

PUBLIC HEARINGS

September 14, 2022

At 8:08 p.m. Supervisor Schiliro stated that Public Hearings which were opened and adjourned on August 10, 2022, would be reconvened in accordance with the Public Notices that follows:

NOTICE IS HEREBY GIVEN that the North Castle Town Board will hold a public hearing on Wednesday, August 10, 2022, at 7:30 p.m., or as soon thereafter, at Town Hall, 15 Bedford Road, Armonk, New York, 10504, to consider the Special Use Permit Application of Brothers Green Nursery. The proposed use of the premises is to continue its well-established use of the property as a nursery. The property is located at 11 Bedford Banksville Road, Banksville, NY, and known on the North Castle Tax Maps as 102.04-1-18, and located within the CB-B (Central Business B) and GB (General Business) Zoning Districts.

The special use permit application is available in the Town Clerk's office during regular business hours and on the Town website. ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO ATTEND AND BE HEARD.

By Order of the Town Board
Alison Simon, Town Clerk

Dated: July 27, 2022
Armonk, NY

NOTICE IS HEREBY GIVEN that the North Castle Town Board will hold a public hearing on Wednesday, August 10, 2022, at 7:30 p.m., or as soon thereafter, at Town Hall, 15 Bedford Road, Armonk, New York, 10504, to consider the Special Use Permit Application of Brothers Green Nursery. The proposed use of the premises is use of the property as a contractor's yard. The property is located at 11 Bedford Banksville Road, Banksville, NY, and known on the North Castle Tax Maps as 102.04-1-18, and located within the CB-B (Central Business B) and GB (General Business) Zoning Districts.

The special use permit application is available in the Town Clerk's office during regular business hours and on the Town website. ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO ATTEND AND BE HEARD.

By Order of the Town Board
Alison Simon, Town Clerk

Dated: July 27, 2022
Armonk, NY

The Public Hearings to consider the Special Use Permit Application of Brothers Green Nursery, 11 Bedford Banksville Road, Bedford, for use as a nursery and for a contractor's yard were reconvened at 8:08 pm and ran concurrently.

Councilman DiGiacinto moved, seconded by Councilman Hussain, receipt of letter from Kory Salomone of Zarin & Steinmetz LLP, dated September 6, 2022; and receipt of letter from the Planning Board, dated September 13, 2022.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Berra, Hussain, Milim, Supervisor Schiliro

Noes: None

Kory Salomone, Zarin & Steinmetz, attorney for the applicant Brothers Green Corp., summarized the amended application and indicated that, based on recommendations from the Town Board, Planning Board, and Conservation Board, the applicant revised the site plan and relocated all equipment and materials associated with a contractor's yard to the portion of the property that is within the General Business District (GB), which permits contractor's yards by special permit, and placed all equipment and materials related to the nursery use in the portion of the property that is within the Central Business District (CB-B), which permits nurseries by special permit. These changes required a special permit for the nursery use and an additional special permit for a contractor's yard.

Mr. Salomone noted that when the Public Hearings were opened at the Town Board meeting of August 10, 2022, Councilman Berra requested a list of equipment currently stored on the property; and this was provided in his letter to the Town Board dated September 6, 2022.

Councilman Berra recommended limitations to the equipment allowed to be stored on the property. Mr. Salomone stated that the size of the property would serve to limit the amount of equipment that could be housed on the property.

Councilman Berra asked whether there would be a Conservation Easement; and Mr. Salomone indicated that a Conservation Easement was not established and instead a wetland mitigation plan was agreed to as per Conservation Board requirements.

The Resolution for consideration by the Town Board included a 10 year term limit on the Special Use Permits.

Mr. Salomone stated his opposition to this term limit stating that it is unprecedented and unfair. He stated that the first time he became aware that a term limit was under consideration was when he reviewed the Resolution prior to the reconvening of the Public Hearing at tonight's meeting. Mr. Salomone stated, and Town Attorney Roland Baroni and Director of Planning Adam Kaufman confirmed, that at no time in Town history have Special Use Permits with term limits been issued by the Town Board.

Director of Planning Adam Kaufman indicated the inclusion of the proposed 10 year limit to the Resolution was based on prior discussions of the Town Board. Supervisor Schiliro, Councilman DiGiacinto, Mr. Baroni, and Mr. Salomone all stated they had no recollection of any discussion regarding a term limit pertaining to these Special Use Permits.

It was confirmed that this application had been reviewed by the Town and County Planning Boards and the Conservation Board, and the imposition of term limits to the Special Use Permits under consideration had not been recommended.

Supervisor Schiliro and Councilman DiGiacinto expressed concerns that any limit to the length of the Special Use Permit terms would be detrimental to the value of the applicant's business and property.

Supervisor Schiliro, Councilman DiGiacinto, and Mr. Salomone all stated that the imposition of term limits to this particular applicant at this time would not be fair.

Mr. Kaufman suggested that term limits presented a greater policy issue that should be addressed by the Town Board. Mr. Baroni stated any changes to the policy regarding the issuance of Special Use Permits should be codified.

Councilman Berra, Councilman Milim, and Councilman Hussain indicated support for a term limit for the Special Use Permits due to environmental concerns. They agreed that the term could be longer than 10 years, and suggested a 40 or 50 year term, and that setting a term limit would enable a future Town Board to readdress any future environmental concerns and would safeguard concerns regarding industrial use near water sources.

Applicant Richard Green stated his opposition to any term limit, and said that he had no prior notification of any consideration of term limits to his Special Use Permit application and that imposing an arbitrary term limit at this time would be highly unusual and unfair.

Resident Ed Lobermann expressed opposition to setting a term limit to this Special Use Permit application.

Councilman DiGiacinto moved, seconded by Councilman Hussain, to adjourn the two Public Hearings at 9:31 pm.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Berra, Hussain, Milim, Supervisor Schiliro

Noes: None

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Councilman DiGiacinto moved, seconded by Councilman Hussain, to reconvene the Public Hearings at 9:36 p.m.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Berra, Hussain, Milim, Supervisor Schiliro

Noes: None

After conferring privately with his client Richard Green; Mr. Salomone advised the Board that they would be willing to accept the approvals of the Special Use Permits with a 50 year term limit in order to move forward at this time. Mr. Salomone further advised that he reserved the right to challenge the decision in the future.

Mr. Baroni indicated his concerns that the Town Board's imposition of a term limit in this matter could lend itself to the risk of legal exposure.

Councilman Hussain moved, seconded by Councilman Milim, to adjourn to Executive Session for Advice of Counsel at 10:12 p.m.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Berra, Hussain, Milim, Supervisor Schiliro

Noes: None

Councilman DiGiacinto moved, seconded by Councilman Hussain, to reconvene the Town Board meeting at 10:22 p.m.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Berra, Hussain, Milim, Supervisor Schiliro

Noes: None

Councilmen Milim, Hussain, and Berra stated individually that they had changed their minds and agreed that term limits should not be imposed on the Special Use Permits. They did concur that the imposition of term limits to Special Use Permits is a matter of policy and should be addressed by the Town Board and considered for codification at a future date.

After all persons were heard who desired to be heard, Councilman DiGiacinto moved, seconded by Councilman Hussain, that the Public Hearing regarding the Special Use Permit Application of Brothers Green Nursery, 11 Bedford Banksville Road, Bedford, to legalize existing nursery use be closed at 10:27 p.m.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Berra, Hussain, Milim, Supervisor Schiliro

Noes: None

After all persons were heard who desired to be heard, Councilman DiGiacinto moved, seconded by Councilman Hussain, that the Public Hearing regarding the Special Use Permit Application of Brothers Green Nursery, 11 Bedford Banksville Road, Bedford, for a contractor's yard be closed at 10:27 p.m.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Berra, Hussain, Milim, Supervisor Schiliro

Noes: None

Councilman DiGiacinto moved, seconded by Councilman Hussain, approval of the Special Use Permit of Brothers Green Nursery to continue its use of the property as a nursery on the property located at 11 Bedford Banksville Road, Banksville, NY known on the North Castle Tax Maps as 102.04-1-18, and located within the CB-B (Central Business B) Zoning District, and the adoption of the Resolution with no sunset provision. The Resolution follows at the end of these minutes.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Berra, Hussain, Milim, Supervisor Schiliro

Noes: None

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Councilman DiGiacinto moved, seconded by Councilman Hussain, approval of the Special Use Permit of Brothers Green Nursery for use of the property as a contractor's yard on the property located at 11 Bedford Banksville Road, Banksville, NY known on the North Castle Tax Maps as 102.04-1-18, and located within the GB (General Business) Zoning District, and the adoption of the Resolution for with no sunset provision. The Resolution follows at the end of these minutes.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Berra, Hussain, Milim, Supervisor Schiliro

Noes: None

Alison Simon, Town Clerk

Dated: September 21, 2022

RESOLUTION

Action: Nursery and Contractor's Equipment Special Use Permit Approvals
Application Name: Brothers Green Nursery | Nursery and Contractor's Equipment Special Use Permit Approvals
Applicant/Owner: Brothers Green Corp.
Zone: CB-B & GB Zoning Districts
Location: 11 Bedford Banksville Road
Date of Approval: September 14, 2022

WHEREAS, the Town Board has received an application for a nursery in the CB-B Zoning District and Storage of Contractor's Equipment in the GB Zoning District; and

WHEREAS, the subject property is zoned CB-B fronting Bedford Banksville Road and GB in the rear of the property; and

WHEREAS, surrounding land uses consist of commercial development along Bedford Banksville Road; and

WHEREAS, the Property has been used for a variety of uses over the last century, including nursery, landscaping, excavation and construction, and contractor's yard; and

WHEREAS, the property has been under the current ownership for the last 15 years and used as a nursery for the last 40 years; and

WHEREAS, in 2019, the Applicant applied for and obtained a building permit to conduct work on the existing house located on the property; and

WHEREAS, after obtaining a building permit, the Applicant was advised that the original building permit issued for the work conducted on the house should never have been issued because there was no approved site plan in the Town's records for the Property; and

WHEREAS, the Applicant is seeking to legalize the existing uses on the property; and

WHEREAS, the Applicant is not seeking to change the current use of the Property as a nursery and the storage of contractor's equipment; and

WHEREAS, approval of a nursery and the storage of contractor's equipment requires the issuance of special use permits by the Town Board; and

WHEREAS, on May 11, 2022 the Town Board referred the special use permit requests to the Planning Board; and

WHEREAS, on September 12, 2022, the Planning Board reviewed and discussed the project and adopted a positive recommendation (4-0) that the Town Board adopt the requested special use permits; and

WHEREAS, the applications for special use permit were referred to the Westchester County Planning Board pursuant to Section 239 L, M and N of the New York State General Municipal Law and Section 277.61 of the County Administrative Code on May 24, 2022; and

WHEREAS, Westchester County did not provide the Town with comments; and

WHEREAS, the property is located within the 100-foot wetland buffer and stream buffer; and

WHEREAS, the project was referred to the Conservation Board for review and comment; and

WHEREAS, the Conservation Board provided a memorandum to the Planning Board dated July 26, 2022; and

WHEREAS, the Conservation Board notes that the Applicant is proposing to construct a grass berm along the property line to prevent water from draining into the stream and create an area where stormwater can be stored within the crushed stone pad; and

WHEREAS, the Conservation Board recommends that the requested wetlands permit be approved subject to the Applicant preparing a plan to remove invasive species in the buffers nearest to the wetland west of the concrete wall at the end of the developed portion of the property and reseed/replant near the edges of the wetland with a native wetland seed mix as needed to stabilize the site; and

WHEREAS, the Conservation Board also advocates for creating a conservation easement over the undeveloped portion of the property; and

WHEREAS, a duly advertised public hearing on said applications was conducted on August 10, 2022 and September 14, 2022, at which time all those wishing to be heard were given the opportunity to be heard; and

WHEREAS, § 355-37 of the North Castle Code establishes certain general standards for all special permit uses; and

WHEREAS, in order for the Town Board to approve a special use permit, the Town Board must find that all of the conditions and standards have been met; and

WHEREAS, pursuant to § 355-37(A) of the Town Code, in order to grant a special permit, the Town Board must find that “the location and size of the use, the nature and intensity of the operations involved in it or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the district in which it is located and that it complies with all special requirements for such use established in” the Town Code; and

WHEREAS, the subject property is located within the CB-B and GB Zoning Districts; and

WHEREAS, the Applicant is proposing relatively minor physical changes to the property (relocating equipment and construction of small berm); and

WHEREAS, the Town Board and Planning Board have studied the proposed application and have determined that the nursery and contractor’s yard are compatible with the neighborhood and surrounding residential character; and

WHEREAS, based upon the submitted information, while the property is visible from the road and surrounding properties, the Town Board finds that the proposed activities would not have a significant negative visual impact; and

WHEREAS, the Town Board, based upon its review of the entire record, finds that the location and size of the use, the nature and intensity of the operations involved in it or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the district in which it is located and that it complies with all requirements for such use established in the Town Code; and

WHEREAS, pursuant to § 355-37(B) of the Town Code, the second criteria for the issuance of a special permit is that “the location, nature and height of buildings, walls, fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of the adjacent land and buildings;” and

WHEREAS, the Town Board, based upon its review of the entire record finds that the location, nature and height of buildings, walls, fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of the adjacent land and buildings; and

WHEREAS, pursuant to § 355-37(C), the third requirement for the issuance of a special permit is that “operations in connection with any special permit use will not be more objectionable to nearby properties by reason of noise, fumes, vibration or other characteristics than would be the operations of any permitted uses not requiring a special permit;” and

WHEREAS, the proposed uses will be the same as currently exist and expansion of activities is not proposed; and

WHEREAS, the Town Board, based upon its review of the entire record finds that the operations in connection with this special permit use will not be more objectionable to nearby properties by reason of noise, fumes, vibration or other characteristics than would be the operations of any permitted uses not requiring a special permit; and

WHEREAS, pursuant to § 355-37(D) of the Town Code, the Town Board, in order to grant a special permit, must find that “parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum convenience and safety;” and

WHEREAS, the site plan depicts an adequate number of off-street parking spaces for existing uses; and

WHEREAS, the Town Board, based upon its review of the entire record finds that the proposed parking areas are of adequate size for the proposed use, properly located and suitably screened from adjoining residential uses, and the entrance and exit driveways are laid out so as to achieve maximum convenience and safety; and

WHEREAS, pursuant to § 355-37(E) of the Town Code, the fourth criteria for the issuance of a special permit is compliance “where required, [with] the provisions of the Town Flood Hazard Ordinance;” and

WHEREAS, the Applicant will file the required floodplain development permit unless the Building Department determines that the obtained LOMA obviates the need for a floodplain development permit; and

WHEREAS, pursuant to § 355-37(F), it is required that “the Town Board finds that the proposed special permit use will not have a significant adverse effect on the environment;” and

WHEREAS, the Planning Board, as Lead Agency, adopted a Negative Declaration on August 1, 2022; and

NOW THEREFORE BE IT RESOLVED, that the nursery and storage of contractor’s equipment special use permits as depicted on plan labeled “EX-SP,” entitled “Existing Site Plan,” dated May 3, 2022, last revised July 5, 2022, prepared by Redniss & Mead, shall be deemed to authorize only the particular use or uses specified in the permit and shall expire if work is not initiated within one year from the date of issue, or if said use or uses shall cease for more than one year for any reason or if all required improvements are not maintained and conditions and standards are not complied with throughout the duration of the use; and

BE IT FURTHER RESOLVED, that the special permit be, and it hereby is, approved, subject to the conditions set forth below:

Conditions:

1. The Applicant shall prepare a plan to remove invasive species in the buffers nearest to the wetland west of the concrete wall at the end of the developed portion of the property and reseed/replant near the edges of the wetland with a native wetland seed mix as needed to stabilize the site to the satisfaction of the Planning Board.
2. The application of herbicides shall be prohibited on the property
3. The application of pesticides shall be prohibited on the property.

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4. Fuel storage and dispensing shall not be permitted on the property.
5. Major mechanical equipment repair or service shall not be permitted on the property.
6. Repair or maintenance involving liquids shall be prohibited.
7. Uses on the property shall not be expanded beyond that depicted on plan EX-SP without amended approval of the Town Board and Planning Board.
8. The Applicant shall obtain Planning Board site plan approval.
9. Compliance with all applicable local laws and ordinances of the Town of North Castle.