

Copy to ...
1-4-16

TOWN OF MARLBOROUGH PLANNING BOARD
SEQRA NEGATIVE DECLARATION AND
NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

WHEREAS, the Town of Marlborough Planning Board has been designated as the lead agency under the State Environmental Quality Review Act (“SEQRA”) for purposes of, among other things, issuance of a determination of significance with respect to the Project and set of actions identified herein below (“Action”); and

WHEREAS, this is a determination of non-significance, i.e. negative declaration, prepared in accordance with Article 8 of the Environmental Conservation Law: SEQRA and its implementing regulations set forth in 6 NYCRR Part 617 (“Regulations”); and

WHEREAS, the name and address of the lead agency is: Town of Marlborough Planning Board, 21 Milton Turnpike, Milton, NY 12547 and the Responsible Officer is Joel Truncali, Town of Marlborough Planning Board Chairman, with a telephone number at (845) 795-5100, Ext 8; and

WHEREAS, the Town of Marlborough Planning Board, as lead agency, has classified this Action as an unlisted action pursuant to 6 NYCRR § 617.6 of the Regulations; and

WHEREAS, the Town of Marlborough Planning Board has caused the applicant to prepare and submit a Full Environmental Assessment Form (FEAF), Part 1, and the Planning Board has itself caused the preparation of an FEAF, Part 2; and

WHEREAS, the Town of Marlborough Planning Board, as lead agency for the environmental review of the Action, has reviewed the Action and all relevant supporting information and documentation, has identified the relevant areas of environmental concern, has compared the reasonably expected results of the Action with the criteria set forth in 6 NYCRR § 617.7 and has determined that there will be no potential significant environmental impacts associated with the Action; and

WHEREAS, this negative declaration is supported and substantiated by the following conclusions of the Lead Agency:

Project Description, Background and Reasons Supporting the Negative Declaration:

The project includes an application to the Town of Marlborough Planning Board for administrative approvals for an approximate 1.93 acre parcel fronting on the west side of NYS Route 9W, south of intersecting James Street. The parcel is located in the Town's Highway Development (HD) Zoning District which allows for various commercial uses subject to administrative review of plans for development by the Planning Board.

The address for the project is 1417 Route 9W in the Town of Marlborough Ulster County, New York (Tax Map Parcel: Section 109.001, Block 4, Lot 14). The site is improved by a one story slab on grade building and associated site development formally devoted to a now inactive restaurant diner facility. The commercial property is currently vacant in a dormant state. The Applicant proposes to demolish the inactive use on the site. In its place, the Applicant proposes to develop a one story 4,800 square foot building without a basement. Site development also includes a gas station with convenient store of approximately 2,800 square feet of the 4,800 square foot structure. In addition a Dunkin Donuts franchise will utilize approximately 2,000 square feet. The Dunkin Donut use includes a drive up window to service patrons.

Fueling is proposed to occur between the proposed building and NYS Route 9W. The gas station would be improved by 5 gasoline fueling pumps with 2 dispensers each for a total of 10 gasoline fueling locations. The site would also incorporate 2 diesel fuel pumps with 2 dispensers each for a total of 4 diesel fuel locations. Fuel pump canopies, subsurface petroleum bulk storage, traffic circulation and parking improvements are proposed.

Site grading will be modified to accommodate the more expansive use of the site. Since the existing site development is located between NYS Route 9W and the toe of a slope an approximate 35 foot high cut is proposed to the rear of the proposed structure.

Geotechnical Engineering reports and plans have been prepared and submitted to the Planning Board.

An in ground septic disposal facility is proposed to be located in the upper western portion of the site. Sanitary effluent is proposed to be pumped via an on site pump station to the western portion of the site discharging to the proposed subsurface sanitary sewer disposal system.

The site is proposed to connect the existing municipal water supply to provide potable water to the facility.

New stormwater management facilities will be constructed to address existing and new impervious surfaces including the construction of Best Management Practices to meet the requirements of the NYSDEC and Town of Marlborough Stormwater regulations. Best Management Practices include a bio retention filter, a proprietary jelly fish filter, upgrading diversion swales and enclosed pipe drainage system. A Stormwater Pollution Prevention Plan has been prepared and submitted.

The applicant proposes 2 access drive entrances at NYS Route 9W with associated curbing. The site's northerly driveway at Route 9W is proposed as being limited to right turns only both entrance and exit. The southerly driveway would accommodate a full turning movement including dedicated right and left out turn lanes. It is proposed to be serviced by a 400 foot long left turn lane along Route 9W for north bound traffic entry in to the site. For north bound vehicles exiting the site from the southern driveway a receiving and acceleration highway improvement is proposed for Route 9W to reduce the level of service delays. Traffic studies were prepared and submitted.

Since the site is 0.07 acres less than the minimum 2 acre parcel size established for the HD zone the Applicant has submitted an area variance application to the Town's Zoning Board of Appeals for a 3.5% reduction of the minimum lot size for an existing commercial site. The project also pursues an area variance allowing placement of accessory structures, gas pumps and canopies, in front of the proposed principal structure.

Other involved agencies in addition to the Towns Planning and Zoning Board of Appeals include the NYS Department of Environmental Conservation, the NYS Department of Transportation, and the Ulster County Health Department. Among them the Town's Planning Board has been designated as lead agency under SEQRA. This is an unlisted action under SEQRA. At the Planning Board's request the Applicant prepared and submitted a full environmental assessment form (FEAF) Part I dated 20 November 2015. The Planning Board caused the preparation of an FEAF, Part II. It was adopted on 21 December 2015. The evaluation of the Part II did not identify any potential impacts as moderate to large.

Impact on Land: The applicant is proposing to develop the 1.93+/- acre parcel with a 4,800 square foot commercial structure and associated gasoline pumping islands. A large portion of the existing site currently contains impervious surfaces including an existing dormant structure and paved parking areas, with substandard access drives and curbing at Route 9W. Regrading of the site will occur along the western portion of the site to provide for additional areas to support development of the proposed structure. A geotechnical report has been prepared identifying the amount of material to be excavated from the site including an evaluation of the type of material to be excavated. Approximately 20,000 cubic yards of material is proposed to be excavated from the western portion of the site to prepare for the proposed development. The westerly most portion will remain at existing grades and will be utilized for a proposed on site subsurface sanitary sewer disposal system. Excavation is necessary to accommodate the footprint of the Project. The area of excavation and resulting rock face will be significantly set back from Route 9W, and will be located to the rear of the site. Project's buildings and gasoline filling station site improvements will intervene between the rock face and Route 9W. Lower portions of the rock face will be improved by wall structures. "Soil nail" engineering solutions will be employed to stabilize the top of the area of excavation. The rock nature of on site topography will provide stability to the face of excavation. The impacts related to excavation will be temporary, short term, and localized, as they will be related to Project construction. Blasting protocols, including pre-blast surveys within the discretion of the Planning Board to impose, will mitigate

impacts to the land. Post-construction conditions will be stable from a geotechnical standpoint.

Impact on Water: The applicant will be utilizing municipal water to provide for potable and fire flow water for the project. Existing town water main is located within the Route 9W right of way. Sufficient capacity within the Town's system exists to serve the project.

The Applicant has prepared a Stormwater Pollution Prevention Plan in compliance with the NYSDEC and Town of Marlborough requirements. The Stormwater Pollution Prevention Plan addresses the site as a stormwater "hotspot" due to the nature of the proposed project. As a result, additional mitigation measures are incorporated in the SWPPP. A proprietary filter product has been incorporated into the SWPPP to treat runoff from the easterly portion of the site which contains the petroleum dispensing pumps. A bioretention system has been incorporated at the western portion of the site parking and access drives in order to provide for filtering and storage of stormwater prior to discharge to the NYSDOT drainage system. The plans identify improvements to the existing stormwater conveyance system within the NYSDOT right of way. Improvement includes installation of a closed pipe drainage system to the north of the project connecting to an existing concrete box culvert. Runoff reduction and green infrastructure practices have been incorporated into the site plan. Compared to existing conditions, a net reduction in discharge will result. Stormwater quality features will be incorporated to improve downstream impacts, as no such features currently exist on the Project site.

Impact on Transportation, Traffic and Air Quality: The Planning Board has reviewed proposed traffic improvements within the NYS Route 9W corridor along the project frontage. Two access drives are proposed to accommodate vehicle circulation to the proposed project. The northerly most access drive is restricted to right turns in and out while the southerly drive proposes a full turning movement including dedicated right and left turn lanes. Traffic improvements include the installation of a north bound left turn lane into the project and a northbound left turn lane out of the project including an acceleration/staging lane. Extensive review of the traffic by the Planning Board including

discussion of alternatives with the applicant's traffic consultant identifies that the proposed highway improvements identify a level of service D for both the am and pm peak weekday traffic for the left turn northbound movements. The northerly most access drive will operate at a level of service C for the am and pm peak weekday traffic. The plans identify queuing for 10-12 vehicles at the drive thru window component. Parking has been provided on the site in compliance with the Town of Marlborough zoning regulations. The applicant's professional's traffic study, dated July 24, 2015, concludes that there will be no resulting significant impacts to traffic volumes or levels of service along Route 9W as compared to existing conditions or future no-build conditions. This professional opines that no significant adverse traffic impacts will result, and that opinion is carried forward in a supplemental traffic report dated December 23, 2015. In supplemental traffic reports dated November 20, 2015 and December 23, 2015, and related design plans, the applicant has put forth additional mitigation designs which supplement an original 400' left turning lane improvements to Route 9W to include driveway reconfiguration and an acceleration feature for vehicles exiting the Project site and turning north onto Route 9W. Improvement to the on-site levels of service for exiting and entering traffic resulted, subject to approval of the New York State Department of Transportation. According the professional opinion in the record of review, there will not be significant traffic impacts at Route 9W absent the project modifications requiring NYSDOT approvals. In the event of disapproval of the proposed modifications and mitigation measures by the NYSDOT, the Planning Board retains the authority and discretion in the context of administrative reviews of the Project under the local zoning law to fashion a suitable outcome by way of denials of project approvals or imposition of conditions of approval. The Planning Board finds that the issuance of a SEQRA determination of significance is fundamentally an exercise of policy, and that requiring preparation and review of an Environmental Impact Statement on the issue of traffic and transportation for a commercial use along Route 9W invited within the HD zoning district is neither required nor sound, particularly where the record includes professional opinion of lack of significant post-build impacts to Route 9W either with or without a northbound turn staging and acceleration lane within that state highway.

Impact on Wildlife, Threatened or Endangered Species and Agricultural Lands: The Applicants have contacted the NYSDEC Natural Heritage Program to determine the presence or absence of threatened or endangered species. Based on information transmitted from the Natural Heritage Program no threatened or endangered species will be impacted by the proposed project. Tree clearing will be limited to the time period which would not impact any threatened or endangered species of bats. Winter tree clearing will be undertaken such that no bats are present on the site. The site is located a significant distance from the Hudson River and will not impact threatened or endangered fish species within the river. By virtue of stormwater management improvements, the downstream drainage impacts to agriculture will be mitigated and enhanced relative to current conditions.

Impact on Historic Resources: The Applicants have submitted the project to the NYS Office of Parks Recreation and Historic Preservation. No adverse impact letter has been received from the agency identifying no impacts to cultural or archeological resources. No mention was made of impacts to historic structures.

Impacts on Energy, Noise and Odor and Public Health: With the exception of noise during construction there will be no impact on any of the above issues. Blasting has been identified as being required on the site based on the geotechnical reports. Blasting will be performed in strict compliance with Town of Marlborough and New York State Regulations. The Planning Board is empowered to condition any approvals on the providing of a pre-blast survey to mitigate on neighboring properties. These regulations control the amount of air blast and seismic activity during blasting operations. Blasting operations will be temporary in nature and will occur only during initial construction operation at the site. Post construction noise will be similar to other businesses within the HD district and the busy Route 9W corridor. Building will intervene between Route 9W and the excavated rock face to the west of the site, such that potential noise reverberation impacts are not reasonably to be anticipated. Lighting impacts are addressed in the applicant's July 15, 2015 lighting plan submissions. Downward directed lighting is proposed to address light pollution in relation to building, canopy and pole fixtures, with

the exception of soffit lighting proposed for the building which, by virtue of expansion of the site development footprint by excavation to the west, is setback significantly from the highway, and even further from lands located to the east of the highway. No soffit lighting is proposed for the canopies located closer to Route 9W, and which intervene between the building and that highway. No significant impacts are found with respect to lighting.

Impact on Aesthetic and Community Resources: The Planning Board has worked with the Applicant to develop a plan which incorporates design elements including the use of natural stone, muted colors and a landscaping plan to address visual impacts of the project. Incorporation of these design elements into the plans has addressed the community resource impacts. With limited exception, the Route 9W corridor to the north and south of the Project site is devoted to a variety of manufacturing, commercial, and office uses consistent with the HD zoning district designation. Some residences are interspersed among these non-residential uses – but the area is predominantly commercial by zoning and by actual development. To the east of Route 9W is located an agricultural activity with related farm fields and plantings. To a depth of approximately 200’ east of Route 9W, the agricultural activity is nonetheless zoned for Highway Development (“HD”). This agricultural activity is at variance with the predominant and existing development along Route 9W, and any contrast between the agricultural activity, or residences interspersed, along the highway, and the Project is circumstantial and insignificant given land use decisions of the Town of Marlborough which underlie the relevant zoning designations---and the extent of manufacturing, commercial and office uses along the highway as invited by land use regulations. Other than some arguable visual contrasts, which are deemed not to constitute a significant adverse impact, the Project will have no potential significant adverse environmental impacts on community character and aesthetics.

Impact on Wetlands and Surface Water: No wetlands have been identified on the project site or the surrounding area. A stormwater Pollution Prevention Plan in compliance with Town of Marlborough and NYSDEC requirements has been developed. A Stormwater

Pollution Prevention Plan incorporates the use of runoff reduction in green infrastructure practices to further reduce stormwater quantity and improve stormwater quality. Proprietary filtering device is proposed to treat potential pollutants from the stormwater hotspot. Filtering practices have been incorporated into the Stormwater Pollution Prevention Plan to provide further water quality benefits. Surface water will be collected from the project site and routed through the stormwater management practices discharging to a closed pipe drainage system which will be upgraded within the NYSDOT right of way.

Community Services: The project has been submitted to the Jurisdictional Fire Department. The Jurisdictional Fire Department has provided a letter dated 14 December 2015 identifying the need for a sprinkler system in compliance with building codes and requesting that a lock box be added to the facility for emergency services access. These items will be incorporated into the plan.

Zoning and Land Use: The project is located in the Towns HD zoning district, which is devoted to the types of uses summarized above. The Planning Board finds that the proposed use as a Convenience Store/Gasoline Station is consistent with the HD Zoning District uses. The project is located on an existing non conforming lot within the HD zone. Minimum lot size for any use in the HD zone is 2 acres while the project is located on a 1.93 +/- acre existing parcel. The project is applying to the Zoning Board of Appeals for relief from this pre-existing condition which, unless varied, renders the parcel along Route 9W unusable for the purposes for which it is zoned. In addition the Project is seeking an area variance to locate the gasoline islands and canopies in front of the principal permitted use Convenience/Retail Store. It is debatable, in the view of the Planning Board, as to whether the canopies and gas pumps are accessory or subordinate to the Project's building, or whether the building, canopies, gas pumps, and site development are integral and co-equal components of a gasoline filling station use, but this is a matter for the Zoning Board of Appeals. The Planning Board finds the location of the canopies is typical for gasoline fueling. It is consistent with local policy manifest in the design and improvement of the Stewart's commercial use located in an HD zone

along Route 9W at Milton Turnpike. The Planning Board has preliminarily evaluated on-site traffic circulation, and other issues, with regard to potentially relocating the canopies to the rear of a building which is repositioned along the frontage along Route 9W. It appears that re-orientation of the building and the canopies is not feasible due to issues presented by zoning setbacks, existing topography constraints and site security. Regardless, the Planning Board concludes that the current Project design does not raise any potential significant environmental impact in terms of zoning and land use. The design is customary and consistent with precedent in the town, as evidenced by the Stewart's use which is a use in the HD zone along Route 9W. In the event that the Zoning Board of Appeals agrees that an area variance is needed to locate the canopy and pumps to the front of the building, that agency is empowered to render the Project's design conforming with zoning by issuance of an area variance. The need for an area variance does not, of itself, give rise to a potential significant adverse impact upon the environment. If either requested area variance is denied, there will be no Project impacts. If both area variances are issued, the Project requires administrative approvals by the Planning Board. The Planning Board maintains its authority, setting aside and regardless of this negative declaration under SEQRA, to approve, disapprove or approve the Project with conditions through the exercise of its underlying jurisdiction which will remain intact.

Involved Agencies:

Town of Marlborough Planning Board

21 Milton Turnpike

Suite 200

Milton, New York 12547

Town of Marlborough Zoning Board of Appeals

21 Milton Turnpike

Milton, New York 12547

Ulster County Health Department
239 Golden Hill Lane
Kingston, New York 12401

New York State Department of Transportation
SEQR Unit
Traffic Engineering and Safety Division
4 Burnett Blvd.
Poughkeepsie, New York 12603

Interested Agencies/Parties:

Town of Marlborough Fire Department
14 Grand Street
PO BOX 777
Marlborough, New York 12542-0777

Ulster County Planning Board
County Office Building
244 Fair Street, 6th Floor
Kingston, NY 12401

NOW, THEREFORE, BE IT RESOLVED, that the Town of Marlborough Planning Board makes the following findings based upon the conclusions identified above:

1. The Action will not result in a substantial adverse change in existing air quality, ground or surface water quality, traffic or noise levels, a substantial increase in solid waste production; or a substantial increase in potential for erosion, flooding, leaching or drainage problems;

2. The Action will not result in the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movements of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial

impacts on a threatened or endangered species of animal or plant or the habitat of such a species or other significant adverse impacts to natural resources;

3. The Action will not create a material conflict with the community's current plans or goals as officially approved or adopted;

4. The Action will not result in the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources of the existing community or neighborhood character;

5. The Action will not create a hazard to human health;

6. The Action will not cause a substantial change in the use or intensity of use of land, including agricultural, open space or recreational resources or in its capacity to support existing uses;

7. The Action will not result in the creation of a material demand for other actions that would result in one of the above consequences; and

8. The Action does not involve changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; and

BE IT FURTHER RESOLVED, that the Town of Marlborough Planning Board, acting as lead agency, has examined the impacts which may be reasonably anticipated to result from the Action, and has determined that it will not have any significant adverse impact on the environment and that therefore a Draft Environmental Impact Statement need not be prepared; and

BE IT FURTHER RESOLVED, that the Town of Marlborough Planning Board hereby issues this Negative Declaration and notice thereof pursuant to the requirements of SEQRA and its implementing Regulations; and

BE IT FURTHER RESOLVED, that the Town of Marlborough Planning Board hereby authorizes the filing this Negative Declaration and notice thereof, if necessary, pursuant to the requirements of SEQRA and 6 NYCRR Part 617 of its implementing Regulations.

The foregoing resolution was voted upon with all councilmen voting as follows:

Chairman Truncali

✓

Member Trapani

- Not at Meeting

Member Lanzetta

✓

Member Lofaro

✓

Member Cauchi

- Not at Meeting

Member Clarke

✓

Contact Person:

Jen Flynn, Planning Board Secretary

Town of Marlborough

21 Milton Turnpike, Suite 200

P.O. Box 305

Milton, NY 12547

845-795-5100

