

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday, February 9, 2021
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
Patricia Burkard	Richard McNamara
Jonathan Hickey	Patrick Krey

Town Officials present:

Director of Community Development Jonathan Bleuer
Junior Planner Andrew Schaefer
Deputy Town Attorney Steven Bengart
Councilman Paul Shear

Motion by Richard McNamara, seconded by Raymond Skaine, to **approve** the minutes of the meeting held on November 10, 2020, as written.

MOTION CARRIED.

Other interested parties present:

Diane Mambretti	David Mambretti	“Henry”	Brendan Biddlecom
Ari Goldberg	Patrick Casilio	“Howard’s iPad”	Scott Wehrlin
Donald Gill	JPalumbo	Robert Sackett	Peter DiCostanzo
CWM/Patrick Sheedy	Matt Green	Brian Green	“iCAA”

An Attorney – Client discussion was held before the meeting.

Old Business

Appeal No. 3 (From November 2020 Meeting)

Brendan and Sarah Biddlecom
Residential Single Family

Applicant requests a variance to allow chickens on a property less than 5 acres in size at 9550 Maple Street.

Appeal No. 3 is in variance to §229-47

DISCUSSION

Mr. Biddlecom provided the additional information as requested by the board at the November, 2020 meeting in the form of a note from his son's primary care doctor. This letter was dated January 20, 2021.

Mr. Skaine stated that at the November meeting when he asked to have this matter tabled, it was so that Mr. Biddlecom could provide additional information from his son's counselor at Endeavor. This most recent letter is from his primary care office. Mr. Skaine asked why a letter from Endeavor was not provided. Mr. Biddlecom stated that due to insurance purposes, they are no longer seeing or working with Endeavor. His son mostly sees rotating doctors and Physician Assistant's at Primary Care Physicians, so he assumed that would be their best bet, since they are his primary caregivers.

Mrs. Burkhardt asked what age Mr. Biddlecom's son is, to which he replied 14 years old. A chicken's lifespan is approximately twelve years, and they currently own 4 chickens. Mrs. Burkhardt asked why they chose chickens and not another animal. Mr. Biddlecom stated that at the time they decided to get them, COVID had just hit, and it was an opportunity to provide an outlet for more outside activity, responsibilities, family time, etc. The way the coop is set up, it does take more than one person to care for the chickens, as well as the coop, so he or his wife will be with his son at all times when outside providing assistance, but their son is the main caregiver of the chickens.

Mrs. Burkhardt asked if there have been any issues with the coop located so close to the sidewalk, Mr. Biddlecom stated that it's been just the opposite, it draws people in to observe the chickens.

Mr. Mills asked in regards to the updated letter that was submitted, why did they not provide one from Endeavor. Mr. Biddlecom replied that there has been no definitive letter or correspondence with Endeavor informing them that they have ceased care with them, they have simply chosen to not follow up, and to continue with the primary care doctor.

The letter submitted on January 21, 2021 from Primary Care of WNY, LLP has been marked Exhibit 3, it is dated 1/20/2021. Mr. Biddlecom stated that the most recent and consistent care for his son has come from Primary Care, and it had been his understanding that the letter needed to come from the primary caregiver, who does have the full spectrum of their son's care, and ultimately the final say. That is why they have the letter from them.

Mr. Mills asked Mr. Biddlecom if his son's impairment substantially limits one major life activity or bodily function. Mr. Biddlecom responded that bodily function, no but life activity yes. As with any other mental health issues, it ebbs and flows so yes, there are days where his ability to function is impacted, without a doubt.

In referring to Exhibit 3, Mr. Mills stated that it is only two sentences, and does not provide much of a context, or additional information. The Physician's Assistant doesn't make the next step in cause of connection to say that the chickens are necessary for his mental or physical health. He personally would like to see a little more content in terms of her making that connection that the chickens are necessary material for their son's ongoing care. She doesn't prescribe them, she merely states they provide him with support. Mr. Mills said he would like to see a few additional questions asked of her, those being:

- whether the patient's impairment substantially limits his life activity
- what type of animal is necessary in terms of her prescription
- why a chicken versus a dog, a cat, or another animal

- whether the patient needs the animal because it does work, provides assistance, that it provides at least one task that benefits the patient because of his or her disability, or because it provides therapeutic, emotional support to alleviate a symptom or effect of the disability.

Mr. Biddlecom responded that he's willing to provide this information, but his concern is with HIPPA. The meeting is being recorded, he assumes this is all on the public record, and he's already very uncomfortable with speaking so frankly and publicly about his son's issues, this is a very private matter.

Mr. Bengart stated that they are not going to ask Mr. Biddlecom to disclose what his son's disability is, nor does it have to be in writing. What is more important is that the board knows that there is a disability, and that a particular animal is what is being prescribed to assist with whatever the issue is. That is what is most important, because the law does not allow for the chickens on their property, so while Mr. Biddlecom is asking for a variance of the law, the board cannot just approve variances without having the appropriate information. Mr. Bengart understands Mr. Biddlecom's concerns, and they are very carefully trying not to go in to any HIPPA areas.

Mr. Mills stated that the final component, in terms of the letter, they need something that is certified by the medical provider. That it is in fact true, and accurate. The one they currently have marked Exhibit 3, is just a letter with a digital signature. Mr. Biddlecom asked for clarification as to what is considered certified. His understanding is that the letter with the signature, on the letterhead, and dated, would be considered certified. He asked whether there is a stamp or something to indicate it is certified. Mr. Mills replied that they do not need it notarized, but that they do need some sort of certification or image on the letter stating the information is sworn to be true and accurate, then have them sign that. There is a distinction between an informal letter, and a certified legal document where someone is swearing and attesting to the content of the document.

Mr. Bengart responded, telling Mr. Biddlecom that he is welcome to reach out to him and he will help and explain to him the language that will be required. Understanding that once they have that language, it doesn't mean that the board will then vote in favor of this variance request, but they cannot go forward without having enough information to prove the validity for the need.

Mr. Biddlecom responded that he doesn't have any problem going back to his son's doctor to ask him to phrase it however the town needs it phrased, to at least get them to the point where they feel as though they can make an informed decision. He would have done that initially, had he known that is what the board wanted.

Mr. Michnik asked Mr. Biddlecom how long his son has gone to Primary Care, and how regularly his son sees the doctor or staff there. Mr. Biddlecom stated that he has been going there since approximately 2008, and is seen at least twice a year, but that fluctuates depending on need. Mr. Michnik then asked how long his son had been going to Endeavor, Mr. Biddlecom replied approximately a year, to a year and a half. His wife typically handles most of the appointments, she would have more accurate information for him. Mr. Michnik then asked how many times he was seen at Endeavor, to which Mr. Biddlecom responded earlier on he was seen more frequently, closer to once a week, but as time went on and they were able to better manage his needs at home without additional professional care, the appointments have become less. Mr. Michnik asked how long it's been since Mr. Biddlecom's son was seen at Endeavor, to which Mr. Biddlecom responded that he wasn't sure exactly, perhaps two months. Mr. Michnik then asked when the last time was that his son was seen at Primary Care. Mr. Biddlecom replied possibly September, perhaps after that, but again he isn't sure without referring to their calendar.

Mr. Michnik asked Mr. Biddlecom if he realizes that the chickens they own at this point, are not legal. Mr. Biddlecom replied that yes, he does understand that. Also, that they are requesting some information, and as the town attorney made a statement, it does not necessarily mean they are going to approve his request because they are asking for the additional information.

Mr. Michnik stated that additionally, he would want the chicken coop 20 ft. away from every lot line and building.

Mr. Skaine asked in regards to the Primary Care doctor. Mr. Biddlecom must have called them for the letter, because it is dated January, 2021 and Mr. Biddlecom stated that his son hasn't been seen there since September, 2020. That is almost 5 months difference of them seeing his son, and then writing the letter. Mr. Biddlecom stated that they have been trying to limit doctor office visits during Covid, but if the board would like them to have a face to face appointment with the doctor, then they will do that.

Mr. Bengart stated that the board won't tell Mr. Biddlecom what to do as far as healthcare treatment goes, just know that the doctor will have to be able to certify that the condition exists, and that it still exists, and this is the answer to that condition.

At this time, Mr. Bleuer read in to record an email that had been received in regards to this variance request, sent on February 5, 2021. This letter is on file.

In response to the contents of the email regarding a dog attacking their chickens, Mr. Biddlecom clarified that it was not a dog from off the street, but instead a family member's puppy that was at their house. Unfortunately, the puppy was left alone with the chickens and caused fatal wounds to two of the chickens, leaving them with four chickens. He wants to be clear that the puppy was on their property, it was not a random dog that came in off the street. Their property is fenced, and on top of that, the coop area is also fenced.

Mr. Michnik asked if they allow their chickens to run around outside of the fenced in area of the coop. Mr. Biddlecom responded that the only time they are ever outside of the coop's fenced in area is when they are out there with the chickens.

Mr. Michnik then asked whether Mr. Biddlecom would object to bringing the doctor in to the next meeting. Mr. Biddlecom said he doesn't object, he can certainly ask the doctor if they would be willing and able to come to the meeting.

ACTION

Motion to **table** Old Business Appeal No. 3, second by Raymond Skaine, the applicant has heard from various board members regarding some additional information that they would like. The town attorney has indicated to the applicant that he will make himself available to the applicant for any further questions concerning these items. This information is:

- Medical provider to certify and swear and attest to the information in his or her report. Exhibit 3 does not have that certification;

Additional information from that provider which should include, but not be limited to:

- whether the patient has a physical or mental impairment;

- whether the health care provider has a professional relationship with the patient involving the provision of health care or disability related services;
- whether the patient's impairment substantially limits at least one major life activity or major bodily function;
- the type of animal for which the reasonable accommodation is sought;
- whether the patient needs the animal because it does work, provides assistance or provides at least one task which benefits the patient because of his disability;
- whether it provides therapeutic emotional support to alleviate a symptom or effect of the disability.

Mr. Mills noted to Mr. Biddlecom that the board needs that additional content in the letter from the medical provider.

Mr. Bengart noted that this is Mr. Biddlecom's request, and what information he provides is up to him. While the provider coming in may be better testimony than a letter, the board should not tell Mr. Biddlecom how to prove his case.

Mr. Biddlecom understands and agrees to the motion to table and to provide the additional information.

Patrick Krey	Aye	Richard McNamara	Aye	Ryan Mills	Aye
Raymond Skaine	Aye	Daniel Michnik	Aye		

MOTION CARRIED

New Business

Appeal No. 1

David Mambretti
Residential Single Family

Applicant requests a variance to allow a detached accessory structure (emergency generator) to be located within the front yard setback at 8128 Leah Court.

Appeal No. 1 is in variance to §229-55

DISCUSSION

They would like to have a whole house generator installed. The best place to have it located is on the side of the house, which due to their location on a corner, becomes the front of the house. Also due to utility hookups, this side of the house is the best location. The back of the house has too many deterrents such as windows, patio, and landscaping. The other side would be inconsiderate to their neighbors, due to the close proximity, and the fact that they have small children.

The side of the house they would like to have it placed already has landscaping in existence, there are several full Spruce trees along that side.

Mr. Krey asked if there is any neighbor input, Jon Bleuer stated that due to Covid, the Planning and Zoning office has been notifying the neighbors of the variance requests. Mr. Bengart stated that there is a very prominent variance sign located on the property, notifying neighbors that a variance request has been submitted.

Mr. Krey then asked why they need a generator. My Mambretti responded that they technically don't need it, but taking in to consideration they're both retired and would like to do more traveling, as well as the convenience of when the power goes out, would be nice to have it to rely on. They currently have a portable one, but it is all manual, and when you're not home and the power goes out, it doesn't do much good. For extended absences, this seems to be the best solution.

Mr. Krey then asked whether they have experienced power outages at their home. Mr. Mambretti responded that yes, they have experienced power outages. Mr. Krey asked how long they have lived in their home, to which Mr. Mambretti responded approximately twenty years. Mr. Krey then asked if they have experienced power outages in that time, Mr. Mambretti stated that yes, they have.

Mr. Krey asked if they plan on doing any landscaping around the generator, since it will be so visible on that corner lot. Mr. Mambretti stated that they weren't planning on it, but if that is a condition that the board makes, they will be happy to oblige. He stated that there are some trees further out towards the street. They are about 55 feet from that side street, so they are not right by the road. Visibility and noise will be at a minimum. It would be nestled in within the landscaping already in place along that side of the house as well. There is a whole row of Spruce trees along that side, closer to the street, which would block most of the visibility. The generator would be placed right up against the house, between the two uprights.

Mr. Krey then asked if he is understanding correctly, that due to the existing landscaping, they don't feel it is necessary to add any additional landscaping, though they did indicate a willingness to do so if it was a condition. Mr. Mambretti stated that yes that is correct, it would be all in a row, going along the side of the house. There is currently landscaping along the side of the house, then there would be the generator, then additional landscaping, then the air conditioner. Everything would be tucked in along there.

Mr. Skaine stated that he agrees with Mr. Mambretti, that the row of trees along the side closer to the road will be adequate. He has a whole house generator also, and understands what Mr. and Mrs. Mambretti are referring to, as NYSEG is not too reliable right now. Mr. Skaine then stated if they could install the generator towards the back of their house, away from the street and the noise further away from the neighbors, which would be a better arrangement.

Mr. Michnik stated that more information is needed from Mr. Skaine as far as his reference to what he means by further towards the back of the house. Does he mean 10 feet, 15 feet, needs to be more specific. Mr. Michnik asked Mr. Skaine whether he'd like the generator to the right or to the left of the air conditioner, Mr. Skaine stated he believes it's the right. Mr. Mambretti stated that the air conditioner is right at the back of the house. There is currently shrubbery in next to the air conditioner, to help shield that from view.

Mr. Mills said that his concerns are similar to Mr. Krey's, in that he doesn't feel the large Spruce trees will be enough to shield the generator from view. If you're driving down Golden Oak, you will have a direct view of the generator. The Spruce block the back corner of the house, but not where the generator would be. It would still be in direct view for cars and people walking by. He'd like to see some additional

landscaping around the generator. If you moved it to the back of the house like Mr. Skaine said, it would be more obstructed, but you can't because the air conditioner is there. Mr. Mambrettie agreed to that suggestion. Mr. Mills stated that some Arborvitae or similar, approximately 3 ft. in height, that would shield the generator and help improve the aesthetics.

Mr. Michnik stated that he agrees with both Mr. Mills and Mr. Krey, in that when you come from the opposite direction, the generator would still be visible. He does have a concern about aesthetics and the way these things look to the public. You never know what is going to happen, and they'd rather err on the side of making things look good for everyone. Mr. Mambretti is asking for them to approve their request, but the board will have things that they would like to see as well, in order to assure everyone will be happy.

Mr. Mambretti stated that he has no problem doing the additional landscaping, his only request is that he doesn't need to put in Arborvitae, as the deer love them. He'd rather put something in that is deer resistant. He will put something similar in fullness, like a Boxwood or Juniper.

Mr. Bengart reminded the board that someone will need to go out to approve this later, so it needs to be specific enough that they understand

ACTION:

Motion by Patrick Krey, second by Ryan Mills to **approve** Appeal No. 1 with the following condition:

- At least three shrubbery, either Juniper and / or Boxwood, which are at least 3 ft. in height, be placed on the east side of the generator, to better conceal it.

Patrick Krey	Aye	Richard McNamara	Aye	Ryan Mills	Aye
Raymond Skaine	Aye	Daniel Michnik	Aye		

MOTION CARRIED

Appeal No. 2

Scott Wehrlin
Agricultural Rural Residential

Applicant requests a variance to allow a 265' front yard setback for the construction of a single family home at 10792 Keller Road.

Appeal No. 2 in in variance to §229-41(A)

Mr. Wehrlin asked if Mr. Zubin from Zubin Custom Homes can speak on his behalf.

Mr. Zubin explained that this is a new build ranch, approximately 2300 - 2400 sq. ft. When they went for the original building permit, everything was approved, but Dave Burke called and said that a variance was needed because the two neighbors have variances, and this house will be right in with them, and they needed to follow that protocol.

Mr. Michnik asked for additional information regarding the house. Mr. Zubin stated that it is a beautiful ranch home, 2 car garage, and pole barn to the right of it. He did include a site plan, which Mr. Michnik stated they do have. The house will have a stone front, vinyl siding, a big porch off of the back.

Mr. Skaine asked Mr. Bleuer what the setback is for the house directly to the west of Mr. Wehrlin, which Mr. Bleuer responded that it is an approximately 333 ft. setback. The home directly to the east is approximately 218 ft. setback. Mr. Skaine asked if the house to the west would hold precedence once they establish a setback. Mr. Bleuer replied that no, if the Zoning Board of Appeals issues a setback variance, it doesn't create precedence for future lots, it doesn't establish that setback, for future lots.

Mr. Skaine asked if the house to the left is setback at 330 ft., does that mean they will be looking in to their backyard at 265 ft. Mr. Zubin stated that he's not sure what that means, but through more discussion, it was determined that they would be pretty equal to the neighbors, basically in the middle.

Mr. Skaine asked if any neighbor notifications went out, Mr. Bleuer stated that as with all of these items, the Town has notified adjacent parcels due to the unknown nature of meeting dates during Covid. There have been no responses from any of the notifications.

Mr. Zubin stated that they were given permission by David Burke to put the temporary driveway in, knowing that they needed to still come for the variance, but because they were trying to not go further or closer than their neighbors, Mr. Burke said it would be ok. They had planned to start in the summer, but with everything going on, they've needed to wait for the variance.

Mr. McNamara said he has no issues with this, it's a medium between the two houses on the left and the right, and he has no other questions.

Mr. Michnik asked in regards to the barn or auxiliary building that they are going to put up, what exactly is going in there. Mr. Wehrlin responded that it won't be for any commercial use, they will simply storing their RV in there. Mr. Michnik asked what kind of business Mr. Wehrlin is in, Mr. Wehrlin responded that he does not own a business, he works for a non-profit agency, and he will just be storing his RV inside the building. Mr. Michnik asked what size RV Mr. Wehrlin has, Mr. Wehrlin replied that he has a 27 ft. travel trailer. Mr. Michnik asked in regards to the size of the building, what size is it? Mr. Wehrlin replied that it's 32x48. Mr. Michnik asked Mr. Bleuer if they are to be looking at the size of that building also. Mr. Bleuer replied no, that because it is located in the Agricultural Zone, the only item that comes in to play for accessory structures is based on setback, and there is no maximum size like in the Residential Single Famil. Mr. Michnik asked if they need to work on something for a setback for this particular building also. Mr. Bleuer responded no, it is proposed in conformance with town code.

Mr. Michnik asked how soon they plan to build the accessory building. Mr. Wehrlin stated that they are permitted together, so they are planning on building them together, within months. Mr. Michnik asked if they have any idea as to what the building will look like. Mr. Wehrlin stated that they will be making it look as nice as the house will. It will have the same coloring as the house, so that it blends in well. Mr. Michnik asked what kind of siding it will have, and if Mr. Wehrlin can supply more information as to what the accessory structure will look like. Mr. Wehrlin responded that there will be two overhead doors in the front, steel sided building with a steel roof. A single man-door on the left side of the barn. Mr. Michnik stated that he just wants to make sure they understand what the secondary building is going to look like, as he does have neighbors on both sides that will also see it. Mr. Zubin noted that the neighbor to the east has a very similar building.

ACTION:

Motion by Raymond Skaine, second by Richard McNamara to **approve** Appeal No. 2 as written.

Raymond Skaine	Aye	Ryan Mills	Aye	Richard McNamara	Aye
Patrick Krey	Aye	Daniel Michnik	Aye		

MOTION CARRIED**Appeal No. 3**

Barclay Damon for Green Org.
Commercial

Applicant requests a variance:

- a) To allow a third story on a multiple-family development; and
- b) Of 2 multiple-family residential units to allow a total of 18 units;

for a mixed use project located at 9150 Sheridan Drive.

Appeal No. 3 is in variance to

- a) §229-126 (D) (1) (f)
- b) §229-126 (D) (1) (b)

Ari Goldberg spoke on behalf of the applicant. Also included was Brian Green and Matt Green for the applicant, Patrick Sheedy Jr. from Carmina Wood Morris, the project engineer.

Mr. Goldberg explained that the two area variances in front of the board tonight are part of a larger area development. In short, the applicant is proposing a three story, 28,000 sq. ft. mixed use project with 18 residential units and then there's commercial space on the ground floor. As part of the process of building in Clarence, they have already appeared in front of the Planning Board, as well as the Town Historic Preservation Commission. The Historic Preservation Commission determined that the existing dwelling on the property has no historic significance. Meanwhile the Planning Board issued a negative declaration under New York State's Environmental Quality Review Act. What is important there, is environment. Under the Planning Board's SEQRA review and decision, that includes not just Wetlands, trees, grasslands or animals, environment includes other similar factors reviewed by this board like neighborhood, traffic, and community character. The Planning Board, in declaring that the project will not have any significant negative impacts on the environment, it offers some point of consideration here.

As to the two variances themselves, the first is for the number of stories. Under zoning code §229-126 (D) (1) (f) they can only build two stories with a multi-family project, and they propose three, so they seek a variance for one story. What's important in this variance is that that zoning code is a bit of a quirk to it, in that the property is zoned commercial under the code, and under Section §229 -87 (f) (1) the maximum height for the district is 45 ft. Even with their third story, they are under the maximum height. For example, if they were to put up a hotel or office, they could build up to 45 ft., and not have to come before the Zoning Board of Appeals for a variance.

The second variance is for the number of residential units. They are permitted 16 residential units under town code §229-126 (D) (1) (b) they are seeking 18, therefore they need a variance for two units. The reason they seek 18 units is because it is a septic project. The septic system, as proposed, is capable of

handling the entire project, and again, the New York State's Environmental Quality Review Act found no negative impacts with 18 units and the commercial space all on septic.

Turning to the Standards of Review for the area variances themselves, there is a considerable benefit in granting these variances. The applicant can implement its project plan and build its building. But on the other side, the detriment to health, safety, and welfare of the neighborhood or community is minimal. The variances requested will not produce an undesirable change in the character of the neighborhood, or detriment to nearby properties. This is a commercial zoned property of the town, the Sheridan Drive, as well as the Main Street – Sheridan node is all slated for commercial projects, mixed-use projects with walkable space. That is this project to a tee – it is mixed use development that brings a reasonable density of residents to the Main - Sheridan node. Residents can live at the development, and use the recent and future pedestrian bicycle infrastructure improvements not just to access the commercial space on the ground floor, but other commercial or recreational spaces on Main and Sheridan.

They realize that for now, this area of Sheridan is in transition. The Comprehensive Plan and underlying zoning code envisions this neighborhood as mixed use neighborhood with commercial uses, but it is not quite there yet. So in recognition of this state of change, the applicant only utilizes approximately 30% of the 3.3 acre property for the project, the rest is greenspace. They have also complied with the 45 ft. greenspace buffer to the west, as well as adding landscaping to the edge of that buffer to enhance the screening, and make for a smooth transition from project site to the lawful, non-conforming occupied dwelling at 9140 Sheridan. So the project found this sort of “Goldilocks zone” between current and future neighborhoods, then through conscientious design, the plan detriments neither of those.

The benefit of the variances cannot be achieved by some other feasible method. They could drop to two stories, and spread out horizontally, but then they would intrude on the greenspace. They could drop two units, undermining the project's financial viability, therefore neither option is feasible.

Third, neither variance is substantial. The single additional story still places this project under the permitted maximum height for the district. Also, an important design feature, the roof is flat, so unlike other projects in Clarence, there won't be a pitched, shingled roof with an attic space which increases the street presence of the building. In terms of substantiality, the septic system can handle the entire project, 18 residential units included.

Fourth factor, the variances will not negatively impact the environment. The project contains appropriately sized storm water detention facilities, it preserves greenspace, and it ensures sufficient greenspace and vegetation buffers. Taking environment a step further, Sheridan Dr. is already a heavy traffic street, they don't anticipate substantially increasing that traffic, and they don't anticipate undermining the recent reorientation road guide that Sheridan underwent, additionally they don't anticipate undermining the pedestrian bicycle infrastructure permits, existing or in the future, as they feel the residents will utilize those.

Lastly, the hardship is not self – created, the unit capacity results from the project being on a septic system, and the additional story pushes them up to permitted heights, as opposed to out, which then impacts the greenspace. An important point is that the plan language of this factor states, that even if it is determined to be self-created, that doesn't preclude the granting of the area variances, this is a balancing test of all of the factors.

In balance of weighing all of those factors, the benefit to the applicant is substantial. Granting the variance facilitates the applicant's development, and brings residents and commercial to the Main – Sheridan node, all of which happen to achieve Comprehensive Plan goals. On the adverse, the detriment to health, safety, and wealth in the community is minimal.

In closing, Mr. Goldberg stated that they respectfully request that the board grants their one story, and two unit request for relief. The project team is all present and available to answer any questions the board may have.

Mr. Skaine stated that they received three new images today. He asked if the buffering that they plan to do, if they will do it at the same time as the building. Mr. Goldberg responded that the landscape buffer at the edge of the greenspace buffer will be installed at the same time as the general construction. Mr. Skaine asked whether the Planning Board has recommended a certain numbers of trees, or if they have had any recommendations concerning the trees. Mr. Goldberg stated that at this point, there has been no recommendation as to the number of trees, as they will return to them for Concept Plan approval, and they also will need to submit a Landscape Plan to the Landscape Committee, which is subject to town approval, which Mr. Bleuer confirmed. Mr. Skaine asked if the photos are renderings of what is maybe being proposed, Mr. Goldberg confirmed that they are renderings to help aid in the understanding of what the project looks like. They recently submitted an updated site plan, which was part of the image package which does include the trees at the edge of the greenspace buffer to the west.

Mr. Krey referred to a statement that Mr. Goldberg made in regards to if they get approval for the variances, they wouldn't have to develop outward on the site, which will keep more greenspace. Mr. Krey asked how much greenspace there will be under the current plans. He stated that Mr. Goldberg made it sound as if they would need to use some of the greenspace to build on. Mr. Goldberg responded that 71% of the land will remain greenspace, on a 3.3 acre lot.

Patrick Sheedy Jr. from Carmina Woods Morris spoke, confirming that 71% of the lot will remain greenspace, which equates to 2.35 acres. A couple of factors for that, first off, basically the whole northern portion of the site, there are wetlands back there and one of the conditions they have for the septic design, is that it has to be at least 100 ft. away from the wetland buffer. That pushes the septic system 100 feet closer to Sheridan Drive. This eliminates a lot of area for development, which is how they came up with the current site plan

Mr. Mills asked who currently owns the property. Mr. Goldberg responded that the property is currently owned by Miss. Renee Marvis, and the Green Organization is under contract to purchase. They submitted an owner authorization form with their application, and Miss. Marvis by Power of Attorney, signed off on all of the consent forms that the town requires.

Mr. Mills asked Mr. Bleuer if the section cited by Mr. Goldberg, §229 -87 (f) (1) which refers to a maximum height of 45 feet, is that applicable to this project? Mr. Bleuer responded that the specific section, §229-126 (D) (1) (f) is applicable to the multi-family code regarding limiting of the multifamily building to two stories. Within the commercial code, Mr. Goldberg is accurate that the allowable height in the commercial zone is a maximum of 45 feet. Mr. Mills asked if this is in the Commercial Zone, to which Mr. Bleuer confirmed yes. Mr. Mills stated that they are a bit flux in that because it is multifamily, it is supposed to be limited to two stories, but there is a commercial component as well, with the retail on the first floor. Mr. Goldberg replied that that is what makes it mixed use. The height isn't specific to this project, because it is multifamily it is specific to the property.

Mr. Goldberg stated that the point he is trying to make is that if they were to build an expressly permitted use for the commercial zone, for instance a hotel, they could build up to 45 feet without needing a variance. Mr. Mills clarified that because this project has the multifamily component they are restricted under the code to two stories. Mr. Goldberg's point is that if it wasn't multifamily they could build higher.

Mr. Mills asked Mr. Goldberg if he has any examples of anything nearby in the immediate area that is similar in height to what the structure will be, for example the Rite Aid on the corner, does he know the height of that building. Mr. Goldberg replied that he believes Rite Aid is one story, but that it might have design elements that go higher. In terms of other three story buildings, they are at 40 feet, and he is not sure of any 40 foot buildings. The entire stretch of Sheridan from where it intersects at Main and Sheridan, down to the town line, is all zoned Commercial or Restricted Business, so there is room to put 45 ft. high buildings in other spaces along that frontage. Mr. Goldberg referred to the building at Sheridan and Shimerville, stating that it may be three stories, but it may also be below grade.

Mr. Mills then asked about the two additional multifamily units needed, are those something that is needed in order to make the project happen from an economic standpoint, would the numbers not work if it was sixteen vs. eighteen units. Mr. Goldberg responded that the numbers work less, and as the current market and circumstances have highlighted to a lot of developers and individuals alike, residential space is more viable right now. It's unclear what commercial space would be like, so they're focusing on the residential, and it is important to add those additional two units. Mr. Mills asked why they weren't also going to residential on the first floor, to which Mr. Goldberg replied that mixed use incentivized by the town. Mr. Mills asked if there will be eight retail outlets on the first floor, Mr. Goldberg responded that it is 6400 sq. ft. of commercial space, and he is unsure if they have decided how that space will be split up. Mr. Mills stated that he is looking at and referring to their visual rendering, which will be marked Exhibit 1. Mr. Mills asked Mr. Goldberg to describe what will be happening on the first floor. Mr. Goldberg stated that there is 6400 sq. ft. of space. He noted that if Mr. Mills is looking at the rendering and seeing the 8 window paned areas, or 8 signs, the renderings don't necessarily reflect the amount of commercial units that will be on the ground floor.

Mr. Mills asked if they contemplate having more than one tenant on the first floor, Mr. Goldberg deferred the question to Bryan and Matt Green. Bryan Green stated that currently it is open space, and it will depend on who the tenants are that go in to that area, it could be two tenants, it could be one tenant. They attempted to put the commercial aspect in to the property to keep with the Comprehensive Plan of the town. Mr. Goldberg stated that it will be market driven, and if there is a tenant that comes in that only needs 3200 sq. ft., then they will sub-divide.

Mr. Mills asked for more information as far as materials that will be used on the building. Bryan Green replied that they're planning to use higher-end materials such as brick, and nicer materials. They want it to look very nice, so they won't be skimping on the materials that they use.

Mr. Mills referred to Exhibit 1 and asked if the applicant can say with much certainty that the structure will contain as much brick as it depicts in the photograph, to which Bryan Green responded yes. Mr. Mills asked about the white stripping in between the brick, and what kind of material that is. Bryan Green stated that it's like a plastic material, so that it doesn't weather, and holds up to the weather. Dave Sutton did the drawings, he designed it and they want it to look nice, for both the tenants and the commercial property.

Mr. Mills asked what they contemplate the market rate rents might be for the residential component, Bryan Green replied that rents will fall between \$1200 and \$1600. Mr. Mills asked what the bedroom layout will be, to which Bryan Green responded that there will be some one bedroom as well as some two bedroom units. Mr. Mills inquired as to whether all of the parking will be outdoors, and that there will be no underground parking. Bryan Green stated that there are some garages on the side, in the rear of the property on the north.

Mr. Bengart reminded the board that depending on how they move forward with this, much of these issues and details will get vetted out in the planning process with the Planning Board.

Mr. Krey confirmed that 71%, or 2.35 acres of the property will remain greenspace. He also asked if the intent of the roof structure is to be flat, as depicted in Exhibit 1. Mr. Krey noted that the best rendering of the roof is on page three of the attachment that was distributed. This is page 3 of Exhibit 1, which contains 5 pages. In reference to the one and two bedroom apartments that are planned, Mr. Krey asked what the square footage will be. Bryan Green responded that the square footage will be roughly 800-850 sq. ft. for a one bedroom apartment, and then approximately 1,000-1,100 sq. ft. for a two bedroom apartment.

Mr. Michnik asked how big the lot is in terms of frontage, Mr. Sheedy replied that it is 224 ft. Mr. Michnik then asked in regards to the housing, manufactured home park to the right of the proposed structure, how close will they be to that property. Mr. Goldberg stated that he believes there is an intervening lot, he can give a rough estimate of that size. Mr. Sheedy stated that in regards to the manufactured home to the east, he believes it to be at least 135 ft. from their property line, so from the physical building itself, it will be over 200 ft. away. Mr. Michnik asked if they know who owns that property, Mr. Goldberg replied that it is a Revocable Trust in Ellis Satola's name.

Mr. Michnik asked in regards to the two homes to the west, whether neighbor notifications were sent, and if any responses were received. Mr. Bleuer stated that the town did mail out neighbor notification forms as part of the project, and that as part of the Town Board and Planning Board previously, there has been public comment, and the adjacent neighbor to the immediate west has reached out. They may be on the call this evening, and when allowed, they may have comment. To this point, the comment that has been received from them is that they are opposed to the project. Mr. Michnik asked if there was any response from the manufactured home owner, to the west of the project, to which Mr. Bleuer responded no there has not been. Mr. Goldberg commented that since the neighbor at 9140 Sheridan Dr. submitted their comments on the project, they have reached out to them. They hand delivered the area variance application to them, Bryan Green met with the resident several days ago, Mr. Green showed him the stakes, and part of their concerns was the additional vegetative buffer on the already 45 ft. greenspace buffer.

Mr. Michnik posed a question regarding parking, in regards to commercial business on the bottom and residential on the top, where will everyone park and how is it going to be controlled. Will the residents have designated parking spots. Mr. Sheedy noted that in terms of the number of parking spots, they meet the required number of spaces per the town code for both the commercial and the residential aspects of the project. Mr. Michnik asked Bryan Green if he can give more information regarding reserved parking for the residents of the building, or if it will be open parking. Bryan responded that they have discussed that, and what they're trying to work out is specific spaces for them, or marked spaces by apartments.

Mr. Michnik also stated that he is concerned about the traffic flow in and out of the driveway, because of the way the state put the extra lane in that forces people to cut over, forcing drivers in the right hand lane to get in to the left hand lane with merging. He doesn't like the situation where the building is, and how the driveway is set up, the way it all will flow. They are not located far from the traffic light, perhaps 75 ft., to which Mr. Sheedy and Bryan Green stated that they are closer to 700 ft. from the traffic light. Mr. Michnik reiterated his concern with the traffic flow in and out of that area. Additionally, he has concerns regarding the residents that reside in the manufactured home park, despite the distance they will be away from them. Also, there is a lot of vegetation in that area and he wonders whether an attempt has been made to reach out to the owner of that property to see whether they have any concerns. Bryan Green stated that he has not had any contact with them yet, as his concern was with Mr. Gill, as he is closest to the property, he has focused his attention on working on Mr. Gill's concerns. Matt Green said they have tried to contact that owner, and have left messages as they have some interest in that property as well, but they have not made any contact with them.

Matt Green stated that in regards to the driveway, they did make an effort to make it easier for navigation for traffic, as there is a lot going on in that area as far as traffic flow. Mr. Goldberg stated that the concerns Mr. Michnik have will occur with any use that goes there, as they are site plan problems, and as we have heard from Matt and Bryan Green and Pat Sheedy, these are all issues they have considered, and tried to design the project to be sensitive to those concerns, but any permitted use that goes there would face these same issues. Mr. Michnik reiterated his concern over the increased traffic flow with the proposed building there. He knows the Planning Board has worked on that item, and looked in to this issue, but he wants to express his concerns with it.

Additionally, Mr. Michnik has a concern regarding three stories. He feels that the proposed building looks beautiful, the flat roof looks nice, but he thinks they will set a precedence by allowing a three floor building be built there.

Mr. Goldberg stated that if a hotel was to be built there, they would face those same site issues as Mr. Michnik posed, and they would be able to build up to 45 ft. high and not appear before the Zoning Board for a variance. Zoning boards don't set precedence in granting variances. They may change the characteristics of the neighborhood, but those are defined by the town itself in the underlying zoning code, the Comprehensive Plan warrants projects like this one, and looks for projects up to 45 ft. high.

Mr. Michnik addressed Mr. Goldberg's statement that Sheridan Drive is turning all commercial, but it is not all commercial. There is still quite a bit of residential on the north side of Sheridan Drive, and in general, there is still a lot of residential area along Sheridan Drive. Two neighbors to your west, multiple neighbors to the east side, as well as the Parks Dept. the Highway Department, and a park in there as well as several other properties. He'd like to reiterate that Sheridan Drive has not turned in to a commercial zone.

Mr. Goldberg responded that Sheridan Drive is zoned commercial, and it is an area in transition and in respect of that change in development, that's why they have tried to maximize preservation of greenspace.

Mr. Michnik asked Mr. Goldberg if he was referring to his piece of property that they purchased being the parcel that is zoned commercial. Mr. Goldberg clarified that every property fronting Sheridan Drive from the intersection of Main Street to Transit Rd., with the exception of frontage along Transit Road is either zoned Commercial or Restricted Business under the town's zoning map.

Mr. Michnik asked Mr. Bleuer if this was true, to which Mr. Bleuer confirmed that yes it is. Mr. Michnik asked if this means the north side and the south side can both be turned in to commercial, which Mr. Bleuer replied that Sheridan Drive is zoned a mix of Restricted Business and Commercial. He also explained that for many years Commercial and Restricted Business did allow residential uses, but specifically regarding the zoning, the corridor is zoned Restricted Business and Commercial, which would allow for a variety of uses.

Mr. Goldberg asked if for a commercial zoned property, a single family dwelling is no longer permitted, which Mr. Bleuer confirmed.

Mr. Bengart reminded the board that their job is to deal with the variance issues, not the planning issues.

Mrs. Burkhardt asked if in regards to the house to the west, 9140 Sheridan Dr., they stated that they'd be mitigating that with some landscaping but will they still be able to see the building, or are you putting quite a bit in there.

Mr. Bengart once again reminded the board that a lot of these issues will be dealt with at the planning level. Mr. Goldberg, while acknowledging Mr. Bengart's reminder, did state that they appreciate the board's questions, and that their comments are helpful in helping them bring this project to fruition.

Bryan Green stated that one of the things with them moving ahead with this project, since it is zoned commercial, as well as so many other areas of Sheridan Drive also zoned commercial, that is why they proceeded with this project. They would not have chosen to do it in this location if it was zoned residential. They plan to put a substantial amount of trees along that border, which is something he has spoken with Mr. Gill next door about. They want to make sure he is comfortable, and happy with the view.

In regards to Mrs. Burkhardt's question, nine trees are proposed to be planted at the time of construction, with a 5 ft. height minimum, then they will grow from there. Additionally, there is existing brush there already.

Mr. Mills asked for more clarification regarding going back on the property with a two story plan versus up with a three story plan, and why that isn't an effective solution. Mr. Goldberg responded that in reference to what project engineer Pat Sheedy explained, there are wetlands in the rear of the parcel, so they have to place their septic system away from the wetlands buffer. If they went horizontal, they would be infringing not only on the greenspace, but also the wetland buffer that they are currently in compliance with. Mr. Sheedy noted that the septic setback from the wetlands has to be a minimum of 100 ft.

Mr. Mills reiterated that while they'd lose some greenspace, is it their testimony here before the board that there is no way to go anywhere else on this site other than up. Mr. Goldberg stated that the testimony is that there is no feasible alternative in another place on the site. Mr. Mills asked for clarification on what Mr. Goldberg means by feasible alternative. Mr. Goldberg responded that the factor to consider is whether there is any other feasible alternative for the site orientation to obviate the need for this area variance, and they testify that there is no feasible alternative. Mr. Mills noted that this site with its size and composition would allow for them to achieve the 16 or 18 units without three stories. Mr. Goldberg replied that Mr. Mills' question, as phrased, the answer is yes, however they would then be in violation of the wetland buffer that they are in compliance with, as well as lose greenspace. Therefore it is not a feasible alternative. More discussion ensued regarding alternative vs. feasible alternatives. Mr. Mills asked if from

a cost standpoint, it is more economically viable for them to go up versus horizontal. Mr. Goldberg replied that he does not know at this time. He can answer from an economic perspective, going horizontal may require more permitting process, and more entitlements to process before bringing this project to fruition.

Bryan Green stated that it will probably cost more to build up but they are trying to maintain greenspace. They want enough greenspace around the property, and like Mr. Goldberg was saying, they want to assure they were far enough away from the wetlands. They would like to make it an open area, so that they aren't taking up too much space, and they can't spread it out, it doesn't work that way.

Mr. Goldberg explained that this is a balancing test, there are five factors in view to look at this project, and what they champion the most is the first factor, in which the way they designed it, minimizes the detriment to the neighborhood. It keeps with the character, and enhances the character as set forth in the Comprehensive Plan. Perhaps going two stories changes that, but it also undermines the benefit achieved in not detracting that neighborhood.

Mr. Mills responded that in understanding the balancing test and the character of the neighborhood, he's having a difficult time after having searched that corridor from Harris Hill to Main and Sheridan, he's not locating any other structures that achieve the three story height, therefore he is getting stuck on the character of the neighborhood. Mr. Goldberg stated that while he doesn't disagree with Mr. Mills, he also believes that the way in which they've structured the development, they're making every attempt to maximize greenspace, because the Main and Sheridan node is not yet at what the Comprehensive Plan envisions. He can foresee many more of these requests simply because that is what the Comprehensive Plan demands – mixed use, multi-family, commercial buildings along Sheridan, because that is what it is zoned.

Mr. McNamara questioned the two different setbacks on the west side, referring to a 25 ft. setback as well as a 45 ft. setback, and requested clarification. Though not sure of what Mr. McNamara is referring to, Mr. Goldberg attempted to explain it stating that if you are heading west on Sheridan, the first edge of the building is set back 128 ft. from the right of way, while the other edge is 92.44 ft. from the setback. Mr. McNamara stated that he is referring to the side setback, Mr. Goldberg replied that there is a 45 ft. greenspace setback, Mr. McNamara asked what the 25 ft. setback is, and why there are two different setbacks. After discussion continued, Mr. Bleuer clarified for Mr. McNamara by stating that the established, demanded setback in the code is a 25 ft. setback, but because the property is adjoining a residential use, they are required to increase that from 25 ft. to 45 ft.. They are showing the allowable setback, as well as the required 45 ft. greenspace setback.

Mr. McNamara then referred to the east side, stating that it appears to be 45 ft. in the back, then moves to 25 ft. in the front. Is that because it is commercial in the back and residential in the front, to which Mr. Sheedy confirmed yes that is the reason.

Mr. McNamara commented that he is a contractor, and he is aware that building up is less expensive than building out.

Mr. Gill residing at 9140 Sheridan Drive then spoke, stating that this is his third meeting in regards to the project, he is still opposed to this project, mainly because of the size and magnitude of it. He and his wife have lived there for 44 years, they have a 1200 sq. ft. house and will have to look at a 26,000 sq. ft., three story building which doesn't really fit the footprint of the neighborhood. Additionally, he is concerned

with the negative impact it will have on the value of his house, should he choose to sell it. He is also concerned about the traffic flow, as was mentioned by Mr. Michnik. The multitude of parking spaces is another concern that he has. Even though he has met with Bryan Green, who has come to Mr. Gill's house a couple of times to discuss the project with him, and has been very gracious in putting in shrubs, or a berm, and anything else that they have planned, that's not really the problem. The issue to Mr. Gill, is that the building would be something new in Clarence that has not been done before, on Sheridan Dr., and unfortunately, his house is right next door to it. He's opposed to it for that reason, the size of the proposed project. While noting that directly across the street is the commercial bank, and a strip mall with a lot of parking spaces. They also used to have Emily's Diner across the street, and there are even apartments across the street, so he is not opposed to commercial buildings the way they've been built the past forty plus years that he has been a resident in town, but this project is out of the ordinary.

He had submitted a letter to the Planning Board after the last meeting in November, also stating that he is opposed to the project.

Jeff Palumbo, co-council with Mr. Goldberg from Barklay Damon on behalf of the Green Organization had a couple of comments. He stated that they didn't adopt a Comprehensive Code and a zoning ordinance that calls for commercial development along Sheridan Dr., the Town of Clarence did that, which they did in pursuant to the Comprehensive Plan. They adopted a Comprehensive Plan, they zoned the property, which leaves no question that the most recent development that is taken place along Sheridan Drive has been commercial as opposed to residential. As Mr. Michnik indicated, there are still a number of residential units along that corridor, however they are all zoned commercial. Sooner or later, they will all be developed commercial, which is the whole idea behind the Comprehensive Plan, and the vision that the town had for commercial development along that corridor. In this particular case, they know that a building which is 45 ft. high can go there right now, it could be a hotel. So he appreciates the concerns regarding the height and nature of the building, but in reality, the property is zoned for that. What it comes down to is a difference in uses, a hotel which is 45 ft. or a multi-use building that has commercial on the first floor, and residential on the other two floors. They are in compliance with the vision of the town, he feels it is important not to lose sight of that point. It is the most important point that they are asking the zoning board to consider. This is a good project, it meets the intent of the ordinance, it is in harmony with what the town has envisioned for this corridor.

Mr. Skaine stated that he believes they addressed the five issues that the board was asked to deal with on an area variance, in quite detail. He'd be reluctant to deny their request, then lose in court, as their usage is quite clear, and the five areas that they should be considering tonight, are all clear.

Motion made by Patrick Krey, second by Raymond Skaine, to **approve** Appeal No. 3 with the following conditions:

- the property maintains the 71% / 2.35 acres of greenspace.
- the roof structure not be pitched, but rather flat as depicted at the bottom of page 3, Exhibit 1.

ON THE QUESTION

Mr. Krey stated that the reason he made the motion to approve the request, is as the applicant has explained, the area is zoned Commercial, and a structure 45 ft. high could be built in that area. The only variance they are requesting is to go from 16 units to 18 units, as well as to have a third story in order to make it more commercially feasible. He believes they have mitigated the issues regarding detriment to

nearby properties by maintaining such a large portion of the property as greenspace. As they have made that a condition of the variance, they won't be able to develop that at a later point in time.

Additionally, Mr. Krey stated that as the applicant has explained, this is also consistent with the Comprehensive Plan of the Zoning Law. The Comprehensive Plan is encouraging mixed use along the Sheridan Corridor, and the zoning law is established. This maintains the integrity of the Zoning Law, as set up by the town.

Patrick Krey	Aye	Richard McNamara	Aye	Ryan Mills	Aye
Raymond Skaine	Aye	Daniel Michnik	Aye		

MOTION CARRIED

Mr. Michnik reminded all Zoning Board members that they are required to continue to get their training. Four hours from 2020 needs to be recorded, Amy has those records, and four hours for 2021 is also required. An email was just distributed regarding a class coming up. Amy will include with the minutes, the number of hours that each Zoning Board member has, and what they are required to have.

Mr. Mills made a motion to close the meeting at 9:02pm, second by Richard McNamara.

MOTION CARRIED.

This meeting will be recorded.