

Town of Canandaigua

5440 Routes 5 & 20 West
Canandaigua, New York 14424

PLANNING BOARD

Established February 20, 1962

Tuesday, December 13, 2022 • 6:00 p.m.

MINUTES—DRAFT #1—SUBJECT TO CHANGE

The following minutes are the official and permanent record of the actions taken by the Town of Canandaigua Planning Board. Remarks delivered during discussions are summarized and are not intended to be verbatim transcriptions. An audio recording of the meeting is retained for three months.

The meeting was conducted at the Canandaigua Town Hall and via remote video conference.

R = Attended via remote video conference.

Meeting called by: Charles Oyler, *Chairperson*

Board members present: Robert Lacourse—**R**
Scott Neal
Mark Tolbert (6:20 p.m.)
Amanda VanLaeken

Alternate: Position vacant

Staff present: Shawna Bonshak, Town Planner
Lance S. Brabant, CPESC, MRB Group, D.P.C.
Kimberly Burkard, Remote Access Facilitator
Christian Nadler, Esq., Planning Board Attorney

Attending:
Fritz Cermak—**R**
Jonathan Jones, Marks Engineering, 42 Beeman Street, Canandaigua, N.Y. 14424
Greg Westbrook, 4096 Onnalinda Drive, Canandaigua, N.Y. 14424

MEETING OPENING:

Recite the USA Pledge of Allegiance
Overview of video conference meeting procedures

Introduction of board members and staff
Overview of emergency evacuation procedures
Privilege of the Floor: *None*
Attest to the Publication of Legal Notice: *None*

4. EXTENSION OF SINGLE-STAGE SUBDIVISION APPROVAL

CPN-22-050 **Venezia & Associates, 5120 Laura Lane, Canandaigua, N.Y. 14424; representing Gregory R. and Beth D. Westbrook, owners of property at 4096 Onnalinda Drive.**
TM #113.17-1-32.110

Requesting a 90-day extension of the Single-Stage Subdivision Plat subdividing an existing 17.829-acre parcel to create Lot #1 at 13.855 acres and containing an existing single-family dwelling, Lot #2 at 1.874 acres and Lot #3 at 2.110 acres with no new development proposed, located within the RLD and SCR-1 Zoning Districts and detailed on the Single-Stage Subdivision Plat prepared by Venezia Professional Land Surveyors dated June 29, 2022, and as approved at the August 24, 2022, Planning Board meeting.

The original subdivision application was reviewed by the Planning Review Committee (PRC) on July 11, 2022.

The PRC referred the original subdivision application to the following Town offices and agencies:

Chris Jensen, Town Code Enforcement Officer
Town Environmental Conservation Board
James Fletcher, Town Highway and Water Superintendent
MRB Group D.P.C.
Kevin Olvany, Watershed Manager, Canandaigua Lake Watershed Council
Cheshire Fire Department

On August 24, 2022, the Planning Board classified this application as an Unlisted Action under the State Environmental Quality Review Act (SEQRA); determined that the application will not result in any significant adverse environmental impacts; made a determination of Non-Significance; conducted a line-by-line determination of the Planning Board Findings on this application as provided in Town Code Chapter 174 Subdivision of Land, Article II Procedures and Applications, § 174-15; and approved the Single-Stage Subdivision Plat with conditions (*see* Planning Board minutes of August 24, 2022, pp. 2–13, for the discussion of the application).

Mr. Westbrook presented this application.

In addition to the requested extension of the Single-Stage Subdivision Plat, Mr. Westbrook also requested that Condition #9 of the original subdivision approval resolution be removed. This condition states that “a shared use/maintenance agreement including contribution for maintenance and repair of Onnalinda Drive, for all lots on the private drive right-of-way, must be submitted by the applicant for review and approval by the Town Attorney and must be recorded prior to signatures on the final plat” (August 24, 2022).

In an email to Ms. Bonshak on November 30, 2022, Mr. Westbrook wrote that this condition requires that he and Beth Westbrook would be required to bind individuals who are not parties to the application. “We have no legal ability to do this,” Mr. Westbrook wrote. “The Town Board will need to pass separate legislation to achieve this outcome. . . .”

Mr. Oyler said that the two issues before the Planning Board this evening are Mr. Westbrook’s request for an extension of the subdivision approval and the removal of Condition #9 from the approval resolution.

Mr. Oyler said that the issue of a shared use/maintenance agreement was discussed in detail at the meeting on August 24, 2022, and received no objection from Mr. Westbrook’s engineer at that meeting. He also said that Kathy Foster (4065 Onnalinda Drive) submitted a letter to the board prior to the August meeting, and spoke to the board at the meeting, to discuss her role as the road committee chair and the person who collects funds from the property owners for the plowing and maintenance of Onnalinda Drive.

At the meeting in August, Ms. Foster said that the residents of Onnalinda Drive are not interested in participating in [road] maintenance or having a homeowners’ association (HOA). At the meeting this evening, Mr. Westbrook concurred with this.

Mr. Nadler said that Condition #9 in the subdivision approval resolution refers to a portion of the private drive to be known as Onnalinda Drive Extension off from which the proposed lots will be located. Mr. Nadler said that Condition #9 does not refer to the entire length of Onnalinda Drive.

Mr. Oyler asked how many lots would be served by Onnalinda Drive Extension. Mr. Westbrook said that a total of five lots would use this portion of the private drive.

Mr. Oyler suggested that at least some sort of formal agreement should be in place on that branch of the private drive [regarding responsibility for road maintenance and plowing] to avoid the expansion of the issue to which Ms. Foster referred regarding the maintenance of the existing portion of Onnalinda Drive.

Mr. Nadler said that Onnalinda Drive is a disaster. Mr. Westbrook said that he [Mr. Nadler] should be careful what he calls it. Mr. Nadler then said that it is not a great situation on Onnalinda Drive. He asked who will be responsible for Onnalinda Drive Extension 50 years from now.

Mr. Westbrook said that today there are three different parties who own the land [associated with this subdivision].

Mr. Oyler asked if Mr. Westbrook could get those parties to agree on some sort of agreement to jointly maintain the branch [Onnalinda Drive Extension].

Mr. Westbrook said that the owners are his family and that he did not wish to force his family [into this type of agreement]. He said that the Westbrooks always contribute [to Onnalinda Drive maintenance] when requested by Ms. Foster. He said that his family members always contribute but that he does not wish to force them [to do so].

Mr. Nadler said that he understands that Mr. Westbrook's children are not going to be a problem and that he understands that this [requiring Mr. Westbrook's children to participate in a shared use/maintenance agreement] is none of our [the Town's] business. But Mr. Nadler said that he is concerned that 100 years from now there may be a stranger who would own one of the lots and who would not chip in for the maintenance of the private drive.

Mr. Oyler said that there are still difficulties [with the maintenance on Onnalinda Drive] and that there is pushback on its maintenance. Mr. Westbrook said that this comes down to one party on Onnalinda Drive.

Mr. Westbrook said that they are not interested in an HOA. Mr. Oyler said that the board is not asking for that. Mr. Nadler said that the Planning Board has consistently required a shared use/maintenance agreement for other applications and locations in the Town where there is a shared driveway. He said that a family compound with one lot is one thing, but that this [subdivision] involves a number of separate lots. He said that when the Westbrooks no longer own the lots, the next owners should have some type of document which indicates the rules [of the responsibility of the maintenance of the road].

Mr. Nadler acknowledged that Mr. Westbrook is pursuing the conditions of subdivision approval diligently and that he is entitled to the requested extension.

Mr. Oyler said that Mr. Nadler is not requesting that Mr. Westbrook form an HOA.

Mr. Westbrook asked if Mr. Nadler is saying "no" to the removal of Condition #9.

Mr. Nadler said that he has provided the same advice to the board on every driveway—that the property owners should have a shared use/maintenance agreement—which can be a one-page thing—which indicates that each of the property owners on the private drive will chip in for the maintenance. He said that such a shared use/maintenance agreement would not bind you [Mr. Westbrook] above that.

Mr. Westbrook said that legally he did not think that he could ask the other owners.

Mr. Oyler asked if Mr. Nadler had a boilerplate text of a sample agreement. He said that perhaps it would be less imposing to Mr. Westbrook [if he could be provided with this].

Mr. Westbrook said that he is the controller of three-fifths of the property today. He said that if he were to sell one of the lots to an outside party, and if that buyer wanted to assign the responsibility to him, it would be fine. He said the outside buyer would have to make him whole when it comes to the responsibility of the driveway, but that he would not wish to do so for the lots which are owned by his children.

Mr. Oyler asked if Mr. Westbrook does not wish to have his children sign [such an agreement].

Mr. Westbrook said that they are pre-existing, that they were invited up [to the lots].

Mr. Nadler said that the board has the legal authority to require a shared use/maintenance agreement but that he did not disagree with Mr. Westbrook. He asked if Mr. Westbrook would provide a shared use/maintenance agreement on Lots #1, #3 and #4.

Mr. Tolbert said that he lives on a shared access road with 13 other property owners. He said that he wished that they had an agreement to some level, that he knew that they did not when he bought the property, but that he would like to have a shared agreement for the road. Mr. Tolbert said that as it is now they cannot make improvements to their private drive.

Mr. Westbrook said that his roadway design standards for Onnalinda Drive Extension exceed those of Onnalinda Drive.

Mr. Nadler suggested that a shared use/maintenance agreement be required for Lots #1, #3 and #4, and that Lots #2 and #5 would not be part of this proposed agreement.

Mr. Nadler asked if there is an easement over the private drive on Lot #5. Mr. Westbrook said yes. Mr. Nadler said that the Town should confirm that the easement is in full effect.

Mr. Neal asked about adding a clause [to such an agreement] that new owners of Lot #2 and Lot #5 would have to chip in [to the maintenance agreement] if the lots were to be sold. Mr. Nadler said that Lot #2 and Lot #5 are always going to be able to receive free maintenance.

Mr. Westbrook said that every request for payment [of maintenance of Onnalinda Drive] has been honored by his family. He said that he does not wish to have a rule to solve a problem which does not exist.

Mr. Oyler said that what Mr. Nadler is saying is that the lot owners must be obligated to support the maintenance of the branch. Mr. Westbrook said that in his view it is unnecessary but that he will look into this with his attorney and see what his attorney has to say.

■ **CONSENSUS:** Following discussion, it was the consensus of the board and Mr. Westbrook that a shared use/maintenance agreement be considered for Lots #1, #3 and #4 on Onnalinda Drive Extension, that Lots #2 and #5 will not be part of the agreement, and that Mr. Westbrook will have this consensus reviewed by his attorney and will respond back to the board and the Town staff.

Regarding his request for an extension to the subdivision approval, Mr. Westbrook said that he discussed this with his attorney and with Mr. Nadler, and at that point decided that he would not pursue anything with the easements at this time. He said that it is just being practical and that he should be finished in an additional 90 days.

Mr. Oyler asked about extending the subdivision approval until May 21, 2023. Mr. Westbrook said that this is possible.

Mr. Oyler said that he felt the board endorses the proposal [to have a share use/maintenance agreement for Lots #1, #3 and #4] and that Mr. Westbrook will discuss it with his attorney.

Mr. Brabant said that the current subdivision approval expiration date is February 20, 2023. He asked about an extension to May 21, 2023. Mr. Westbrook said that he agreed with the date of May 21, 2023.

There were no additional comments or questions on this application this evening.

■ A motion was made by MR. NEAL, seconded by MR. TOLBERT, that the application of Venezia & Associates, representing Gregory R. and Beth D. Westbrook, owners of property at 4096 Onnalinda Drive, requesting a 90-day extension of the Single-Stage Subdivision Plat subdividing an existing 17.829-acre parcel to create Lot #1 at 13.855 acres and containing an existing single-family dwelling, Lot #2 at 1.874 acres and Lot #3 at 2.110 acres with no new development proposed, located within the RLD and SCR-1 Zoning Districts and detailed on the Single-Stage Subdivision Plat prepared by Venezia Professional Land Surveyors dated June 29, 2022, and as approved at the August 24, 2022, Planning Board meeting, be approved. The new expiration date is **MAY 21, 2023**.

Motion carried by voice vote.