

**Town of Geneva
Planning Board
June 21, 2022
DRAFT**

Present: Mary Ann Bell, Robert Gringeri, Eric Reuscher, Kenneth Nardozzi, Gary Johnson, Jeff Trickler

Staff: Floyd Kofahl, Code Enforcement Officer, Amy Naegele, Clerk of the Board, Steve High, Town County Planning Board Representative

Others Present: 8 members of the public

Chair Mary Ann Bell called to order at 7:00 pm.

Note: Letter addressed to the Chairperson and Members of the Planning Board of the Town of Geneva, NY was provided to the secretary prior to the meeting, and it was requested that they be attached to the minutes. It was confirmed with the Chairperson to include said letter.

Brewery Ardennes – Site Plan Modification Request PB2022-003

Derek Edinger presented to the Board. He explained that they are requesting the conditions “there shall be no events at this location” and “no exterior music is to be played” that were part of the site plan approval PB2020-05 on 8/26/2020 be removed. He explained that the request is a result of Local Laws 3-2022 and 4-2022 that were recently passed by the Town Board. He went on to explain that they would like to have occasional outdoor music and mostly small events. The size of the events would be restricted by their occupancy and parking and bathroom facilities. He explained that they are not requesting any physical changes to the site. He also spoke to the Board about the portion of the code requiring a vegetative buffer and explained their compliance with the requirements. He explained that they have a buffer around the 3 sides of their property that abut another property and are not required to have a buffer on the side facing the road. He discussed the Town’s implementation of the buffer requirement in other zones in the town and gave examples, which are listed in the application letter that is part of file PB2022-003.

Mary Ann asked if the board members had any questions. Ken Nardozzi asked for the applicant to elaborate on the music and events that they would have. Derek explained that they did not want to limit themselves, but the atmosphere is fairly laid back and the plan would be to have an event on Friday or Saturday with the possibility of doing something special on a weekday to bring people in. He also mentioned that the outdoor seating is close to the building.

Mary Ann asked about the definition of an event. Derek explained that he believed Floyd was working on that but that they did receive a letter from the Town with some of the limitations that would be in place. He added that any events with a third-party business are not currently allowed. He also explained that their interior occupancy is 87 and even with outside space they wouldn’t be able to have many more people due to their parking.

Gary Johnson asked Floyd about the vegetative buffer and how Floyd had confirmed at the last meeting that it would apply to properties across the street as well. Floyd confirmed that this was correct. Robert Gringeri asked for clarification since the applicants stated otherwise.

Floyd explained that their interpretation is that it is not required along the street and his interpretation is that it is. Eric Reuscher asked about the businesses listed by the applicant and Floyd explained that they are in a different zoning and are pre-existing. Derek spoke to the Board and stated that the language in the code for vegetative buffer is the same for the different zones so it their position that the implantation of the code by the town would be the same. There was further discussion between the applicant and the Board regarding the vegetative buffer.

Robert Gringeri read a part of the applicants' letter which states, "We would like to have exterior music and host occasional events in compliance with these new laws," and commented about non-compliance with the current restrictions on the facility. He gave an example of meals with a chef and talked about what was proposed at the original site plan application. Derek explained that they are asking for a change to the site plan and that they do not feel like they have been non-compliant thus far. There was a discussion regarding the condition #4 of PB2020-05 that there shall be no reservations for food service. Derek stated that it does not state that they cannot have food service and explained that they were required to provide food during COVID. There was further discussion between the applicant and the Board regarding wineries and breweries serving food and the use of the kitchen.

Mary Ann asked Floyd if he had anything to add. Floyd explained the process for when a business does not agree with Floyd's interpretation of the code, referring to the vegetative buffer. He explained that it will go to the Zoning Board. Gary Johnson asked about the definition of vegetation and Floyd explained that the requirements are 15 ft. wide by 6 ft. initial height and the length of the front of the property. There was further discussion between Floyd and the Board regarding the buffer. Floyd added that the buffer requirements were defined in the Town Design Standards that were put in place in the last couple of years and the new businesses that have been going in are meeting these requirements. Eric confirmed with Floyd that the concern with the vegetative buffer would be addressed at the Zoning Board and was not something the Planning Board need consider tonight.

Mary Ann asked what the indoor capacity is, and Derek confirmed that it is 87. She asked about the outdoor capacity, and he explained that it is limited by the serving area allowed by the Liquor Authority and by parking limitations.

Eric asked Floyd if the businesses would have to come to Floyd prior to having events. Floyd explained that, due to the way it was approved, the current process is that businesses will have to come in to obtain an operating permit prior to having an event. Gary asked if each individual event would need an operating permit and Floyd explained that it would depend on the event. For recurring events, they could obtain an operating permit for a range of time to hold that recurring event. For something unique, they would have to have an operating permit for each event. He used the example of two weddings needing separate operating permits. He explained that they have submitted a proposal for the town attorney to review which would allow Floyd to issue a yearly operating permit with guidelines for what is allowed.

Ken asked who would be responsible for making sure the occupancy limits were not exceeded at an event. Stacey Edinger responded that they will be doing this. If they reach their occupancy limit, they will turn people away, this is what businesses do and they have done this previously. Mary Ann asked if they have any events booked yet and the applicants confirmed they do not.

Robert returned to the vegetative buffer and asked Floyd what constitutes as a vegetative buffer and if it needs to be evergreens. Floyd explained that when approved by the Town Board

it was defined as a visual buffer and a noise buffer and would be evergreen type trees. He added that they are also working on trying to get a better definition other than just height and width.

Mary Ann asked the board members if there was anything else to discuss. Robert stated that he thinks it is imperative to have definitions in place. The Board discussed their options for moving forward with the application. The interpretation of the need for the buffer along the front of the property was brought up and Floyd explained that the Planning Board can only consider his interpretation, which is that it is required, until such time that Zoning Board rules otherwise. Robert asked Floyd what will constitute an event and Floyd explained that the Town Attorney has said that the interpretation of an event will be based on the information provided to Floyd for the operating permit. Based on the occupancy and what they will be doing, Floyd will decide if it is considered an event and what the requirements are. This will be until the Town Board makes a determination on the definition of an event. There was further discussion between the board members and Floyd regarding how he will be reviewing each application.

Mary Ann asked Floyd about the determination of food service. Floyd explained that food service is something that is up to the Planning Board and is something they can review based on their previous site plan conditions. He added that food trucks would be included on the operating permits. He also confirmed that having a food truck would be considered an event. Robert returned the conversation to the food service and offering pairings with food versus offering a full menu. He asked Floyd if a restaurant was allowed in the ag district if it was not part of an agricultural business. Floyd explained that the ag district does not allow for restaurants and would require a use variance, which would go before the Zoning Board. Eric asked Floyd if he considered the current operation a restaurant. Floyd explained that he is in the process of making a determination, but as it currently stands, yes.

The board members discussed their options moving forward and the issues they would like to see resolved. They discussed the operation of a restaurant and the interpretation of the buffer. Eric spoke to the other members and explained that issues being raised are items that need to be addressed by the Zoning Board and do not affect the decision before the Planning Board tonight. There was further discussion. Floyd added that the Planning Board addressed food service as part of the original site plan and with the COVID requirements now lifted, the issue of a restaurant would need to be addressed by the Zoning Board. He reviewed what was before the Board tonight which is the removal of conditions that no events be held and that there be no live music. He explained that in the new laws that were just passed, these are now allowed in the ag district.

There was a question regarding the timeline for the installation of the buffer. Floyd explained that once the site plan modification was approved, the applicant would have 30 days to provide a contract for the installation of the vegetative buffer. Ken confirmed that the Planning Board could approve the modifications based on the new laws passed and the other outstanding issues would be brought to Floyd and the Zoning Board. Eric asked if there was a state law regarding agricultural commerce that the Town of Geneva was not in compliance with, which is prohibiting the business to operate in a way that they should be able to. Floyd confirmed that this is not the case. Mary Ann brought up the exterior lights and Floyd confirmed it is something that they have talked about. There was further discussion regarding the vegetative buffer and the length of time it could take to get installed if it goes before the Zoning Board.

Motion made by Eric Reuscher to allow events and to allow live music under the stipulations of the new laws (LL 3-2022 and LL 4-2022) passed by the Town Board. 2nd by Gary Johnson.

Roll Call Vote:

Robert Gringeri: Yes

Eric Reuscher: Yes

Mary Ann Bell: Yes

Kenneth Nardozzi: Yes

Gary Johnson: Yes

Motion carried.

Meeting Minutes of May 19, 2022 and of May 25, 2022

Motion made by Mary Ann Bell to approve minutes. 2nd by Gary Johnson. All in favor, motion carried.

Other Business

Floyd explained that applications are down until such time that the issues are worked out with the City of Geneva regarding the sewer. Right now, it looks like 2026.

Eric asked Floyd about the 80-unit apartment building approved at the Geneva Crossing PUD. There was discussion regarding if the previous approval by the city was still applicable or if the project would have to resubmit for approval.

Ken asked Floyd about a potential project on Carter Road. Floyd explained that it is still in process, but the sale sign is back up because the purchase contract is reaching its expiration.

Ken also asked Floyd about the crossing signals being put up at the intersection of County Road 6 and Route 5 & 20. He asked if there were plans for where the people were going to go after crossing as there are no sidewalks. The only options are to walk in the weeds or on the road. Floyd explained that he was told that it was so people could get across the road to be able to get to the plaza, restaurant, and doctor's office. He added that when the next building goes into the Geneva Crossing PUD, the sidewalks will be installed in front of that section.

Robert asked about the possibility of a round-about in that intersection. Floyd said, not at this time.

Motion made by Mary Ann Bell to adjourn the meeting. 2nd by Eric Reuscher. All in favor, motion carried at 7:45.

Motion made by Eric Reuscher to reopen the meeting at 7:46. 2nd by Mary Ann Bell. All in favor, motion carried.

Robert Gringeri asked Floyd about the fact that the Planning Board decided to hold a meeting after receiving only a 2-week notice. The Board recently passed a motion stating that they wanted all items received 30 days prior to the meeting date. Since there was nothing else on the schedule and this was only a modification, the Planning Board decided to have the meeting. Floyd explained that because it was a resolution passed by the Planning Board, they were in their rights to go against that decision and to hold the meeting. He added that no Public Hearing was required. Robert stated for the record that the Planning Board does not see this as a precedent

being set and they decided to have the meeting based on the specific circumstances of this application and this month's agenda. Specifically, they did not have anything else on the agenda to review this month and the request was for a modification to an existing approval.

Motion made by Mary Ann Bell to adjourn the meeting. 2nd by Ken Nardozi. All in favor, motion carried at 7:49.

June 21, 2022

Chairperson and Members of the Planning Board of the Town of Geneva, NY

Town of Geneva Town Hall
3750 County Road 6
Geneva, NY 14456

RE: 566 Snell Road Ardennes Brewing

Dear Chairperson and Members of the Planning Board,

If, during its 6/21/22 meeting, the Planning Board disregards the timeline and public notification requirements outlined in Town Code 165-81 and approves Ardennes Brewery's last-minute request for Site Plan modification, it will be a direct violation of Town Code and will open up the Planning Board to possible legal action and the prompt filing of an appeal through the Zoning Board of Appeals.

Town Code (165-84.E) requires that any desired change to the final, approved Site Plan shall require the owner of the subject property to submit a new application to the Town Planning Board and proceed through the established approval process. Below is a brief comparison between Town Code requirements and the timeline Ardennes Brewery is requesting for Site Plan modification that lays bare the lack of compliance with Town Code.

Town Code Requirement

Site Plan & application form must be presented to Code Enforcement Office at least 30 days before Planning Board meeting to be considered at that meeting (165-81.A)

Planning Board shall give public notice of said hearing in a newspaper of general circulation in the Town at least 5 days prior to hearing date (165-81.A)

Notice shall be given to the metropolitan, regional, or county planning agency at least 10 days before hearing as required by General Municipal Law 239-m (165-81.A)

Planning Board shall hold a public hearing on date specified in said notices (165-81.B)

Ardennes Request

Application form submitted 5 days beforehand (dated 6/16/22)

To my knowledge, no public notice has been given

Because the Town received the application form on 6/16/22, it would have only been able to give a maximum of 5 days to the county planning agency

To my knowledge, no public notice has been given

In its letter to the Planning Board, Ardennes calls the requested modifications "administrative." This statement has no basis in Town Code. Simply put: the requested change would be a change to the approved, final Site Plan and must therefore go through the established review process per Town Code.

I request that the Planning Board delay consideration of this issue until it can comply with the required timeline and public notification.

Respectfully submitted,
Carole Higgins
569 Snell Road
Town of Geneva

of Geneva and Adopting a New Chapter 63 Providing for the Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code", attached hereto as Exhibit 1; and

WHEREAS, the Town Board of the Town of Geneva has reviewed the draft of the aforementioned proposed Local Law and deems it in the best interests of the Town of Geneva to proceed in accordance with the Code of the Town of Geneva and the Laws of the State of New York in adopting said Local Law,

NOW, THEREFORE, BE IT RESOLVED, that the Town Clerk be, and she hereby is, directed to schedule a public hearing to be held on July 12, 2022, at 6:00 p.m. at the Geneva Town Hall, 3750 County Road 6, Geneva, New York; and be it further

RESOLVED, that the Town Clerk, be and hereby is, authorized to forward to the official newspapers of the Town a Notice of Public Hearing in the form substantially the same as that attached hereto as Exhibit "2"; and be it further

RESOLVED, that the Town Clerk be, and she hereby is, directed to post a copy of the proposed Local Law on the Town of Geneva sign board and take any and all other necessary actions to properly bring the aforementioned Local Law before the Town Board of the Town of Geneva for its consideration; and be it further

RESOLVED, that the Town Clerk be, and hereby is, authorized to provide all other notices as required by law for the adoption of this local law.

I, Lorrie S. Naegele, Town Clerk of the Town of Geneva do hereby certify that the Town Board of the Town of Geneva adopted the aforementioned resolution on _____, 2022 by the following vote:

	<u>Aye</u>	<u>Nay</u>
Mark Venuti	_____	_____
Robert McCarthy	_____	_____
Jeffrey Dunham	_____	_____
Kimberly Aliperti	_____	_____
Mitchell Wilber	_____	_____

Dated: _____, 2022

Lorrie S. Naegele, Town Clerk

14. Reports of Standing Committees

- Economic Development –
- Sustainability –
- Kashong Conservation Area -
- Communication –
- Parks and Recreation –
- Agricultural Enhancement –

*This page 3 of
Town Board meeting
June 14, 2022 -*

'EVENTS' still not defined

15. Supervisor's Report:

The location of the stormwater control system supported in part by a grant from the Great Lakes Commission through its Conservation Kick program has been moved from the Cornell farm west of Carter Road to the Ralph DeFelice farm east of County Road 6 because Cornell obtained its own funding for the previously proposed project and will proceed with it and other control projects on its own.

Cornell is proposing to construct a new pesticide filling station on its property in the town which will allow it to better handle and control the chemicals it uses.

The town, primarily with Jacob Fox as the point person, is continuing to work with JACOMB LLC out of Victor on the EV charging station for the town hall that will have a fast-charge port and a standard slow-charge port. An order has been made for an all-electric F-150 Lightning pickup truck for the code enforcement officer that will probably not be delivered until next year because of the back-log of orders. The town budget has lines for both projects, and the town has \$35,000.00 in grants from NYSERDA for our Clean Energy Community actions that will be applied to the purchase of the truck.

The code enforcement officer is working on a guidance document describing his interpretation of what constitutes an event, which also outlines the conditions for them contained in local law 4, which can be used to inform affected venues.

Although the Town of Seneca is working on obtaining feedback from its residents on the future of the Ontario County landfill, the supervisor has been assured there are no negotiations with landfill operator Casella to expand the landfill or extend the lease with it to continue operating the landfill after the current lease expires at the end of 2028.

Selected Meetings and Activities

Section 1. Subsections (1) and (2) of paragraph D. of section 165-15 of the Zoning Code of the Town of Geneva are hereby amended to read as follows:

- (1) Agricultural commerce in compliance with §165-15 l;
- (2) Agricultural tourism in compliance with §165-15 l;

Section 2. Section 165-15 of the Zoning Code of the Town of Geneva is hereby amended with the insertion of a new paragraph l to read as follows:

Additional requirements for Agricultural Commerce and Agricultural Tourism

- (1) The hours of operation for Agricultural Commerce and Agricultural Tourism events shall be between 7:00 a.m. and 10:00 p.m. and shall be strictly controlled, i.e., not open to customers between the hours of 10:00 p.m. and 7:00 a.m., which shall be referred to herein as "hours of prohibited operation." The business may be open for preparation and cleanup during the hours of prohibited operation.
- (2) Events shall be operated in a manner that maintains a reasonable noise level. Any noise levels exceeding 75 decibels, including traffic-related noises or electronically amplified live music or electronically reproduced noise, that project beyond the property line are prohibited.
- (3) Where the property on which Agricultural Commerce or Agricultural Tourism events will take place abuts a residential parcel or a residence, there shall be a vegetated buffer area conforming to the standards set forth in section 165-40, not less than 15 feet in width, planted with trees and shrubs spaced in a manner that will result in a continuous visual screen along the property boundary abutting the residential parcel or residence.
- (4) No more than three events per week are allowed if the event is outside or the attendance is expected to or does exceed the interior permitted occupancy of the building or buildings housing the event.
- (5) Where the business holding the event is regulated by the New York State Liquor Authority, attendance shall be limited to the occupancy permitted under the New York State Uniform Fire Prevention and Building Code for the areas, including any outside areas, permitted under the license issued by the State Liquor Authority for serving alcoholic beverages.

Section 3. Section 165-85 of the Zoning Code of the Town of Geneva is hereby repealed and a new section 165-85 is hereby inserted in its place to read as follows:

§165-85 Penalties for offenses.

The failure to comply with the requirements of this article or the conditions of site plan approval imposed by the Town Planning Board shall be considered a violation of Town Law for each day that the property owner or owners remain in noncompliance and shall be punishable, upon conviction, as provided in Chapter 1, General Provisions, Article III.

Section 4. Paragraph A. of section 1-16 (Penalties for offenses) of Article III (General Penalty) of Chapter 1 (General Provisions) of the Code of the Town of Geneva is hereby repealed and a new paragraph A is hereby inserted in its place to read as follows:

Unless otherwise specifically provided, the violation of any law, ordinance, rule, regulation or any specific provision or provisions thereof adopted by the Town Board as a part of this Code, or a violation of any condition imposed by the Town Planning Board or Town Zoning Board of Appeals under this Code, shall be deemed an offense against such law, ordinance, rule, regulation or provision thereof, punishable by a fine not to exceed \$500.

Section 5. If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been ordered.

Section 6. This local law shall take effect immediately upon filing with the Secretary of State.

5. 2022 RESOLUTION NO. 42-2022: Authorizing Adoption of Local Law 3-2022 "A Local Law which would amend the Zoning Code of the Town of Geneva by amending the definition of "Agricultural Commerce." Motion made by Councilmember McCarthy second by Councilmember Wilber. Approved

**TOWN OF GENEVA, NEW YORK
RESOLUTION OF THE TOWN BOARD
RESOLUTION NO. 42-2022**

WHEREAS, a resolution was duly adopted by the Town Board of the Town of Geneva for a public hearing to be held by said Town Board on March 8, 2022, at 6:00 p.m. at the Geneva Town Hall, 3750 County Road 6, Geneva, New York, to hear all interested parties on a proposed Local Law Amending Chapter 165 (Zoning) of the Town of Geneva; and

WHEREAS, notice of said public hearing was duly advertised in the official newspaper of the Town of Geneva, on March 31, 2022 and all other notices required by law to be given were properly served, posted or given; and

WHEREAS, said public hearing was duly held on April 12, 2022, at 6:00 p.m. at the Geneva Town Hall, 3750 County Road 6, Geneva, New York, and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said Proposed Local Law, or any part thereof; and

May 26, 2022

This letter was to
Town Board and submitted
as record of meeting

To : Town Board Members
Town of Geneva, NY

Dear Town Board Members,

I oppose the change in the definition of Agricultural Commerce that the Town Board is considering due to a wide variety of concerns, but I'd like to comment on two specific concerns that I believe will immediately be problematic if the Board approves the proposed change tonight.

1. The proposed law change limits breweries and wineries to hosting 3 events per week, but Town Code does not define an "event." How is a business or its neighbors supposed to know what counts against that 3-event-per-week limit? If there is a definition provided by the Town Board, Town Code Enforcement, or the Town Attorney, I strongly request that it be shared and discussed publicly so that everyone can understand. I think this lack of clarity is going to cause confusion and frustration on both sides.
2. As the Board has discussed numerous times recently: if a business doesn't voluntarily follow these rules, there is a lot of uncertainty about the Town's ability to enforce them. Let's face it: Town Code Enforcement isn't always available and the Sheriff isn't going to come. I have sincere doubts that a business that doesn't voluntarily comply will be forced to comply.

I also do not believe that there is clarity about a meal and a paring. Floyd has told me that a restaurant is not approved in an agriculture zone. If the town attorney has defined the difference, I request that it be made available to the public.

I anticipate the lack of clarity surrounding what is an "event" and the much-discussed enforcement concern will be a consistent problem until the Board addresses these issues head-on in an open, public manner.

I am appreciative of the Board's attention to these concerns. Thank you.

Carole Higgins
569 Snell Rd Geneva