

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday January 9, 2018  
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

Town Officials present:

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

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** the minutes of the meeting held on December 12, 2017, as written.

Jonathan Hickey      Aye                      Richard McNamara      Aye  
Patricia Burkard      Aye                      Ryan Mills                      Aye  
Daniel Michnik      Aye

MOTION CARRIED.

Other interested parties present:

Chris Galasso              Spilios Kiamos              Suzanne Stang              Dave Stang              Nicole Stang

**Old Business**

**Appeal No. 1** (from Dec. 2017)

Bernard Kolber  
Commercial

Requests the Board of Appeals approve and grant a use variance to allow for the construction of a self-storage facility at 9035 Sheridan Drive.

Appeal No. 1 is in variance to §229-84.

**DISCUSSION:**

Mr. Bleuer explained that a letter has been received from the applicant asking for this item to be tabled. The applicant is still working on information they felt was pertinent to the item, they expect to be back next month.

## New Business

### Appeal No. 1

Christopher D. Galasso  
Industrial Business Park

Requests the Board of Appeals approve and grant a use variance to allow for the construction of a residential single family home at 9300 Wehrle Drive.

Appeal No. 1 is in variance to §229-100.

### **DISCUSSION:**

Christopher Galasso is present and submitted signed neighbor notification forms and certified mail receipts for all the adjacent neighbors. He said they are looking to build a single family home, this is two parcels which are under contract. The front parcel, being on the south side of the bike path, is zoned light industrial so they are looking for a use variance to build a home on that parcel. The second parcel, which is to the north of the bike path, is zoned suburban agricultural and is actually landlocked. There is no ownership of the bike path that bisects the two (2) parcels so there is no use for the northerly parcel. All of the land to the east is single family residences, the land to the west is one (1) parcel which is being used for commercial purposes. Across the street is residential use as well, so there is no change in the character of the neighborhood by requesting this variance.

Spilios Kiamos is the realtor and represents the seller of the property. He noted that the property has been for sale since 2012, the owners tried to sell it as light industrial but it never sold, so they pulled it off the market. The property went back on the market about six (6) months ago. Everyone who inquired about the property asked if they can build apartments or a house on it. Mr. Kiamos called the Town to ask what he can do to get this property sold, someone recommended obtaining a variance for the property.

Mr. Galasso said since the seller has not been able to sell the property since 2012, he (the seller) is not able to realize a reasonable return on the property as it is currently zoned. Without this use variance it creates a hardship. It will not alter the essential character of the neighborhood. This hardship was not self-created by the seller.

Mr. Kiamos said he has the actual contract from the seller when they listed the property the first time, it is dated 2012. This document is on file as Exhibit A. A second document titled "Land, Proposed or BTS Properties" dated 2013 is also on file as Exhibit B. A third document is the contract when the property went on the market again in 2017, it is on file as Exhibit C. Another document titled "Land, Proposed or BTS Properties" from 2017 is also on file as Exhibit D. Another document showing what was done to try and sell the property in 2013 is on file as Exhibit E. Mr. Mills noted that the first time the property was for sale in 2013 it was listed for \$119,000. The second time the property was listed in 2017 it was listed for \$69,000. Exhibits F and G are flyers with the information on the property and are on file.

Mr. Mills said the marketing materials say the property is 15.6 acres in size, while the survey from Wendel, dated December 22, 2017 says 17.11. Mr. Galasso said that is correct, there is a difference, however they believe that 17.11 is accurate.

Mr. Galasso said the property owner's name is Bahas, they bought the property in 1989, but Mr. Galasso does not know how much they paid for it. The parcel to the south is about 7.5 acres, this is the parcel the use variance is being sought for. It is noted that the listing is for the entire parcel. Mr. Mills asked what

the property is assessed and appraised at. Mr. Galasso said the assessed value is \$60,000. The Bahas' live in Florida.

Mrs. Burkard asked what kind of house the applicant plans on building. Mr. Galasso said whatever is appropriate but he is hoping for 2500 to 3000 square feet. A house is the only use he will have on the property.

Mr. McNamara asked the location of the home. Mr. Galasso said he has not looked at the wetlands yet and he knows they exist on the property, this will largely determine where the home will be placed. He prefers to put it towards the back. Mr. McNamara questioned the setback for the home. Mr. Bleuer said the average setback for the area is 60'-80'. Mr. McNamara said if the applicant wants to go further than that he would need another variance and would have to come back before the Board. Mr. Galasso understands. The frontage is almost 400', Mr. Galasso is planning on building in the middle of that. Mr. Galasso anticipates building further back than 60'.

Mr. Mills asked the applicant if a condition was put in place that he could only build one single family home and not develop the property any further would that be acceptable to him. Mr. Galasso said yes. Mr. Mills noted that the County Clerk's record shows a transaction on May 20, 2099, he asked the applicant if there was a transaction since 1989. Mr. Galasso said he is not aware of anything and is sure that is a misprint. He also noted that there was an interfamily transfer.

Chairman Michnik asked the applicant what makes this property so attractive that he wants to come before the Board. Mr. Galasso said he currently lives down the road closer to Transit Road, if he built a home where proposed his commute to work would only be 1-2 minutes longer. Chairman Michnik asked if the applicant realizes what is next to this property. Mr. Galasso said Buffalo Crushed is across the street and a commercial operation is next to him. He has observed the commercial operation. Chairman Michnik asked what the applicant would do if his request was denied. He would cancel the contract under his due diligence contingency.

Mr. Bleuer said the Engineering Department has submitted a letter noting that they have some concerns related to the wetland, this would need to be further explored before any proposal could be submitted for a permit. There is a map in the file that shows the estimated wetlands on the property and it looks like it encompasses 90% of the parcel. A wetland delineation or at least a walk-over would be required by the Town regardless of what happens at this meeting.

Deputy Town Attorney Steven Bengart asked the applicant if he could not obtain an additional variance for the setback that he desires would that affect his interest in buying the property. Mr. Galasso said it might.

Chairman Michnik asked if there was anything industrial ever done to that property. Mr. Bleuer said there is no record of that. He also noted that a State Wetland carries a 100' buffer. Mr. Galasso said even with a 100' buffer it looks as though it would still be feasible to build a house on the property, closer to the road. He may pursue this if it is the only alternative. Chairman Michnik asked if the applicant wants to look into the issues discussed before the Board takes a vote on his request. Mr. Galasso thinks he'd like the Board to act on his request. He is ok with the house having to be closer to the road due to the wetlands.

Suzanne Stang, lives across the street at 9285 Wehrle Drive and said she was never notified of anything being done to the property. She would like to get notification since she lives across the street. She has lived there over 31 years. She asked how far back the home will be built, will it be equal distance to the

houses surrounding it? Her house is much closer to the road. Deputy Town Attorney Steven Bengart said the general discussion was the applicant wanted to put his house behind the others versus lining up with them. Ms. Stang asked if it will be a 2-story house, Mr. Galasso said it will be a ranch. Ms. Stang is concerned about a basement and asked if there will be blasting. Chairman Michnik said those are all things that would come after the study is done. There are concerns that are taken care of to protect the neighbors. She asked to be on the list so she knows what is going on. She does not have a problem with a single family home going across the street from her. She did not have to blast to install her septic system. She does not have a basement.

Mr. Hickey asked if the zoning was the same as it is now when Mr. Bahas purchased the property. Mr. Galasso said as far as he knows, yes. Mr. Hickey said with respect to a reasonable return for the owner his concern will be what Mr. Bahas purchased the property for. When there is a use variance analysis they look the hardship to the one with the interest in the property. Mr. Galasso said regardless of what Mr. Bahas spent, he is unable to realize any return as currently zoned. There is no interest in the property, no one has made an offer. Mr. Hickey said the standard is a reasonable return, maybe he bought it for \$7500. Mr. Hickey does not disagree with Mr. Galasso's premise.

Ms. Stang thinks Mr. Bahas bought the entire property for \$179,000. He split off two lots and sold them, this after the town said he could not do what he planned with the property, which was a paint company warehouse in which he would store massive trailers. The town did not want that look in the town with those trailers lined up on Wehrle Drive.

Nicole Stang said both of the houses next to the property in question have basements.

Mr. Hickey noted that the property could have a variety of commercial applications. He asked Ms. Stang if she would rather see one (1) single family home or a commercial business or multi-family. Her desired outcome would be one (1) single family home.

Mrs. Burkard asked if someone else bought the property could they put a business there with all the wetlands there. Mr. Bleuer said regardless of what goes there a coordinated review will be required, all interested parties will need to be involved and then identify what can be considered.

Mr. Hickey asked if the parcel has always been wetlands. Mr. Bleuer said he does not know if it was ever formally delineated.

Mr. Mills asked what the taxes are on the property, then asked what the contract purchase price is. Mr. Galasso said the contract purchase price, which is the assessed value, is \$60,000. The paper work indicates that in 2012 the taxes were \$1374 a year. So the owner of the property spent about \$30,000 in taxes since he has owned the property.

The applicant wants to move forward with the coordinated review.

**ACTION:**

Motion by Ryan Mills, seconded by Richard McNamara, to send Appeal No. 1 out for coordinated review under the State Environmental Quality Review Act (SEQRA) to all involved agencies.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Mr. Bleuer noted that a Short Environmental Assessment Form is required to be submitted by the applicant. Mr. Galasso can call the Planning Office for assistance in completing this form. The minimum requirement for the review is thirty (30) days, thus the appeal will be next heard at the March 2018 Zoning Board of Appeals meeting.

Meeting Adjourned at 7:37p.m.

Carolyn Delgato  
Senior Clerk Typist