

Town of Clarence  
One Town Place, Clarence, NY  
**Zoning Board of Appeals Minutes**  
Tuesday November 13, 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	Patrick Krey

Town Officials present:

Director of Community Development James Callahan  
Deputy Town Attorney Steven Bengart  
Councilman Paul Shear

Motion by Jonathan Hickey, seconded by Patrick Krey, to **approve** the minutes of the meeting held on October 9, 2018, as written.

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

MOTION CARRIED.

Other interested parties present:

Joseph Heins	Russell Salvatore	Paul Runfola	Art Pogorzala
Sharon Cook	Angela Licata	Andrew Pawenski	

Chairman Michnik and Richard McNamara both recuse themselves from participating in the discussion and voting on Old Business Appeal No. 6. The appropriate paperwork is on file for their recusals. They leave the dais. Vice-Chairman Ryan Mills presides over the meeting.

The Zoning Board of Appeals Committee entered into executive session and Attorney/Client Privilege session at 7:02 p.m. The session ended at 7:20 p.m. and the Zoning Board of Appeals meeting opened.

### Old Business

**Appeal No. 6**(from August 2018 Meeting)

RSA Development LLC  
Restricted Business

Requests the Board of Appeals approve and grant a variance to allow a density of eight (8) residential units for the proposed multiple-family project located at 6449 Transit Road.

Appeal No. 6 is in variance to §229-126(D) \*Code allows up to six (6) residential units.

**DISCUSSION:**

Vice-Chairman Mills noted that this request has been in front of the Board on multiple prior occasions. The record is filled with evidence and testimony from the neighbors and the applicant concerning this application. The applicant's counsel will be heard tonight along with any neighbors who would like to speak. Correspondence which has been received by the Town since the last meeting will be entered into the record. A letter from Paul Runfola dated October 30, 2018 is paraphrased as follows: Mr. Runfola is writing on behalf of his neighbors, their three homes and backyards are directly impacted by the proposed development of Phase 2 of The Abbey, we urge you to reject this request, the land space is too small, we don't believe it is fair and ethical for Mr. Salvatore to engage in negotiations over selling additional land he owns to some of our neighbors whose backyards won't border this project, please respect the zoning laws. This letter has been entered into the record as Exhibit A. Vice-Chairman Mills went on to say they also received correspondence from RSA Development to Thomas Nelson at 8081 Clarherst Drive which stated "The purpose of this letter is to memorialize our agreement with respect to the sale of the back portion of the property currently zoned R. RSA Development has agreed to keep the back property forever green by selling same to your group of four neighbors." There is also documentation that contains 16 names and addresses of people that have signed off that, "RSA Development has entered into a purchase agreement with several investors whose homes border the RSA owned land known as Phase III, we, the undersigned, happily remove our objection to RSA's variance request for 8 units. We are pleased to know the three acres of forest between the homes on Clarherst and Old Post Road West will remain forever green and will continue to be enjoyed by many." This document has been entered into the record as Exhibit B. A third document was received November 13, 2018 from Deborah Brown of 8065 Old Post Road West. It is paraphrased as follows: In her opinion only the voices of the first three houses be heard tonight, they are the only three houses that will have direct impact from the Phase II project, these are the only voices that should matter, RSA originally offered to sell the land to those nine houses for \$179,000, five of the homeowners have expressed interest in purchasing the land, now there is a deal for \$50,000 if they agree to 8 rental houses instead of 6, then RSA will be rewarding them by selling the land, she is generally against the 6 to 8 variance." This document is entered into the record as Exhibit C.

Joseph Heins, an attorney with Bouvier Law and counsel for RSA Development, is present. Russell Salvatore, owner of RSA Development, is also present. Mr. Heins said they have had a lot of dialogue with the neighbors and what they heard was the neighbors want the back portion of that land to remain forever green. Since the August 2018 meeting the applicant has been working with the neighbors to make sure that space remains forever green. They have come up with a solution to sell that portion of the land to a group of neighbors. Selling the property is not a money making enterprise for the applicant, it is a way to capture some of the equity that is there, but certainly not anywhere near the full value of the land. Mr. Heins referenced the letter with the signatures of 16 neighbors who are now in favor of the project. He went on to say they discussed grading and berms, and worked specifically with the neighbors about how they would want the landscaping installed, the applicant is committed to this. They will make sure the screening is in place so the impact on the neighbors is as minimal as possible.

Deputy Town Attorney Steven Bengart asked what forever green means and how will it be enforced. Mr. Heins said forever green means it will not be developed, nothing will be built on that property. In the hands of the new owners, he believes they plan on putting a conservation easement on the property which will put the forever green stamp in the record that cannot be taken back. Mr. Salvatore said he worked with the neighbors to come to an agreement that would benefit all. He does not want to develop that land and would rather it be in the neighbor's hands so they can keep it as they wish. The three neighboring houses have a pretty good existing buffer compared to where the other houses are. Mr. Mills referred to the site plan from

Carmina Wood & Morris dated May 31, 2018, entered into the record as Exhibit C. He noted the area of land behind the three houses zoned R area next to zone RB. Mr. Salvatore said he believes Mr. Herzog owns that property.

Deputy Town Attorney Steven Bengart asked if the four potential buyers will own the property individually. Mr. Heins said those individual have not determined that yet. There is a letter of understanding but no contract yet.

Paul Runfola, of 8050 Old Post Road West, referenced the e-mail labeled Exhibit A and noted that it was signed by neighbors on both sides of him. He said he has another e-mail from Mr. & Mrs. Piwko that was sent to the Town at 4:41 p.m. today, it is reiterating their opposition to the 8 rental units. Mr. Runfola suggested that Mr. Salvatore's attorney is feigning a rosy picture that the issues have been properly resolved and that is in fact not the case. Through their stall tactics that originated from the summer, they have created a division within the neighborhood. Of the 16 names on the referenced letter none of them are directly bordering the property for Phase 2. The neighbors at 8030, 8040 and 8050 Old Post Road West feel that in this context the majority does not rule. He went on to say that you do not have the privilege of negotiating away land for the sake of property that your home does not border, those folks interested in purchasing land from Mr. Salvatore are not directly impacted by Phase 2 development. Mr. Runfola's home is directly impacted by it, many of his neighbors are saying his and his 2 neighbors are the voices that should be heard. Restrictions for 6 units are in place for a reason. To put 8 townhouse units in a confined space where there are only three homes is simply too much. Highway Superintendent Mr. Dussing has already admitted to Mr. Runfola that the drainage in his backyard is a mess and has to be addressed. He is very concerned about drainage issues, noise pollution in the form of air conditioning units, lighting and cramming 8 units in a confined space. The three homes directly impacted are not on the list of 16 names that have removed their opposition. It is not fair that Mr. Salvatore and his attorney are trying to put together a deal to conflate two separate issues. Phase 2 is an entirely separate issue than the forever greenspace they are talking about. In Mr. Runfola's mind those 16 people who signed that document do not have a say in the concessions since they are not impacted by the proposed development. He asked the Board to consider the reason for the zoning of 6 and respect the residents directly impacted by Phase 2. He asked the Board to consider the 6 units and the ordinances that are in place.

Art Pogorzala, of 8101 Clarherst Drive, is one of the four people who is purchasing the property. At this point he is looking to protect his property, he recently put a substantial amount of money into his home. He was hoping this item would be pushed on one more month so he could complete his transactions. He does not want to concede his right until he is sure he is getting what he thinks he is getting. He asked that the Board put this off one more month so he can finalize his details.

Mr. Krey noted that there are parking spaces depicted on the plan C-100 which was based on 6 units, now there is going to be 8 units. Mr. Salvatore said the parking will be less of an impact, and they accommodated the Planning Board's request as well. Each townhome has a garage with one parking spot, the rear parking lot is additional parking for the front of the building. Each unit has three spots to park in, one across from it, one in the garage, and one right out front.

Mr. Hickey asked for the status on consummating the parcel sale and how the applicant will ensure greenspace stays forever green. What has to be done to complete the transaction? Mr. Heins said the letter is the agreement that was in place as of yesterday, it was memorializing the discussions they had. Mr. Nelson is the attorney for the residents. The next step is getting a non-contingent purchase contract signed. Once the contract is signed the seller is bound to sell the property. Mr. Heins thinks the contract will be

signed within a week and they could close within 30 days. Deputy Town Attorney Steven Bengart asked if there are going to be four deeds or one deed with four owners. Mr. Heins said the decision has not been made yet but he thinks it will be one deed with four owners listed on it. There is further discussion as to whether a conservation easement will work or not. Mr. Heins said they are fine with putting an easement on the property before the sale happens. Deputy Town Attorney Steven Bengart suggested Town Attorney approval of the final conservation easement and or deed restrictions.

Further discussion ensued regarding the property being purchased by the neighbors. Mr. Salvatore said there will now be a fire lane. They added additional parking spots for the 8 units.

Mr. Salvatore again stated that the footprint of the building is going to be the same whether it is 6 units or 8 units. Per the zoning of the property, a commercial component could be introduced into this building and a small office space could be built with the 6 units, this is allowed per the Town Code. The units will be rental, \$1800-\$2400 a month. The turn-around is 2-3 feet below grade, so any neighbors who are adjacent to it will not be able to see it. There will also be landscaping to screen the view.

An individual asked why the units have to be rental. Mr. Callahan said based on sewer, the town would have to be a partner with the sewerage works corporation to allow that to go forward, and the Town Board is not interested in doing that.

Mr. Runfola asked how is the preservation of land beyond this development connected to cramming 8 units into an area that is zoned for 6. He went on to say that no one is addressing those residents who are directly impacted by this project. There will be more people with 8 units, more pollution, more traffic, more noise.

Mr. Heins said drainage will be improved by this project, all the drainage for this parcel will be kept in a drain pipe and go straight out to Transit Road.

#### **ACTION:**

Motion by Jonathan Hickey, seconded by Patrick Krey, to **approve** Appeal No. 6 under Old Business, as written, with the following conditions:

- the closing of the sale of the remaining property taking place within 75 days of a fully executed contract of sale.
- the sale of the property shall include deed restrictions as discussed at this meeting including in a manner of a conservation easement that the remaining property be deemed forever green and will not be developed.
- prior to deed transfer the Clarence Town Attorney shall have the ability to review and approve the deed, which shall include the sale/transaction document(s) that would reflect the forever green in the absence of any future construction language. There should be no accessory structures constructed on the remaining property, nor should there be any pervious surface.
- the applicant cannot proceed to a Special Exception Use Permit through the Town Board until all conditions have been met.

#### **ON THE QUESTION:**

Deputy Town Attorney Steven Bengart said until the conditions are met the applicant will not go before other boards for approvals.

Mr. Krey said he sympathizes with Mr. Runfola in terms of what he is saying about the development being in his backyard. If what was before the board was changing it from the green space it is now to this developed property, he would be more inclined to vote against it. However, the only thing that is really for the Board's review is it going from 6 units to 8 units. Mr. Krey seconded the motion with conditions because the footprint is the same, the developer clearly made the effort to preserve the greenspace in the back and coordinated it with the neighboring properties. Also, with the Town's input, the applicant has addressed parking issues.

Mr. Hickey said Mr. Runfola is to be commended for his presentation. Mr. Hickey looked back at the record in which all the issues were discussed. It was tabled at that point. These analyses are not based on majority and/or minority. There are codes in place for a reason, but so too does an applicant have the ability to seek a variance, this is when the discussion shifts to the Board. The request was tabled on September 11, 2018 and again on October 9, 2018. During the time the request was tabled, Mr. Hickey believed that Mr. Salvatore was doing his best to work with everyone who was impacted. The Board needs to look at the benefit to Mr. Salvatore versus the detriment to the neighbors. There is not an undesirable change in the neighborhood going from 6 units to 8 units. There are feasible alternative methods, this is a self-created problem. This is not unexpected. Mr. Hickey does not see this as having an adverse physical or environmental impact, nor does he see this as a substantial request. Ultimately the benefit to the applicant outweighs the detriment to the health, safety and welfare of the community.

All e-mails, communications and previous meeting minutes are incorporated into the decision making.

Mr. Mills said the Board looks at Town law to see how this property could be used, which would create a more undesirable change in the neighborhood. An office could have gone back there, there could have been a third phase which could have been a single family home, but now its protected greenspace.

Patrick Krey	Aye	Jonathan Hickey	Aye
Patricia Burkard	Aye	Ryan Mills	Aye

MOTION CARRIED.

### New Business

#### Appeal No. 1

Angela Licata  
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 7' variance to allow a 3' side yard setback for the placement of a detached accessory structure (emergency generator) at 5688 Chatham Lane.

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

Chairman Michnik and Mr. McNamara return to the dais.

#### **DISCUSSION:**

There are two (2) neighbor notification forms on file.

Angela Licata is present and wants to have full/whole home generator installed. She received an estimate from Zenner and Ritter for the installation and as soon as it is approved they will begin work on it. Ms. Licata has lived in her house for four (4) years, she lives by herself.

Mr. Hickey asked if the applicant loses power. She said the generator is more for insurance but they did lose power for 45 minutes over the summer. Sometimes the power goes on and off. The generator would be a Generax and would be under \$6000. Zenner and Ritter advised Ms. Licata on the maintenance of the generator noting that it should be run once a week, preferably during the day. Mr. Hickey asked if it was the Zenner and Ritter representative that showed her the best location for the generator. She said yes and explained the reason is because there is only one (1) small window on that side of the house, there are windows all across the back of the house and windows on the other side, so the proposed location would be the safest place. She had tow (2) quotes and both vendors recommended that side of the house. Out of her neighbors, she was the first to close on her house.

Mrs. Burkard asked if the applicant is willing to put up landscaping to block the view of the generator from the street.

Chairman Michnik asked for details on the landscaping. Ms. Licata said she talked to a representative of Clover Management to ask if the landscaping has to cover the generator or just make it pretty around the bottom or pleasing to the eye. The generator will be places on stone and its color will blend with the house.

**ACTION:**

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 1 as written with the following condition:

-The applicant places landscaping around the unit to mitigate the view from the street and the neighbors.

**ON THE QUESTION:**

Ms. Licata clarified that the Home Owners Association requires landscaping around the generator.

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

**MOTION CARRIED.**

Meeting adjourned at 8:30pm

Carolyn Delgato  
Senior Clerk Typist