

Town of Byron Planning Board Minutes

Wednesday, April 1, 2026, at 7:00 PM

Byron Town Hall, 7028 Byron Holley Road, Byron, NY 14422

Those Present: Planning Board Members: Planning Board Chairman Christopher Hilbert, Bill Stevens, Laura Bestehorn, Jen Tuerk, Town Councilmen Steve Hahn, Town Attorney John Sansone, Interim Town CEO/ZEO Gerry Wood. Members of the Public: Rob Panasci (Blue Wave), Fiona Dutcher (Blue Wave), Larry West, Roger Rouse, Joel Woodward, Mr. Crosby.

Call the meeting to order at 7:02 PM

MOTION: Motion to open the meeting made by J. Tuerk. Second by B. Stevens. All in favor. None opposed.

MOTION PASSED

Note from Chairman Hilbert:

Please note that from this date forward all planning board meetings will be conducted as a business meeting. There will be an allotted time for public comments. At the next meeting and going forward you will need not only sign in but sign that you are requesting to speak. Each speaker is given 3 minutes.

Public comments will be on agenda items only. Agenda items will be accepted 10 days prior to each meeting and will be posted on the town website. Beyond that, it will be at the discretion of the Planning Board to add to the agenda.

Review & Approval of previous meeting minutes

MOTION: Motion to open the review & approval of previous meeting minutes made by J. Tuerk. Second by B. Stevens. All in favor. None opposed.

MOTION PASSED

Meeting minutes for March are unavailable at this time – will review and approve at the May meeting

MOTION: Motion to close the review & approval of previous meeting minutes made by B. Stevens. Second by J. Tuerk. All in favor. None opposed.

MOTION PASSED

Joel Woodward (Playmates)

MOTION: Motion to open the Joel Woodward (Playmates) section made by B. Stevens. Second by J. Tuerk. All in favor. None opposed.

MOTION PASSED

John Sansone: Couple of different issues I see with this particular case: Originally, when it came about, Playmates was originally a nightclub, correct?

Chris Hilbert: Correct

John: Do you know whether or not that nightclubs were approved uses or allowable uses permitted uses back then?

Chris: Topless was approved. The meeting minutes from 9/16/1992

John: Okay, but not nude.

Chris: Correct.

John: Do you know whether or not there were sufficient setbacks and parking at that time that it was approved to be topless?

Chris: Back then, I am not sure. We are unsure, we don't have all of those notes that entail the permanent process back then.

Gerry Wood: It doesn't meet them in today's standards in both parking and setbacks from residential buildings that are too close.

Joel Woodward: How does it not have enough parking outside?

Gerry: Because you don't have designated parking

Joel: There's a whole parking lot.

Gerry: Yes, but you would need an engineer to come out and tell you how many spots you have available in your parking lot.

Joel: I have engineer friends that can come out and do that, it shouldn't be any issue. And, we're past all that, all I had to do was prove that we were still running in March.

John: Okay, is there anything you'd (Mr. Woodward) want to address as it relates to what I just put into the meeting minutes?

Joel: I don't see anywhere in the Byron Zoning where it states that an engineer has to show anything, it's just by size and how many people work there.

John: Okay, is there anything else anybody would like to put on the record as it relates to the current parking situation over there?

*No additional comments

John: I understand there was a special use permit that was granted by the State of New York based upon the fact that there was no public water over there and that was the basis of the application to the state. Would you agree, Christopher, that some minutes from the town board meeting indicates that they were going to allow, and some board members and the supervisor at the time went to Rochester to that meeting. Is that what you understand too?

Chris: Yes

John: Then, a special use permit was granted to the owners of Playmates at the time and that said no one can be on the second floor. And that the sprinkler system wasn't required as long as no one was going to be in the second floor. Also, that the minutes from the town board meeting allowed it to have topless dancers there but not nude, correct?

Chris: Correct

John: In your current situation are you planning on having topless?

Joel: Full nude. The previous owner went all the way and made sure she got it all noted that you allowed full nude.

John: Okay I'm not disputing that, but I'm saying I don't have anything on that. Did you see anything on that?

Chris: No

Joel: That's why it's a juice bar for 30 years; we don't serve alcohol. There is still a sign on the door to the upstairs from 2003 that says no one is allowed to be up there.

John: Now, the electric bills that were provided. Does everyone agree that the statute currently says that 6 months

Joel: Yes, if you abandon it. An intent to open means your not abandoning it. I've been trying to open this since the day I purchased it.

Gerry: That abandonment is for a business that's going along and it shuts down and then decides to open again in a year. That's the same business, same entity, same building, same everything. It's not a new business going into the same building.

John: I would agree with that but I know Mr. Woodward is going to have a rebuttal

Joel: Yessir, New York Non-Conforming Use. In New York State, a nonconforming use, or a grandfathered use, is a property used that was legal when established but became noncompliant due to later zoning changes.

*Read the attached, "PBTeam04012026.docx"

Jen: The bills that you submitted go back to December 2024 but there's no usage during our coldest months, December, January, February. At the end of the lease, there is a big spike, which would be the shut off and disconnect notice. The property was listed in October 2024

Joel: Yes, my girl was dancing there after that.

Jen: Okay but you haven't provided anything to use showing that it was an active establishment. Everything you've shown us shows that it was closed.

Joel: I have pictures and videos of the girls dancing. The lady that was renting doesn't like to spend money, she was cheap, she made them use hairdryers to keep warm.

Gerry: But the bill you submitted to us from RG&E doesn't show the address of the place. This could be for anywhere; we don't know where this is from. The address on this is in Pennsylvania.

Chris: When you're reading section 7.05 maintenance and restoration, it also states that in the event the building is damaged, or contains a non-conforming use, and the amount of the repairs cost more than 50% of the assessed value of the building, the building shall cease to be nonconforming use and any repair reconstruction must comply with the law.

Joel: Yes, that's why they didn't build up upstairs caused by a fire. Redoing the living area, the roof and all that plus the sprinkler system would have been above 50%.

Chris: I'm just curious what the cost was prior to you owning the building of the amount of repairs to take the third floor off and make it into a two-story building and bring it up to code at the time.

Joel: There was a code officer there the whole time.

Chris: Yeah, for a building that was assessed at no more than 50 grand at the time. I find it hard to believe that it costs less than \$25,000 to do all that.

John: Along the same lines, I want to point out there are minutes from a meeting dated September 3, 2002. It's old business under old business, it says Playmates. It says that the planning board received a one page set of plans, that talks about the sprinkler system, which is going to be required because it's a dual use building. What I think is important, it says Playmates will have to bring this building up to current code, because the cost of the repairs will be in excess of 50% of the value of this building, signed by Kathy Barbero.

Joel: I have those plans; I have all the blueprints. And the work was done really well.

Chris: I'm not denying how well the work was done, but if it's more than 50% of the assessed value, the building shall cease to be a non-conforming use.

John: And the current code applies.

Chris: So, the minutes say that it has exceeded the 50% of the value of the building.

John: Playmates will have to bring this building up to current code, because the cost of the repairs will be in excess of 50% of the value of the building (this is from those meeting minutes).

Joel: I think it's for them to make it dual use, because they want to put apartments upstairs.

John: It says in there, same paragraph, Playmates Inc. is applying for a variance from the state to have residents located above their business. The big issue with this is the sprinkler system, which is required for dual use buildings.

Joel: Yeah, they couldn't afford to put in a sprinkler system and repairs.

Joel: With that, I want to get into some issues with the previous zoning official. The lady previously, Melissa Ierlan, I had spoken to her previous to purchasing the property, the day I purchased the property, and then the day I paid for the property. I email corresponded with her, and every time it was just lies. I do have all those text message and emails. I told her I have photos, and she rebuttals to me that I could photoshop. If you're saying photoshop, that would be saying I'm tampering with evidence or false providing statement. She's falsified statements and committing a crime by saying that as a zoning official. What the town is doing now is wrong and it's all based on what this lady said. I'm upset about the money I'm losing. I'd asked for a FOIL, Melissa had to find all those papers, and send them to me. And then she'd stated to the town board that she did an inspection but did not know that there was thermal in there, she did not know there was a red box in there. She's supposed to inspect that. I also did not get an inspection since 2014, which is over a 10-year gap. So the board is still blocking and that's a big issue. It means that you're trying to steal business away from me, they took my income for a year. Fraud analysis statement combined with officials failure to notice fire system. She'd previously documented, and a FOIL request provide strong evidence of willful misconduct. She definitely acted with gross negligence or in bad faith.

*References NY penal code 19510.

Joel: Has anyone seen inspections of everything since 2014? Which, by law, is every one-three years, and she also stated multiple times that its up to the person there to do this.

John: Of your building? I have not.

*Information on pending court cases regarding Melissa Ierlan.

Joel: Reads page 11 – 12 of PB04012026.docx regarding Penal codes.

Joel: The property at 7540 Byron Holley Road remains a constitutionally protected, preexisting, nonconforming use. We have provided irrefutable documentary evidence, specifically, the gas bill. No abandonment occurred. Under New York law, abandonment requires a voluntary intent to relinquish use. There's no intent to leave, I'm not leaving. The towns now, of my operating rights, relies on a fabricated verbal report from zoning official Melissa Ierlan. We allege official misconduct, and penal law 195 based on volume. Again, we'll FOIL and I should get it all. Requesting for special use requiring a modern fire system, and she saw apparently, she sent it to me. Even though she sent me Special Use papers for Clarendon she whited out, but Kristy sent me the proper one. Melissa Ierlan's verbal claim to the recent inspection, without any supportive written reports, constitutes gross negligence. During public proceedings, Melissa Ierlan dismissed credible photographic evidence of the business operation through March 2025. This refusal to acknowledge dated, authentic, digital evidence, complete with metadata, as well as saying to your informants, is the definition of arbitrary and capricious.

*Additional information regarding a pending court case in Orleans County

Joel: Due to these documents, documented locks, the business has been wrongfully held back, we are going on 10-12 months resulting in zero income. We will be figuring this out, we will be seeking consequential damages, full reimbursement for loss of business profits based on prior business history. Section 1983 damages: federal damages for the taking of property rights, a violation of due process, and attorney fees. Under 42 USC 19.66, we'll seek to have the town pay for all my legal costs. To avoid a lawsuit, that will cost taxpayers and buyers significantly more than settlement. Immediate recognition of the grandfather's status and issuance of all permits. Under NY CPLR 78.03, a court will review whether the determination was affected by an error of law, or was arbitrary and conspicuous. Your evidence shows that 10-year gap in mandatory inspections, verified by the FOIL.

Gerry: I just want to put on the record that inspections were done on 8/25/15, 6/21/21, 7/14/21, and October of 2024.

Joel: So why didn't those get released to me specifically in my FOIL request? That means she did withhold stuff.

Gerry: She doesn't have access to this IPS system for the zoning officials. The FOIL requests go to Kristy, not Melissa. Also, to confirm, nobody is allowed to live at the property.

Joel: Nobody is living up there, there are no windows, it's weird that people keep saying this.

Gerry: You applied for a special use permit, correct?

Joel: No I don't need one

Gerry: But you filed one with the town.

Joel: Because I was told I had to by a liar.

Gerry: Under our law, our town law, the Special Use permit that was issued for the building before you owned it doesn't transfer to you. "A special use permit issued under the provisions of this section it shall not be transferrable" Section 116 C – Number two. Page number 132.

Joel: Well what's the special use permit for? I'm not trying to get people to live upstairs.

Gerry: Well you'd need a special use permit, because that is what you'd have to apply for to run a business like this in this town. It doesn't qualify to run in this town at that location because that's a commercial building and it's not in an industrial zone. In our town law we have an industrial district zone, which is where they have to do adult uses. That's not an industrial district zone. You don't own the business.

Joel: It doesn't go with the business, it goes with the property.

Gerry: No, it doesn't. It says right here in our town law that a special use permit shall not be transferred and you'd have to have a special use permit to run this business in an industrial zone and that's not an industrial zone. It's too close to the residential zone, it's within 200 feet, and it's too close to the ag res district too.

John: A couple of things I want to indicate. Has anyone on the board lived in Byron since Playmates started?

Jen: Yes, I grew up in South Byron

Chris: Before it started, no, after it started.

John: When Playmates became a nude or topless entity

Joel: It was there before Playmates

Jen: Before that it was the South Byron Hotel

John: When it was there, does anybody know what it was zoned back then? Nightclub?

Chris: The only records I have is what Kristy and I dug out.

John: Does anybody know if it complied with the setbacks when it started?

Chris: I don't know

John: The reason why, one of the arguments that's being made tonight is that this is a non-conforming preexisting use, and some of the documents that were read by Mr. Woodward indicated it has to be a lawful use at the time in order for it to continue after the code was changed. This is why I am wondering if it had sufficient parking spaces, had sufficient setbacks, it was zoned in the right way.

Gerry: Since 2014, it has not.

John: Was there a certificate of occupancy granted after the fire in 1998?

Joel: Yep, occupancy went to 60, went from 130 to 60.

John: Is there a valid certificate of occupancy currently?

Gerry: No

John: When was it revoked?

Joel: Never revoked

Gerry: It would have been revoked when it changed hands.

John: Somebody would've had to, before your time, taken action and revoked it. Do you know, is there any particular thought to say that?

Gerry: No so it would have to be issued a special use permit, the business that's there, because it falls to close within everything. Doesn't matter what business it is. So when it's sold it becomes nonconforming to anything that's there and needs to be brought up to date.

John: I think it was, there's a reflection in the minutes that I read that shows it, because the value of the repairs exceeded 50% of the value that it would have to comply with the current code of 2002.

Mr. Woodward, how many meters are in that building, electric meters?

Joel: There's one electric meter. One gas, one electric.

John: I think you have sufficiently put on record that it's not in compliance with today's code. You mentioned the zoning. You mentioned the parking. And is it too close to anything other than those other zoning areas?

Gerry: Yes, I mean it's not allowed in there.

John: Because it's not in the industrial zone.

Gerry: Correct.

*No further questions

John: So you have to decide whether you want to put a motion on to vote about the special use permit (this is the form filled out by Mr. Woodward), but I think the language says that he wants the preexisting nonconforming to continue. You have to decide whether you want a motion and a second to approve allowing them the nonconforming use to continue or you can file a motion indicating that you can make a motion to say that it needs a special use permit, and vote on that, or you can reserve decision and issue a written decision in 62 days. Those are your options. Or you don't have to take any action. You have to take action on the application, whether or not you want to grant the application.

Chris: In my opinion, I believe it would be in the best interest to review all the minutes of tonight's meeting and form a letter within the 62 day time frame to the board, to yourself, to Gerry and to Mr. Woodward to explain our position and decision.

John: The only people who can vote on the application, are the three of you present tonight.

Bill: I don't disagree. I feel there is a lot more that I need to study. Mr. Woodward presented a lot of information. I want to make sure I cross all my T's and dot all my I's with this. So that would put me parallel with you.

Jen: I'm in the same boat, I have to read all the information he sends.

MOTION: Motion to close the public hearing for the property formally known as Playmates made by B. Stevens. Second by J. Tuerk. All in favor. None opposed.

MOTION PASSED

MOTION: Motion to close the review of minutes & forward findings to John Sansone, Gerry Wood & Joel Woodward & the board made by B. Stevens. Second by J. Tuerk. All in favor. None opposed.

MOTION PASSED

Bergen Swamp LLC opened at 8:20 PM

MOTION: Motion to open the Bergen Swamp LLC section made by B. Stevens. Second by J. Tuerk.
All in favor. None opposed.

MOTION PASSED

John: We have some representatives from Blue Wave here tonight. What I did was I circulated a, Sherman put together a combination of some comments that were made by Blue Wave, and also by renewable energy consultant. I sent that out this morning to Christopher, Rob, Gerry and Sherman. This afternoon I got back some comments by Blue Wave, by Rob, and I prepared a resolution for discussion. I think we can go about this one of two ways, and whichever way you want to go, we can go that way.

John: I prepared a resolution today for the board to approve the special use permit with the conditions that I sent this morning. Respectfully, the way that they're going to approve it under option A would be without incorporating the changes that you sent today. I want to move the project along and my thought process was we can amend the conditions. You make an application to amend the conditions and we can do it. This way, if they approve it, it moves forward, we keep moving forward. Option B is if you want to continue to try to talk and go through these changes, cause they kind of went back to what we had talked about on the phone at the team's meeting after it had been reviewed by our renewable energy consultant, and I just want him to look at it, which I wasn't able to give it to him.

Rob Panasci (Blue Wave): I don't know what your feeling is on this, but part of me wants to get the decision, right? Some of these aren't perfect, but if we could get an approval...

Fiona Dutcher (Blue Wave): I think, lets talk about the HCA

Rob: There are two things I wanted to talk to you about. The change that you made to the decommissioning agreement provision. The one thing that was added was in your install discretion. So I was going back to what would be in the code. And the other one was the HCA. I sent a form of an HCAQ. So the HCA's for large-scale projects would be a money component, a site plan review. I don't know if you're doing the reviews internally. They have an onsite monitor. They have decommissioning sometimes and all that stuff. It's really intended to be a huge agreement for a large-scale project. What I've always done for solar, that's small-scale, and I think that's all you really want. The two things we really wanted to nail down were that, you know, follow the code for decommissioning so it's in reasonable discretion. And then secondly, with the HCA, we understand your position. We want to give you an HCA with the money only, but not dealing with the rest of the stuff because it's over the top. Even if we had a soft commitment that we can come back in and address those.

John: Yeah, that's fine. I understand exactly what you're asking for. I apologize, I wasn't able to get to it in time to have our consultant look at it. I didn't want to hold your project up either.

Rob: I appreciate that. We're in a time where we want to get this all going. Because we're ready. And this is the time so that we can get done. So if you're okay with it, Fiona, I think this is the right approach.

John: You want the new approval with the conditions that we submitted this morning?

Rob: Yes, as long as they're okay with that.

John: Okay, I sent you a resolution.

MOTION: Motion to adopt the following resolution for Bergen Swamp LLC section made by J. Tuerk. Second by B. Stevens. All in favor. None opposed.

MOTION PASSED

Chris: *Reads resolution, attached "Bergen Swamp Resolution Approving SUP.docx"

Voice Vote recorded:

Jen: Yay

Bill: Yay

Christopher: Yay

MOTION: Motion to close Bergen Swamp LLC section made by B. Stevens. Second by J. Tuerk. All in favor. None opposed.

MOTION PASSED

Bergen Swamp LLC section closed at 8:31 PM

Zoning and Codes

Postponing discussions regarding zoning and codes, board will look over what John sent out and then discuss at the next meeting.

Miscellaneous Agenda

No Miscellaneous Agenda items

Public Comments

Roger Rouse: Can I get put onto the agenda for next months meeting, regarding flag lots.

Chris: Yes

MOTION: Motion to adjourn the meeting made by J. Tuerk. Second by B. Stevens. All in favor. None opposed.

MOTION PASSED

Meeting closed at 8:35 PM

Respectfully submitted,



Jennifer Tuerk