourned at approximately 9:05 p.m.

Respectfully submitted,

Melinda L. Mayer  
Secretary