

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
March 14, 2023

Chairman Ryan Mills called the meeting to order at 5:30 p.m.

Zoning Board of Appeals members present:

Gerald Drinkard Raymond Skaine Ryan Mills Richard McNamara

Zoning Board of Appeals members absent:

Patrick Krey Patricia Burkard

Town Officials present:

Director of Community Development Jonathan Bleuer
Deputy Town Attorney Steven Bengart
Councilman Paul Shear

Other Interested Parties Present:

Jun-Xu Li Dan Michnik Paul Wheeler

ACTION:

Motion by Richard McNamara, seconded by Raymond Skaine, to **approve** the minutes of the meeting held on February 14, 2023 with the following change:

- 1. page 2023-13 under the Action for Appeal No. 1, it should read “Motion by Patrick Krey, *seconded by Ryan Mills*”

Gerald Drinkard Aye Raymond Skaine Aye Ryan Mills Aye
Richard McNamara Aye

MOTION CARRIED

NEW BUSINESS

Appeal No. 1

PB Investors, LLC
Major Arterial, Commercial, Restricted Business

Applicant requests a variance:

- 1. to allow a third story on a multiple family housing building; and
- 2. to allow for 9 multiple family units over the allowable residential density; located at 5695 & 5731 Transit Road.

Town Code Reference:

- 1. §229-126(D)(1)(f)
- 2. §229-126(D)

DISCUSSION:

Project Attorney Sean Hopkins from the law firm Hopkins Sorgi & McCarthy PLLC and Project Engineer Pat Sheedy with Carmina Wood Design were present on behalf of the applicant, PB Investors, LLC.

Mr. Hopkins reviewed the location of the proposed project, which consists of 10 acres.

Mr. Hopkins explained this proposed mixed-use project consists of two basic components; a three-story 'L' shaped mixed-use building along Transit Road consisting of 22,575 sq. ft. of first floor commercial space, 6 first floor apartments and 54 upper floor apartments.

Additionally, Mr. Hopkins pointed out the following aspects of the proposed project:

- 6 two-story 4-unit townhome buildings with garages in the back of the proposed site
- 7 single-story garage buildings which will be for the residential tenants of the mixed-use building
- A total of 291 parking spaces
- Due to the size of this proposed project, they will be required to implement a Stormwater Management system in accordance with the Department of Environmental Conservation's (DEC) stringent stormwater quality and quantity standards
- Based on the current proposed plans, 54% of the site would remain permanent greenspace
- Based on comments received from previous meetings, the proposed dog park will be moved closer to the front of the proposed site, away from current residential properties
- Multiple access points are proposed, all of which have been reviewed extensively by numerous agencies including the New York State Department of Transportation (NYS DOT)

Mr. Hopkins continued to review the proposed project to this point.

Referring to the area variances they are requesting tonight, Mr. Hopkins started off with an area variance for the number of floors for the mixed-use building. The Town of Clarence Zoning Code allows two floors, they are proposing three floors. The code would allow a three-story building if it was not mixed-use.

Second, they are requesting a variance for the number of residential units, they are over the allowed number of units by 9.

Mr. Hopkins continued to review the layout of the proposed project, suggesting that perhaps the code should be changed for future projects to allow for 3-story mixed use buildings and not only 3-story commercial buildings. Mr. Hopkins stated that traditional mixed-use buildings have one floor of commercial with two stories of residential.

Regarding the second variance, Mr. Hopkins explained the balanced benefits that would come to the applicant if the variance was granted, and weighing the benefits against any possible detriments to the health, safety and welfare to the neighborhood and community. Mr. Hopkins noted that they don't believe

granting these variances will result in substantial setbacks to the neighborhood, and would be better than what is permitted under Town Code.

Mr. Hopkins noted that this proposed project is consistent with the recommended land use per the Comprehensive Plan adopted in 2016, which designates this site for precisely what they are proposing; business center and residential uses.

Mr. Hopkins stated they believe they are meeting the criteria, based on the elevations as well as other key aspects and amenities of the project layout.

Mr. Hopkins explained that the first criteria to be considered by the Zoning Board of Appeals in connection with the two variances is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variances. Mr. Hopkins stated that they believe that answer is no, they do not feel granting the request for relief will result in any undesirable changes to the neighborhood or detriments to nearby properties.

Touching on the second criteria that the Zoning Board takes in to consideration is whether the benefits received by the applicant if the variance is granted can be achieved by some other method feasible for the applicant to pursue aside from the area variance.

Mr. Hopkins distributed handouts to the Zoning Board, which Chairman Mills placed in the record as Exhibit A, document titled C-100. The plan outlines what the proposed project would be without the two requested area variances. The tree-story mixed-use building along Transit Road would become a two-story mixed-use building with the same footprint. The 'L' shaped building can not be expanded in any direction, as it would encroach neighboring properties or interfere with the Transit Road curb-cut.

Mr. Hopkins noted that the rear of the project site would then have 8 2-story four-unit townhome buildings, an addition of 8 more units.

Mr. Hopkins noted that this layout would not allow the applicant to receive the benefits they are seeking, they would lose the density, and the three-story mixed-use building along Transit Road is needed for this project make sense. Also, this project comes at the expense of portions of the substantial permanent open-space on the eastern portion of the project site.

Mr. Hopkins stated that if they were to follow the plans without the requested variances, setbacks along the back (east) portion of the project site would be reduced from 239 ft. to 98.37 ft. Town of Clarence Zoning Code requires a minimum setback of 45 ft., so although reduced, it would still be a generous setback.

Mr. Hopkins explained that considering the history of this project, they feel it is important to retain as much greenspace as possible. Additionally, the ample number of residential units will help the commercial component of the mixed-use project flourish.

If the density aspect of the variance was denied, they would leave the mixed-use building the same, assuming the third story variance was approved.

Breaking down the buildings, Mr. Hopkins explained the following breakdown of units for the mixed-use building:

- 60% of the units would be two-bedroom
- 30% of the units would be one-bedroom
- 10% of the units would be three-bedroom

If the density request was denied, they would reduce the number of one-bedroom units, and increase the number of two-bedroom units. The appearance of the site would look the same either way.

Mr. Hopkins continued with the third criteria, which asks if the requested relief is substantial. Explaining that the key is not to quantify the deviation compared to the zoning code, but rather to look at whether there will be any resulting harm brought on by granting the request. Mr. Hopkins noted that they feel it is clear no harm will be incited by granting these two area variances.

Criteria number 4 is whether or not granting the requested relief will have adverse effects on the physical or environmental conditions in the neighborhood. Mr. Hopkins stated that the answer is no. The most important part of this specific criteria is that the Planning Board has completed the Coordinated Environmental Review pursuant to the State Environmental Quality Review Act (SEQRA). Upon solicitations from involved and interested parties, there were no comments received from any of the agencies expressing concerns with the Town of Clarence acting as lead agency. More importantly, there were no concerns that the proposed project would result in any potentially significant adverse environmental impacts.

Mr. Hopkins reviewed additional reviews and approvals that have been granted, including sanitary sewer capacity, all of which can be found in the project file.

Mr. Hopkins stated that if they get to the point where sanitary sewer capacity catches up to their review process, the proposed project will be done in one phase, rather than two.

Mr. Hopkins noted that there are no jurisdictional wetlands on this site, per the letter from Scott Livingston with Earth Dimensions.

Mr. Hopkins briefly touched on the extensive Traffic Impact Study (TIS) that was conducted. The layout shown reflects input by the NYS DOT.

Mr. Hopkins continued to review the criteria that the Zoning Board must consider when looking at variance requests. Whether or not the alleged difficulty is self-created. Mr. Hopkins acknowledged that they are aware of the zoning code and current zoning and are in a tough position to argue that the request is not self-created.

Mr. Hopkins asked that the Zoning Board consider granting the two area variances

Mr. Drinkard asked if any rezoning is needed for this proposed project.

Mr. Bleuer responded that there is rezoning needed for this project to continue. The rezoning would act as a down-zone from Major Arterial to Commercial and Restricted Business. The applicant has requested the frontage to be down-zoned to Commercial and Restricted Business classification.

Mr. Hopkins reviewed the zoning lines on the project plans.

Mr. Drinkard asked if the rezoning is a work in progress, or a done deal.

Mr. Bleuer responded that it is not a done deal, it will require Town Board consideration.

Mr. Drinkard noted that from a semantic point of view, Commercial and Restricted Business is Commercial.

Mr. Bleuer responded, stating that while they are distinct zoning classifications, they are very similar.

Mr. Drinkard referred to a paragraph in the Town of Clarence Zoning Code for Mixed-Use areas that states “part or all of the required commercial component (restricted business / commercial) can be preserved as open space for later commercial development”. Mr. Drinkard stated that there must be 30% greenspace, and this project is listed at approximately 54% greenspace. Mr. Drinkard asked what will restrict the applicant from later on developing on the greenspace and reducing it to less than 54% but remaining over 30% greenspace.

Mr. Hopkins explained that they would be willing to record a Declaration of Restrictions at the Erie County Clerk’s office to insure for the benefit of the Town of Clarence and the surrounding property owners that no development could take place. Discussion regarding making it a condition ensued. Mr. Bengart stated his will happen at the Planning Board level.

Mr. Drinkard noted that this proposed project is a reflection of the Town of Clarence Master Plan. The greenspace has been preserved to the fullest extent that can be done, the process for down-zoning has begun. The bulk of the 3-story building versus a smaller building which would be less imposing, but it guards the visual to the back portion of the project.

Mr. Drinkard explained that most of his questions revolve around what the Planning Board has to do, he is satisfied with the proposed project to this point.

Mr. Skaine asked how far it is from Transit Road to the front of the first ‘L’ building.

Mr. Hopkins responded 85 ft., and this does not include the greenspace in the right-of-way.

Mr. Skaine asked if there will be windows on the corners of the buildings, or plain wall.

Mr. Hopkins stated that there are windows, which he feels is aesthetically better than a blank wall.

Mr. McNamara asked if there are photos of the proposed garages.

Mr. Hopkins responded not yet, but a good example is Mr. Bliss’s project at 6770 & 6790 Main Street. They are upscale garages without the traditional old school look.

Mr. McNamara pointed out that they are inconspicuous, and don’t have a mini-storage aesthetic to them.

Mr. Hopkins reiterated that they are solely garages for the tenants of the apartments, there will not be any third-party uses.

Referring to the three townhomes on the southern end of the proposed project, Mr. McNamara asked if any thought has been given to moving them towards the west in order to provide more of a buffer to the existing neighbors.

Mr. Sheedy responded that they can review that scenario.

Chairman Mills asked Mr. Hopkins to describe the materials that will be used on the proposed project.

Mr. Hopkins responded that materials include brick, stone, hardie board, and ample amounts of transparency. There will not be any vinyl on the buildings. The wood will most likely be a simulated wood.

Understanding the amount proposed, Chairman Mills asked about the ratio between greenspace and non-greenspace, and what the “as of right” would be.

Mr. Sheedy responded that it reduces it approximately 5%.

Chairman Mills asked Mr. Hopkins if it is his testimony that if the second prong of this variance request is not granted, which allows for 9 multiple family units, they will reconfigure the apartments to achieve the same.

Chairman Mills asked Mr. Hopkins what they would do if the first prong of the variance was not granted for the third floor, would they reconfigure the layout.

Mr. Hopkins responded no, they would not continue with the project, it would not be financially feasible.

In regards to Public Participation, the following residents spoke:

1. Doug McCallum of 8087 Highland Farms Drive:
 - in support of the variance requests
 - inclusion of access road on to Highland Farms will bring a lot of additional traffic
 - none of the traffic studies account for human nature
 - current traffic for those living there now is not a safe environment
 - developer has done a tremendous job keeping the residents abreast of developing
2. Paul Wheeler of 5647 Kippen Drive:
 - in regards to the dog park he hopes they relocate the dog park
 - also requesting that the buildings be moved to the west as Mr. McNamara suggested

Public Participation was closed for this meeting.

The following correspondence has been received and placed in the project file:

- Scott Zak
- Judith Whitehead
- Dworzanski

Mr. Bleuer noted that a significant amount of correspondence has been received regarding this proposal associated with Planning Board and Town Board. They have been considered by the appropriate boards. Regarding variance requests and this meeting specifically, the submitted packet is complete.

Neighbor notifications were provided by the applicant.

Mr. Drinkard noted that in the exhibit for the two variances, page 2 of 2 – Mr. Hopkins had referred to §229-126(D)(f). It should be §229-126(D)(1)(f)

Mr. Drinkard noted that he likes the connectivity to Zoes Restaurant as well as to the senior living apartments.

Mr. McNamara asked about the dumpsters on the left of the property. Mr. Hopkins noted that they are for everyone residing on the property. There may be some property management to assist with that also.

Mr. McNamara asked about moving the buildings to approximately 200 ft., still leaving adequate space for the dumpsters.

Mr. Hopkins stated that they can look at that possibility, but would prefer an exact number be given.

Discussion continued regarding parking.

ACTION:

Motion by Gerald Drinkard, seconded by Raymond Skaine to **approve** Appeal No. 1 as written.

ON THE QUESTION:

Chairman Mills explained that the applicant has provided tremendous documentation including alternate site plans, the “as of right” plan that would reduce the amount of greenspace by approximately 5%. Also, additional units in second prong could also be achieved by reallocation of bedroom space but the site plan proposed holds a more dynamic environment in terms of greenspace for the neighbors.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Ryan Mills	Aye
Richard McNamara	Aye				

MOTION CARRIED

Meeting adjourned at 6:25 p.m. with a motion by Richard McNamara.

MOTION CARRIED

Amy Major
Senior Clerk Typist