Colden Planning Board Meeting

July 16, 2024

Planning Board Members Present:	Walt Kammer (Chairman), Dakota Fortune, Andy Gow, John Riley, Cheryl Schenne, George Reinhardt, and Bobby Walker
Also Present:	Applicants: Mr. & Mrs. Maybach & Jesse Hyrick (Evergreen) Tom Dziulko (Fire Inspector/Asst Code – Enf. Officer), 1 Resident, Town of Colden Constable

The July 16, 2024 Planning Board Meeting was called to order at 7:00 PM by Walt in the courtroom at the Colden Town Hall.

The Board Members reviewed the June 18, 2024 minutes and Bobby motioned to approve the minutes with a revision as follows:

> *"The applicants met with the Environmental Board on June 4, 2024 and the SEQR was determined to have a negative declaration."*

George seconded and all were in favor.

Special Chairman Introduction for Meeting

Due to some uncertainty by a citizen, Walt reviewed the Change of Use (CoU) with the Board Members and explained the Planning Board's role for any CoU process. The CoU doesn't require the Planning Board to hold a public hearing; mandatory public hearings are limited to code changes and other special actions. Likewise, for Planning Board meetings there is no mandatory Privilege of the Floor. The Town Board will have the final review and disposition actions on any CoU, with due consideration to the advisory reports from the Colden Environmental Board and Colden Planning Board. There is no requirement for the Town Board to hold a public hearing on a Change of Use application.

Mr. & Mrs. Maybach, Change of Use (CoU)

Walt introduced the applicants to the Planning Board and proceeded to review their application. Walt shared an aerial view from Google Maps of the parcel and confirmed the location for the new build with the applicant. Walt did confirm that the applicant is in commercial zoning. Walt reviewed the sealed survey that was submitted by the applicant and confirmed with the applicant

that there aren't any easements which exist. This was confirmed by the applicant(s). The Environmental Board previously reviewed the application on 7/2/24 and the SEQR was determined to have a negative declaration. The CEO's issued a Building Inspector Report on or about 6/13/24. The CEO's stated that all Town Codes are met and will be in compliance with Zoning. Walt reviewed that the CEO's preliminary letter on 9/8/22, for two specific permitted principal uses for the applicant's parcel. That letter was courtesy guidance for the Applicant prior to the real estate purchase of the parcel. Walt also reviewed that all NYS and DEC requirements for material safety and handling must be met, and that any "hazmat" events will be reported to the DEC, and the Town's CEO, immediately upon occurrence.

The following conditions will be added to the Chairman's Report to the Town Board:

- Upon exiting the parcel no backing of trucks will be done. Any infrequent emergency backing upon entrance will have a safety flagman. A traffic study isn't required.
- If any roadside signs, then Chapter 108 Article X111 {Signs} will be applicable. Specifically in C-Zoning, §108-72 applies. Same applies for lighting and will need to follow the proper code.
- There isn't any storage of materials associated with the enterprise be outside of the proposed existing building. This includes storage in metal multimodal containers and similar rental containers known as PODs.
- A "good neighbor policy" with respect to hours of operation be considered for the typical workday at the site, with exceptions minimized when possible.
- The applicant verified that there won't be a floor drain. An oil separator won't be required.
- The applicant verified that a slab poured concrete floor and heated structure is planned. The structure will need to meet the NYS Energy Code but not the NYStretch Energy Code as Colden was not an "early adopter" of the NYStretch requirement.
- Sanitary Facility are located nearby in the applicant's adjacent residence, and the applicant will rely on State and Erie County of Health requirements if any issues occur. There will normally be no employees working in the building other than the applicant.
- The existing driveway, existing culvert, and proposed parking lot will need to be marked on the new stamped survey which the applicant will have prepared using the existing survey as the baseline.
- The position of the new building should be shown on the drawing by a surveyor, including boundary setbacks, and the footprint of the new building should be drawn to scale as the preliminary hand drawn markup was not to scale.

John made a motion to approve the CoU and Cheryl seconded. All were in favor. Walt will submit the Planning Board findings to the Town Board in his report. Walt reviewed the updated changes that need to be shown on the submitted stamped survey to the Code Enforcement Officers with the applicant. This updated survey will be a requirement after potential approval of the CoU by the Town Board, and the updated document must be submitted with any subsequent Building Permit application to the CEOs.

EverGreen of WNY LLC, Change of Use (CoU)

- Walt reviewed the Change of Use (CoU) with the Board Members. Walt also commented that a concern for the parcel acreage requirement will need to be discussed. Walt shared an aerial view from Google Maps of the parcel and confirmed the location. Walt stated that the CoU is for existing property classified as "Vacant with improvements". The CoU will define a new principal use supporting the applicant's Arborist and Tree Service enterprise. The CoU will also define existing structures as the new principal structures supporting the new purposed principal use; the CoU will consider a long-term intent to construct another principal or accessory building to likewise support the same principal use, but those construction plans are in the future and not part of this CoU. The Environmental Board reviewed the application on 7/2/24 and the SEQR was determined to have a negative declaration. The CEO's issued a Building Inspector Report and stated that the pending CoU will be in compliance with Zoning as long as setbacks and other zoning conditions are met. Walt reviewed the parcel size and shape along with road frontage. Walt stated that as per tax records the applicant has standing to submit the CoU. The existing building(s), after any approval of this CoU, will support the new principal use proposed, which is an allowed Principal Use in the Ag zoning where the activity will take place. The Principal Use is a permitted use per §108-36.A(20), contracting business. Walt noted that the submitted survey doesn't indicate or show any backland easements (such as gas lines, etc) which could impact the proposed project's implementation. Upon questioning, the applicant confirmed that there is a utility easement as gas line runs diagonally through the middle of the property. The applicant stated that the utility is aware of the CoU application. Andy asked the applicant about future buildings, the applicant stated that as of right now there won't be any construction. Walt stated that once the applicant receives approval from the Town Board on the CoU, any new construction will clearly need a Building Permit issued by the CEO, and possibly, pending CEO desires a site plan review by the Planning Board. Walt received two documents submitted prior to the meeting and thus clearly not within the mandated 72-hour advance notice. One submission was from the applicant, and another from a dissenting citizen. After mutual concurrence with the applicant and concerned citizen, the Chairman allowed the documents to be discussed at the meeting so that a timely resolution of the CoU application could proceed. The concerned resident that lives near the property, but on Woodview, addressed concerns in writing in the second document. Walt reviewed all the relevant concerns and stated the Planning Board nor the Town Board will address any civil disputes between the parties. Walt allowed the applicant concerns, expressed in writing, in that written document and the comments were discussed on each point. Due to the mutual agreement of the parties, Walt also allowed a document submitted by the applicant to be reviewed by the Planning Board which likewise wasn't received 72-hours before the meeting. The CoU applicant submitted a bilaterally signed agreement/contract for a land purchase from an adjoining northwesterly neighbor. The agreement allows the applicant to purchase some adjacent land which will increase the applicant parcel's acreage to more than the 6 acre requirement mandated in §108-36.A(20). The purchase will not create an illegal lot after the subdivide of the adjacent donor parcel. Andy asked about long-term goals; applicant not to have any equipment stored outside but

will perhaps build another structure to contain equipment and storage. The PB examined the applicant's SEQR Part 1form. Attention was directed to page 1 section 3 (b) which defines land disturbance. The applicant's original form didn't properly reflect the disturbed acreage and it should be 0.50 acres versus the value shown. This minor disturbance was to reflect a future dream building for vehicle and equipment storage but that will be in the future. The Colden Environmental Board also questioned the answer to box 3(b), and a pen and ink change to 0.50 acres was made by both Boards. That change should be made by the Lead Agency also.

The following conditions and confirmations will be added to the Chairman's Report to the Town Board:

- Acre verified as 5.76 and will increase to 6+ with land purchase agreement.
- Zoning §108-59.B(1), (a)(b)(c) applies to Ag-Zoning – Applicant's site conforms to these provisions, but to be confirmed by the CEO during issuance of any Certificate of Zoning Compliance after CoU action by the Town Board.
- All NYS and DEC requirements for material safety and employee training be met, and that any DEC "hazmat" events will be reported to the DEC, and the Town's CEO, immediately upon occurrence.
- The Planning Board noted that this Permitted Principal Use doesn't have criteria for Required Parking Space in accordance with Code Article XI §108-52 through 58, only that the parking spaces are adequate for the business and employees.
- The applicant's letter of intent indicates there's open parking for enterprise vehicles. The applicant anticipates six motorized vehicles.
- Off street parking is considered Automotive Use Area 108-59 {Off Street Parking Requirements}.
- §108.56.J zoning will require fewer spaces than exist already due to the existing structure present.
- Zoning §108-59.E requires that ALL open off-street parking is considered an Automotive Use Area subject to Chapter 108 Article VIX. The Automotive Use provisions are set in Zoning §108-78 {Automotive Use Areas}. That section requires compliance with the following which will be a condition for CoU approval and confirmed by the Colden CEO's.
    - Zoning §108-78.A {surfacing} Applicant already has a durable dustless graded to drain water in compliance with code. Applicant to confirm and indicate that compliance will be agreed.
    - Zoning §108-78.B {lighting} Applicant must direct light away from street and adjourning premises, which applicant confirmed.
    - Zoning §108-78.C {screening and green area}. Applicant's Letter of Intent indicates 6 motorized vehicles, which is greater than 5 allowed, without application of this section, in the underlying Ag-Zoning.
    - Zoning §18-78.C(1) {Green Area} along road line, live planting strip. Applicant must comply; action already started by the Applicant.

    - Zoning §108-78.C(2) {Screening Area} fenced or evergreens per spec. Applicant must comply; action already started by the Applicant.
    - Zoning §108-78.D {Access},
        - (1) is Not Applicable {no intersection within 30"}, and
        - (2) no backing onto road, and traffic arrangement approved by Colden Highway Superintendent. Applicant must comply.
    - Zoning §108-78.E {Restriction on wrecked, junked, or dismantled vehicles}. Applicant must comply.
- With reference to Zoning Article XI §108-59 {Site requirements for off-street parking spaces} in Ag-zoning per §108-59.B(1) parking for employee and vehicles shall conform with:
    - B. Setback for all off-street parking spaces.
        - (1) In any R or AG District:
            - (a) Enclosed off-street parking spaces shall be subject to the regulations for accessory buildings in Article XVI.
            - (b) No open off-street parking spaces shall be permitted in a required front yard or exterior side yard corner lot.
            - (c) No open off-street parking for five or more motor vehicles shall be located within five feet of any side or rear lot line of an adjoining lot in R or AG District
- Based upon information known to date, the proposed new Principal Use will conform with the Setback requirements for off street parking. A condition to meet this requirement will be recommended.
- Parking should be shown on the final NYS RPLS sealed survey which will be included with any new building permit and also required for the CEO's CoZC. The parking layout is a Code Enforcement matter after CoU approval. The new survey will confirm the pending acquisition of additional adjacent land with will increase the acreage of the parcel to 6 Acres or more.
- The enterprise only has a limited number of employees, which most are seasonal. The staffing for the enterprise (per applicant assurances) will sometimes report for work at the parcel, but that traffic will not be excessive. Some employees, from time to time, instead report at the specific project sites for the various work contracts.
- The Planning Board, on any commercial activity, reviews the traffic pattern for the proposed action, especially if deliveries or large amounts of daily traffic are anticipated from time to time.
- The existing and proposed parcel roadways can accommodate entry/egress to the parcel that will never require backing of the vehicles and trailers onto Lower East Hill Road. This will be a condition of the CoU.
- The CoU's traffic impact is anticipated to be mainly at the start and end of each workday, and low in volume. Therefore, no traffic study appears justified. No accident study is required as the traffic study appears justified. No accident study is required as the traffic density on Lower East Hill Road is low.
- The road is rural in nature.

- Normal actions will NEVER require backing onto the road. If backing, from time to time, is required then:
    - For unexpected extraordinary situations, any truck backing INTO the driveway area from either approach direction MUST will have a "flagman" to direct citizen traffic during the backing INTO lot operation
- All EXITs from Driveway will be in a normal forward direction, in a safe manner, with flagman present.
- Condition for entry & egress: No backing of trucks/trailers onto the roadway.
- Condition that if any business signs are anticipated, then Chapter 108 Article XIII shall apply. Specifically, §108-69 shall apply.
- The Planning Board, at the time of the meeting, didn't receive an EC DEP GML 239(m) response, thus a possible Condition. If the County response isn't "Local Concern", the Town Board should consider those conditions, or refer this matter back to the Planning Board for reconsideration.
- The Applicant is encouraged to adopt a "good neighbor" approach to the operations at the site, especially during early workday starts.
- While the applicant has common ownership with several nearby parcels making up common ownership, there are other unrelated citizens located nearby in both Ag and R1-Zoning, so the Planning Board encourages neighborly consideration.
- The Town encourages commercial operational policies which have minimum negative impact on the rural lifestyle present in Colden.
- Final action on this CoU will be by the Town Board.
- There's no Public Hearing associated with a CoU application, just Town Board action(s).
- No storage (logs, timber, containers….) allowed on parking spaces which must remain as parking spaces and not converted to other uses.
- Right of way isn't an issue with utility.
- Resolve neighbor dispute between neighbors via civil means. They are not a Town Board or Planning Board matter
- Applicant stated that fuel is stored in above ground fuel tanks: on road diesel and 1 non-ethanol, No underground tanks
- Tom (CEO) verified that the proposed purchase of the adjacent land will not affect the building line width requirements for the "doner" parcel to the northwest. That parcel will remain a conforming lot after the land transfer.
- Parking-off street automotive use area - Walt confirmed with CEO on setback
- Land requirement and acquisition review to be included in the Chairman's report
- Equipment and vehicles are registered and will pass NYS Inspection and Emissions

Andy made a motion to approve the CoU, with the conditions reviewed during the meeting, for EverGreen. Cheryl seconded. All were in favor. Walt will submit the Planning Board findings to the Town Board in his report.

Old Business

The Planning Board will review the tabled topics until the August meeting.

New Business

There wasn't anything discussed.

George motioned to adjourn the meeting at 9:02 PM, and John seconded. All were in favor.

Submitted by: Crystal Barrett