

**Town of Clarence**  
One Town Place, Clarence, NY  
**Zoning Board of Appeals Minutes**  
**Tuesday November 8, 2022**

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

Zoning Board of Appeals members present:

Chairman Ryan Mills	Patrick Krey	Raymond Skaine
Richard McNamara	Gerald Drinkard	Patricia Burkard

Town Officials present:

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

Ryan Mills	Aye	Raymond Skaine	Aye	Patrick Krey	Aye
Richard McNamara	Aye	Gerald Drinkard	Aye	Patricia Burkard	Aye

Referring to the agenda for tonight’s meeting, Old Business No. 8 has been removed from the agenda.

**OLD BUSINESS**

**Appeal No. 9** (from the 10-11-2022 meeting)

Sean Jacobs  
Agricultural Flood Zone

Applicant requests a variance to allow a detached accessory structure (garage) to be located within the front yard setback located at 9290 Tonawanda Creek Road.

Town Code Reference;  
§229-34 (E)

**DISCUSSION:**

Daniel Kidd was present on behalf of the applicant Sean Jacobs. Correspondence has been received from Sean Jacobs granting permission for Corey Banach and Daniel Kidd to represent him at the Zoning Board of Appeals meeting on November 8, 2022. This will be marked Exhibit A and placed in the project file.

Mr. Kidd also submitted an additional neighbor notification. Mr. Bleuer placed the neighbor notification for 9300 Tonawanda Creek Road in to the project file.

Mr. Kidd stated that Mr. Jacobs is seeking a garage, because he does not currently have one.

Chairman Mills asked if Mr. Jacobs has explored other locations.

Mr. Kidd responded that there are no other locations on Mr. Jacob's property to locate this proposed structure because his property is right on the creek. Mr. Jacob's backyard has a hill that leads down to the water, and it is not possible to get a vehicle back there.

Mr. Drinkard asked if the building will go right in front of the house between the house and road.

Mr. Kidd responded that it will be off to the side in front of the pool.

Mr. Drinkard asked why it is necessary to have a two-car garage.

Mr. Kidd responded because of the way the driveway is situated, the garage would be inaccessible due to the location and the turn that would need to be made. The garage door is 16 ft. wide in order to pull in and out of the garage.

Mr. Drinkard asked if both neighbors have been notified.

Mr. Kidd responded yes, and no comments have been received.

Mr. Skaine asked what the dimensions of the garage are.

Mr. Kidd responded 24 ft. by 24 ft. and 10 ft. high. Mr. Jacobs has a tall pickup truck, so the doors need to be at least 8 ft. high.

Mr. Bleuer clarified with Mr. Kidd that the 10 ft. includes wall height.

Mr. Kidd responded yes. The peak is approximately 3 ½ ft. taller.

Mr. Krey mentioned the shed located just behind the pool. He stated that the lot is an abnormal shape, making it a challenge to place accessory structures and a pool on the lot.

Mr. Krey asked if it is possible to place the proposed garage where the current shed sits.

Mr. Kidd responded no, the incline in the backyard is too steep. This is the only feasible location for the proposed structure.

Mr. McNamara reiterated that there is no way to get in to the backyard due to limited space on the west side.

Mr. McNamara stated that due to the situation, he has no problems with the request.

Mrs. Burkard asked what materials will be used.

Mr. Kidd responded that the walls will be constructed using 2 by 4's with vinyl siding and a steel roof. Both will match the house.

Mr. Drinkard asked if the applicant intends to run a business out of the proposed garage.

Mr. Kidd responded no.

Chairman Mills asked if the garage door will be oriented towards Tonawanda Creek.

Mr. Kidd responded no, you will pull in to the driveway as if you are pulling in to the house, then the garage will be off to the right-hand side, and the garage doors will be parallel with the driveway. The garage door will not be facing the road.

Chairman Mills asked if there will be any windows on the structure facing Tonawanda Creek Road.

Mr. Kidd responded that there are 3 windows, one on each side. Therefore, one window would be facing Tonawanda Creek Road.

Chairman Mills commented that vehicles traveling on Tonawanda Creek Road will see vinyl siding and a window.

Mrs. Burkard asked if there will be landscaping along the side that faces Tonawanda Creek Road.

Mr. Kidd said he is unsure; he is not involved with the landscaping.

Mr. McNamara asked if the gable of the roof will be facing Tonawanda Creek Road or facing over the garage doors.

Mr. Kidd responded that the gable will be facing the road and the peak will be seen.

Chairman Mills noted that based on Board's comments, if a condition of no business being operated from the proposed garage was placed, would he be in agreement of that.

Mr. Kidd responded yes.

Chairman Mills asked Mr. Kidd if the applicant would agree to landscape the side of the proposed garage that faces Tonawanda Creek Road.

Mr. Kidd responded yes.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

**ACTION:**

Motion by Raymond Skaine, seconded by Richard McNamara to **approve** Appeal No. 9 under Old Business as written, with the following conditions:

1. no business is to be conducted out of the structure
2. landscape the side facing Tonawanda Creek Road to be similar to the house landscaping.

**ON THE QUESTION:**

Mr. Kidd stated that he heard, understands, and agrees to the conditions on behalf of the applicant.

Chairman Mills noted that this is a unique parcel because it backs up to Tonawanda Creek and the elevation appears to drop dramatically. This leaves the homeowner with very few alternate options.

Chairman Mills added that due to the depth of the lot, there is ample frontage, and the applicant will also mitigate the view of the structure with landscaping. These circumstances sets this request apart from other requests.

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

MOTION CARRIED

**NEW BUSINESS**

**Appeal No. 1**

Michael and Julie Sayers  
Agricultural-Rural Residential

Applicant requests a variance of 19’9” to allow a 51’9” front yard setback for an addition to the principal structure (garage) located at 10540 Tillman Road.

Town Code Reference;  
§229-41

\*Average front yard setback within 500’ is 71’6”.

**DISCUSSION:**

Michael and Julie Sayers were present to further explain his request, and answer any questions.

Mr. Sayers stated that they are requesting this variance to accommodate the addition of a 3-car garage to be placed directly in front of their existing 2-car garage. The existing 2-car garage will be renovated in to a bedroom for his elderly Father-in-Law.

Mr. McNamara asked Mr. Sayers why he isn’t proposing to go to the side of the garage.

Mr. Sayers responded that ultimately, they are trying to accommodate a first-floor bedroom in the residence. If they went out to the side, the bedroom would be facing the front of the house, which would not fit in with the flow of the existing home.

Mr. McNamara asked if the materials would match the existing house.

Mr. Sayers responded yes, and noted that the existing siding has been there for quite some time and has faded, in which case they will replace that also, so that it all matches consistently.

Mr. McNamara asked if a driveway will be added to the proposed garage.

Mr. Sayers responded yes.

Mrs. Burkard asked how many bedrooms the house currently has.

Mr. Sayers responded there are currently 3 bedrooms.

Mr. Sayers described the new structure that they are putting up is a 3-car garage to be placed directly in front of the existing garage.

Mrs. Burkard asked if the structure goes straight across.

Mr. Sayers noted that the third bay has a one-foot setback.

Mr. Krey asked why there is a blue line along the house.

Mr. Bleuer responded that originally it was two parcels, but the property owner required additional land. It has been legally merged in to this lot.

Mr. Krey asked if the variance is from the front right-away.

Mr. Sayers responded yes.

Mr. Krey noted that the neighbor on the side won't notice it due to the density of the trees.

Mr. Skaine noted that the document Mr. Sayers brought tonight, which has been entered in as Exhibit A was helpful with showing the planned layout of the proposed structure.

Mr. Drinkard noted that the Sayer's driveway and house are elevated from the road and the neighboring properties, which helps to mitigate the view from the street and neighbors.

Mr. Drinkard stated that he doesn't see any changes the character of the neighborhood, in fact there are other houses that are similar in appearance on the street.

Mr. Drinkard asked if the siding on the proposed structure will match the siding on the house.

Mr. Sayers reiterated that there are some of the details in the aesthetics that they are still working on, but whatever the decision is, it will encompass the entire front of the property.

Mr. Drinkard asked if they intend to run a business out of the proposed structure.

Mr. Sayers responded no.

Chairman Mills asked Mr. Sayers if any alternate design options were discussed.

Mr. Sayers responded yes, but due to the layout of the existing house, the only other option would be the northeast corner, and they had trouble making the aesthetics work with that layout. Additionally, due to their setback, they would need to move some lines.

Mr. Sayers added that they did look in the driveway to the west, but it did not flow well.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

**ACTION:**

Motion by Patrick Krey, seconded by Richard McNamara to **approve** Appeal No. 2 as written with the following condition:

- 1. siding and shingles to match the house
- 2. no business is to be conducted out of the structure

**ON THE QUESTION:**

Mr. Krey stated that based on the location of the house on the lot, it will not make any change from the street view.

The conditions imposed will mitigate any issues with it not fitting in with the character of the neighborhood.

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

**MOTION CARRIED**

**Appeal No. 2**

Lewis Wargo Jr.  
Agricultural-Rural Residential

Town Code Reference;  
§229-40

Applicant requests a variance of 50’ to allow a lot frontage of 100’ located at 5730 Salt Road, for the purpose of conducting lot line adjustments in association with 5740 and 5750 Salt Road.

**DISCUSSION:**

Mr. Wargo was present to further support his request and answer any questions.

Mr. Wargo stated that he owns the house at 5754 Salt Road and has recently purchased the properties located at 5750 and 5730 Salt Rd.

Mr. Wargo submitted a sketch which illustrates what they are planning to do. Mr. Bleuer distributed the sketch to the Board members.

Mr. Wargo noted that the properties in question are irregular in shape, their intentions are to straighten the lot lines according to how the properties are maintained and where the houses are located on the lots.

Mr. Wargo noted that the property at 5750 Salt Road was a non-conforming lot when they purchased it. It was 100 ft. wide at the street, and extended back 220 ft. while 5730 Salt Road was approximately 164 ft. wide at the street.

Mr. Wargo added that what they are proposing to do is to shift the property line of 5740 Salt Road approximately 64 ¼ ft. to the south on both the north and south sides. This will center the houses at 5740 and 5750 Salt Road in the middle of their respective lots.

Mr. Wargo continued, explaining that this will also eliminate the encroachment of the driveway from 5740 Salt Road on to the property at 5730 Salt Road.

Mr. Wargo stated that he has received interest in the purchase of some of the 'L' shaped lot that would remain from 5730 Salt Road after the proposed lot line adjustment.

Mr. Krey asked Mr. Wargo if the intention is to center the existing home on the lot, would he sell the additional lot.

Mr. Wargo responded that he does not plan to develop the other lot, but rather to maintain it as is, or if the adjacent neighbors are interested in purchasing any of, he would sell it.

Chairman Mills clarified that Mr. Wargo does not own 5740 Salt Road.

Mr. Wargo responded no he does not.

Mr. Krey noted that the only request for the Zoning Board is to approve the adjustment of 100' frontage for the property located at 5730 Salt Road.

Mr. Wargo responded yes, they are changing 5750 Salt Road from a non-conforming lot to a conforming lot, and 5730 Salt Road from a conforming lot to a non-conforming lot.

Chairman Mills asked Mr. Wargo if he intends to ever build a house on the lot located at 5730 Salt Road.

Mr. Wargo responded no, not his intention.

Chairman Mills asked if they put a restriction on this becoming a residential building lot in the future, would that be an issue.

Mr. Wargo responded it would not be for him.

Mr. Skaine asked which lot the 'L' shaped lot that Mr. Wargo referred to is.

Mr. Wargo responded that it is located at 5730 Salt Road. There are houses located on 5740 and 5750 Salt Road only.

Mr. Drinkard asked for clarification on the conformance of the new lot that is being developed, noting that it would not be a buildable lot.

Mr. Bleuer stated that it would not be a buildable lot unless this variance is approved. At that point, the Planning Office would note that from a zoning perspective it is a good lot, from there all agency and department approvals would be necessary

Mr. Drinkard asked Mr. Wargo if he considered the option of taking all three lots and doing it once over all of them, dividing by three which would make three conforming lots.

Mr. Wargo responded that he did not look in to that because he does not own all three lots so it was not an option.

Mr. Wargo added that with doing the lot line adjustment, it will bring the properties in line with how the properties are maintained with regards to lawns and hedgerows.

Mr. McNamara asked who would be interested in the 'L' shaped property in the back of 5730 Salt Road that Mr. Wargo has referred to.

Mr. Wargo responded that he has received interest from the neighbors located to the south, and also from 5740 Salt Road.

Mr. McNamara asked if any consideration has been given to having that transaction taken care of first before proceeding with the variance and lot line adjustment.

Mr. Wargo responded no, not at this time.

To clarify, Chairman Mills stated that if this variance is granted, the applicant will have a non-conforming lot.

Mr. Bleuer responded that 5730 Salt Road would be a non-conforming lot.

Chairman Mills asked if the applicant ever wanted to put a house on that lot, would he need to apply for a variance.

Mr. Bleuer responded no, the Zoning Board would allow it to be a non-conforming lot, but a good lot of record.

Mr. Bleuer noted that based on Mr. Wargo stating that there may be interest in the purchase of some of that land, that any sale should be reviewed by the Planning Office to verify that the lot still meets the required acreage.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

**ACTION:**

Motion by Gerald Drinkard, seconded by Raymond Skaine to **approve** Appeal No. 2 as written.

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

MOTION CARRIED



**Appeal No. 3**

Sherry L. Hunter  
Residential Single-Family

Applicant requests a variance:

Town Code Reference;

- 1) §229-55 (H)
- 2) §229-55 (H)
- 3) §229-55 (E) (2)

- 1) to allow a secondary detached garage; and
- 2) of 952 sq. ft. to allow a 1,152 sq. ft. detached accessory structure; and
- 3) of 2'6" to allow an 18'6" tall detached accessory structure; located at 4895 Schurr Road.

**DISCUSSION:**

Sherry Hunter was present to further support her request and answer any questions.

Ms. Hunter stated that she would like to build a hobby garage / workshop on the southern edge of her property. The height variance is because the house is 16' and sits on a slight berm, which would cause the garage to be shorter than the house. A garage height of 18'6" would put the garage in line with the house.

Ms. Hunter noted that the colors of the proposed garage would match the house. Additionally, by placing it where she is proposing, she has attempted to mitigate the structure with existing landscaping. This will aid with reducing the presence of the proposed structure from the road.

Ms. Hunter stated that the proposed structure will be 24' wide and 48' long, and the side that is 24' will be facing the road, with windows only and no garage door.

Ms. Hunter added that her intention is to surround the proposed structure with landscaping. She would like to add to the aesthetics of the neighborhood and character of The Hollow. She intends to have the proposed structure resemble a barn, and not a garage.

Mrs. Burkard asked Ms. Hunter if she plans to run a business out of the proposed structure.

Ms. Hunter responded no, and added that she and her significant other that lives with her use the garage for their hobby, and have outgrown their existing garage.

Mrs. Burkard asked if there will be a driveway to the proposed garage.

Ms. Hunter responded no, but the intent is to have electricity for the woodworking tools.

Mrs. Burkard asked if there is a second floor of the proposed structure.

Ms. Hunter responded no.

Mr. McNamara asked what the siding material is.

Ms. Hunter responded that it is metal, with a metal roof. The existing house is vinyl sided but has a metal roof, so the metal roof on the proposed structure will be identical.

Mr. McNamara asked how far off of the road it will be.

Ms. Hunter responded that she doesn't have the exact measurement with her, but it will be set back behind the house.

Mr. Krey asked Ms. Hunter how big her home is.

Ms. Hunter responded that it is approximately 1,700 sq. ft.

Mr. Krey stated that the structure appears to resemble a barn more than a garage, and asked if there are similar size structures in the area.

Ms. Hunter responded no, not on Schurr Road but there are on the neighboring roads, and the are of The Hollow itself has multiple barns.

Discussion continued regarding the size of the structure. Mr. Krey stated that he feels the proposed structure is out of place for a Residential Single-Family neighborhood.

Mr. Skaine asked Ms. Hunter how close she is to the property line of the neighbor to the south.

Ms. Hunter responded that they are 14 ft. off of the property line, the shrubs are hers. The neighbor's mailbox is actually on her property. The property line comes 1 ft. off of the neighbor's concrete pathway leading to his door.

Discussion continued regarding property lines.

Mr. Bleuer clarified that in the Residential Single-Family zone, two accessory structures are allowed, each being 200 sq. ft. or less.

Mr. Drinkard stated that it appears the proposed structure will not be centered on the lot next door.

Mr. Bleuer responded that it is all one lot.

Mr. Drinkard asked how the neighbor feels about the proposed structure.

Ms. Hunter responded that after having removed a row of pine trees, this proposed garage will provide privacy for them.

Chairman Mills asked if any other materials have been explored, even just for the front façade, to create something more aesthetically pleasing.

Ms. Hunter responded that she prefers the entire structure was wood, but it cost prohibited to do so. She has not seen similar examples of a structure with one side wood and the others are metal.

Chairman Mills asked if any other decorative elements on the front façade to break up the mass of a solid wall would be an option.

Ms. Hunter responded that the landscaping that she intends to install would cover the front of the proposed structure. Each bush that she plans to plant will be a minimum of at least 4 -5' high.

Ms. Hunter added that she intends to add an Eyebrow Pergola to the windows that face the street, as shown in the photo included with her packet. The pergola will mimic the artwork that was built on the north side of her garage.

Ms. Hunter continued to explain her plans for the property, reiterating her goal of producing the Clarence Hollow characteristics.

Regarding the front façade of the proposed structure that faces the street, Chairman Mills asked Ms. Hunter how tall the shrubs are that she plans to plant.

Ms. Hunter responded that initially they will be approximately a foot and a half off the ground, but will grow quickly to full height of 4-5 ft. high.

Chairman Mills asked about the eyebrow pergola that is depicted in the photo submitted, marked Exhibit A. If they made it a condition of the variance that no business is to be operated out of the garage, and that two windows facing the street with the eyebrow pergola also facing the street, and landscaping of Ms. Hunter’s choice at least 1.5 ft. in height, would Ms. Hunter agree to that.

Ms. Hunter responded yes.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

**ACTION:**

Motion by Ryan Mills, seconded by Raymond Skaine to **approve** Appeal No. 3 as written, with the following conditions:

1. no business to be conducted out of the structure
2. two windows facing the Schurr Road with eyebrow pergola
3. landscaping along Schurr Road to be planted at least 1.5 ft. tall

**ON THE QUESTION:**

The applicant heard, understands, and agrees to the conditions.

Chairman Mills explained that this request is unique in other similar sized structures because the parcel is very wide, and a large parcel size.

Chairman Mills added that significant foliage already exists on the lot, and the applicant will mitigate it further with additional foliage.

Mr. Bleuer added that the overall height calculations of 18 ft. 6 in. does not include the proposed cupola. The Planning Department does not believe the cupola would count towards the overall height, if the applicant decides to add it.

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

MOTION CARRIED

**Appeal No. 4**

Paul Bonito  
Agricultural Flood Zone

Applicant requests a variance to allow a 450' front yard setback located at 8935 Tonawanda Creek Road.

Town Code Reference;  
§229-31

\*Average front yard setback within 500' is 88'.

Mr. McNamara recused himself from Appeal No. 4

**DISCUSSION:**

Paul Bonito was present to further discuss his project and answer any questions. Mr. Bonito added that he would like to build the proposed home 350' back from the road.

Mr. Skaine noted that Mr. Bonito is looking to be in line with the other houses on his street, but that there are not many other houses near him.

Mr. Bonito responded that the house next to him would only be approximately 100'-125' further back.

Mr. Skaine asked if the variance is for 450' or 350'.

Mr. Bonito stated that he mis-calculated, and that it is an approximately 350' setback.

Mr. Bonito explained that Tonawanda Creek runs east to west, and the house would be going south.

Chairman Mills asked Mr. Bleuer for clarity regarding the size of the variance.

Mr. Bleuer noted that it was published at 450 ft. per the application submitted by Mr. Bonito. Per his current testimony stating that he is requesting a lesser variance, the Board can consider a lesser variance. The established setback is 88 ft.

Mr. Drinkard asked Mr. Bonito if the area around him is wooded.

Mr. Bonito responded yes.

Mr. Drinkard asked what the building on Tonawanda Creek Road with the blue top is.

Mr. Bonito responded that it is an old storage building.

Mr. Krey asked why Mr. Bonito does not want the 88 ft. setback.

Mr. Bonito responded that he does not want to disturb the old barn that sits on the property, his plan is to have it updated. The structure is over 150 years old and has a right to live.

Mrs. Burkard asked if the pole barn located on the back of the property is Mr. Bonito's.

Mr. Bonito responded that he owns the pole barn.

He plans to build a 2,300 sq. ft. home; it will be a modern farmhouse style.

Chairman Mills asked Mr. Bonito if the house will be a one or two-story house.

Mr. Bonito responded that it will be a two-story house.

Chairman Mills asked what Mr. Bonito means by "expandable".

Mr. Bonito responded that if in the future someone wishes to add on to the house, they are able to.

Chairman Mills asked Mr. Bonito if he has closed on this lot and is the legal owner.

Mr. Bonito responded yes; he is the legal owner.

Chairman Mills asked Mr. Bonito if he explored this variance at all before purchasing the property.

Mr. Bonito explained that the previous owner had discussed it with his lawyers and there was no issue. When he purchased the lot, he began clearing the overgrowth and found stakes that the previous owner had installed indicating where he was going to place his house, which is basically where he would like to place his.

Mr. Bleuer stated that he was unable to verify that.

Chairman Mills asked Mr. Bonito if he has any plans drawn up for the house.

Mr. Bonito responded yes; they have been submitted to the Town of Clarence.

Mr. Drinkard noted that going west on Mr. Bonito's property takes you in to the golf course. There is also a building on an adjacent lot, and asked if that is a house.

Mr. Bleuer responded stating the property adjacent to the west has a house with a substantial setback.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

**ACTION:**

Motion by Patrick Krey, seconded by Raymond Skaine to **approve** Appeal No. 5 as written.

**ON THE QUESTION:**

Mr. Krey stated that the applicant has stated a desire to not disturb the existing barn located at the front of the property, which he believes is of historical significance.

Mr. Krey added that the property adjacent to the west has a structure with an even greater setback than what Mr. Bonito is requesting. Mr. Krey does not believe this request will create an undesirable change in the neighborhood.

Raymond Skaine	Aye	Gerald Drinkard	Aye	Patrick Krey	Aye
Patricia Burkard	Aye	Ryan Mills	Aye		

MOTION CARRIED

**Appeal No. 5**

Bevilacqua Development, L.P.  
Commercial

Town Code Reference;

- 1) §229-126(D) (1) (f)
- 2) §229-87 (F) (2)
- 3) §229-126 (D) (1) (e)

Applicant requests a variance:

- 1) to allow third stories on three multiple-family housing buildings; and
- 2) of 6’ to allow two 51’ tall buildings (45” roof height, 6’ parapets); and
- 3) to allow a building containing more than 4 multiple family units without an in-building commercial component; located at 6625 Transit Road.

Mr. McNamara returned to the dais.

**DISCUSSION:**

Sean Hopkins was present on behalf of the applicant, Bevilacqua Development L.P. as well as Megan Cumbo, in-house counsel, and Pat Sheedy, Project Engineer from Carmina Wood Design.

Mr. Hopkins reviewed the lengthy history of the project, bringing it up to date with the current requests.

This property located at 6625 Transit Road also has frontage on Miles Road, with almost 19 acres zoned Commercial and approximately 16.8 acres that are zoned Residential Single-Family.

The proposal includes 2 three-story mixed-use buildings, containing approximately 22, 750 sq. ft. of first-floor commercial space, 31 upper floor apartments, and 1 three-story multi-family building that consists of 28 units.

The variances only pertain to those particular buildings.

They are proposing commercial out-parcels along Transit Road.

Mr. Hopkins stated that while the Planning Board review of this project is not completed, he believes they have completed an exhaustive environmental review pursuant to the State Environmental Quality Review Act (SEQRA) and have issued a Negative Declaration.

Mr. Hopkins explained that the back of the site will be an Open Space Design subdivision, they are proposing 16 residential lots on approximately 17.4 acres. Because they are proceeding with Open Space

Design requirements, slightly more than half of that will consist of permanent open space to be deed restricted. This includes the entire Ransom Creek corridor located on the eastern edge of the site. Mr. Hopkins added that due to the scope of this project, they did go beyond the typical neighbor notification forms, with more a more detailed description of the project.

Mr. Hopkins continued with the description of the project, noting that several of the changes from the original plan are based on reviews and comments from several involved and interested agencies, including the Army Corp of Engineers, Planning Board, neighbors, and most importantly, some of the substantial changes that they made were mandated via comments from the New York State Department of Transportation (NYS DOT) on April 5, 2022.

Summarizing the comments that were made by the NYS DOT, Mr. Hopkins noted the following:

1. a traffic signal is required on Transit Road, directly opposite of Deer Creek Lane
2. eliminate a proposed restaurant and drive-thru parcel on the northwest corner of the site
3. to change the modifications of the internal driveways in order to accommodate the 95% queue length. This means no internal access aisles connected in to the primary driveway in to the signalized intersection

Mr. Hopkins noted that based on those comments and requirements, they have revised the plan to what they are currently showing.

No specific tenants have been identified for the commercial outparcels along Transit Road. The Planning Board has made it quite clear that they will be thoroughly evaluated for consistency with the overall design of the project.

Mr. Hopkins stated that at the request of the NYS DOT they are showing a potential future connection to the Royal Car Wash to the north. There is no current agreement for this request at this time.

The footprint of the two commercial use buildings have been reduced by approximately 2,500 sq. ft.

They have eliminated two of the previously proposed three story multi-family buildings, combining them in to one building.

Mr. Hopkins added that this was all done without increasing any impact to the jurisdictional wetlands or any impacts to the regulated floodways associated with Ransom Creek on the site.

Mr. Hopkins stated that in terms of the variances he previously mentioned, they all apply for those three buildings. The 2 three-story mixed-use buildings, and the three-story 28-unit building.

Mr. Hopkins pointed out that they have designed this project in recognition of the fact that those three buildings that require variances are a substantial distance from adjoining property lines and adjoining houses.

Mr. Hopkins stated that during the Planning Board meeting on October 19, 2022, Scott Snider who owns the property at 8100 Miles Road has asked that the applicant donates the sliver of permanent open space to him and possibly some of his neighbors. This assures that no development will ever occur there, and will be deed restricted.

Mr. Hopkins continued, reviewing each variance request in detail.

Mr. Hopkins added that the code related to the frontage of this site, does allow for three-story buildings, however they must be commercial.

Mr. Hopkins pointed out that the only portion of the three-story buildings that would exceed the required 45 ft. are the parapets.

Mr. Hopkins stated that they are not here seeking area variances for the number of units, or for the density.

Broken down, this means that if they are not able to proceed with a three-story, 28-unit building, they would spread the 28 units among 7 additional 4-unit, two-story buildings. Unfortunately, that would come at the expense of greenspace, wetlands, and result of additional impervious surfaces on the site. It would also not be consistent with the mixed-use neighborhood character that they are proposing.

Mr. Hopkins reviewed the Town of Clarence Masterplan 2030 and the ways in which this proposed project meets those requirements, and has formed the basis of what they are proposing in regards to the mixed-use layout.

Mr. Hopkins added that they are still providing a site that will provide pedestrian access, recreational trails, and to reiterate, half of this property will remain undeveloped greenspace.

Mr. Hopkins reviewed the criteria for variances.

Mr. Hopkins reviewed the Environmental Impacts, which can also be found within the Supporting Documents on the Town of Clarence website.

Mr. Hopkins requested that the three requested area variances be approved with one condition, that being the height variance is limited to the parapets on the 2 three-story mixed-use buildings.

Mr. Drinkard noted that this project goes back many years, the corridor was rezoned from Major Arterial to Commercial in 2008. Mr. Hopkins noting that their intentions have been to meet the Master Plan 2030 with mixed-use, it's walkable, it's easy to get to, and then transitions in to the Traditional Neighborhood District in an aesthetic way.

Mr. Drinkard stated that asking for a variance not for something aesthetic, but for actual reasons of volume, is the reason for his question.

Mr. Drinkard asked about the initial rendering that went to the Town Board and the Planning Board without the four businesses in the front, the whole project has begun to look like a very congested area.

Mr. Drinkard referred to the minutes from 10/19/2022 where Mr. Hopkins stated that they've intended to "maximize the property" and it shows. While looking at the three buildings for a variance, you must look at the whole parcel and project.

Mr. Drinkard stated that he is concerned with the overall volume of the project, including parking and the sewers.



Mr. Hopkins responded to Mr. Drinkard's concerns, noting that they are not here about the volume or density, and that if the requested variances weren't permitted, they would need to consider taking the three-story town unit and instead adding in 7 additional two-story buildings, and would come at the expense of greenspace.

They are not seeking a density variance.

It is not a feasible location for commercial frontage.

Mr. Hopkins noted in terms of sanitary sewer, they have a letter from Jeff Burrows, the Engineer with the Town of Amherst Engineering Department that limits the sewer capacity at this time. Ultimately, they will need sanitary sewer capacity for the full build-out. This will include the installation of some off-site improvements in the Town of Amherst.

Mr. Drinkard stated in 2008 when the project was first presented, there were no variances needed. It was truly sympathetic to the walkability, less vehicles and volume. He is concerned with the four buildings in the front of the project.

Mr. Hopkins stated that the changes they have made were mandated by the NYS DOT over the course of 18 months.

Mr. Hopkins noted that the original project from 2008 was entirely retail, no mixed-use components.

Mr. Skaine asked what the build-out plan is.

Although tough to predict, Mr. Hopkins stated that the plan is to start the mixed-use components and at least start the residential portion as soon as possible. They have a substantial amount of work ahead of them, and would like to proceed as quickly as possible to full build-out.

Mr. Hopkins reiterated that each of the retail out parcels will require a separate review process and separate approval.

Mr. Hopkins added that if he had to speculate, the goal would be to complete full build-out in the next 2-3 years.

Mr. Hopkins noted that any specific use for any of the 4 out parcels that replace the one that was there previously will require a separate review and approval process.

Mr. McNamara asked about the parapet walls, there are 4-5 on each building.

Mr. Hopkins stated that they'll be a maximum of 6' each. These buildings are not fully designed yet.

Mr. McNamara asked how far the main parapet is above the roof.

Mr. Hopkins responded that he is guessing approximately 2 ft.

Mr. McNamara noted that the parapet walls are decorative, giving the building more appeal.

Mr. McNamara asked if there is parking underneath the 28-unit building.

Mr. Hopkins responded yes, there is, it may be ground-level or halfway below the ground.

Discussion continued regarding the total number of units and units per floor, in relation to parking.

Mr. Hopkins added that they would like to set a new standard in the Town of Clarence for mixed-use development.

Mrs. Burkard asked about variance #2, if the variance is not granted, they would build 4 more units. Mr. Hopkins confirmed yes, though they would prefer not to, it would be their only other option.

Mrs. Burkard asked how many businesses would be down below in the mixed-use 'L' shaped buildings.

Mr. Hopkins stated that they are 22,000 sq. ft. each, he envisions each building to be occupied by approximately 5-9 tenants each, depending on uses.

Mrs. Burkard asked if there is a need for that.

Mr. Hopkins responded yes; they feel that there is. Typically, Mr. Bevilacqua's tenants are not national chains, but more local businesses.

Mrs. Burkard asked what the residents who live on Miles Road will see if the three-story buildings go up.

Mr. Hopkins responded that the backs of the lots are heavily vegetated, as is the proposed project. Mr. Hopkins believes it will be difficult for the residents in those homes to be able to see the proposed buildings. Mr. Hopkins noted that the closest edge of the three-story mixed-use building is 350 ft. away from the closest home on Miles Road.

Mrs. Burkard asked if the traffic study says that this is all ok.

Mr. Hopkins noted that the traffic study has been updated 3 times, not only did the traffic study say it would work with the mitigation that they are proposing, the Department of Transportation (DOT) which has exclusive jurisdiction over Transit Road said it is ok also.

Mr. Hopkins stated that they are not saying there won't be additional traffic on Transit Road from this proposed development, but that they Department of Transportation and the Planning Board have determined that it will not have an adverse impact.

Mr. Bleuer clarified status of the DOT review, in that he has had multiple conversations with the DOT associated with this project and also associated with the corridor in general. First and foremost, they have denied a signal at Miles because it does not meet the warrants required for consideration at this time.

Mr. Bleuer added that they did agree to meet with the Town to seek future improvements which could include designated turn lanes at Miles and Transit, for example a left and right turn lane at Miles. Additionally, they agreed to continue to monitor the area, as well as to review the hashing on Transit Road heading north where it merges down to one lane then opens up in to a right turn lane. Without

putting it in to writing, they identified that they are willing to remove the hashing and allow that lane to continue as a right turn lane only.

Mr. Bleuer noted that those are not tied to this project, and they cannot verify that it will happen, but they will continue to collaborate with the DOT to see them through.

Mr. Krey confirmed the back residential area will be sold off and developed in to homes.

Mr. Hopkins stated that the back 16 will be single-family homes to be developed and sold. The remainder residential units will be for lease. They will be the owner as well as maintain and manage those leased properties.

Chairman Mills confirmed that there is no office component with the proposed project.

Mr. Hopkins responded no, but that the first floors of the mixed-use buildings can include some office uses as well.

Chairman Mills asked what the white brick is.

Mr. Hopkins responded that he is not sure, it may be brick or Hardee board, but not vinyl and nothing that is a cheap material.

Discussion continued regarding the materials that will be used.

Chairman Mills labeled the elevation Exhibit A for the record.

Chairman Mills asked Mr. Hopkins if the Zoning Board were to impose a condition that at least 50% of the front and side facades of the back structures are to be brick, would Mr. Hopkins agree to that.

Mr. Hopkins responded that he is not comfortable agreeing to 50%. He is comfortable with the idea, but he is not the architect and not speaking on behalf of the architect.

Mr. McNamara asked if that is the Planning Board's job to discuss materials.

Mr. Bengart responded yes, that is correct.

Discussion continued regarding materials.

Mr. Bleuer stated that the Planning Board is the authority for the conceptual architectural as well as the final architectural, and they do share the concern regarding materials. They are not in the habit of approving materials that are not long-lasting, so they are looking for brick, stone, Hardee board, LP Smart siding, and other similar quality materials.

Discussion continued regarding the materials that will be used.

Chairman Mills asked if there is any way to compromise on the additional 44 units, if there is any way they can make it less than that.

Mr. Hopkins reiterated that their only other option would be to take those units and transition them in to a different format, and fail to meet the objectives that they are trying to meet.

Mr. Bleuer stated that the Planning Office provided a neighbor notification list of all adjoining parcels to the applicant. The applicant mailed out copies to all of those neighbors. The Planning Office has received some, but not all back requesting that the recipients mail or send a copy to the Planning Office. It is not a requirement that the residents send them back.

In regards to Public Participation, the following residents spoke:

1. Ed Nesselbeck of 8070 Miles Road
  - while they have many objections to this overall project which will destroy this beautiful, natural sanctuary behind their house, they are concerned with the traffic and the congestion.
  - not sure how the DOT plans will shake out, as Miles Road is already a major cut-through for thousands of Clarence residents. Sometimes they will have to wait for 5 minutes just to turn on to Transit Road.
  - with this kind of population density with access to Miles Road, which he is sure most residents will be using, is going to change the nature of the neighborhood and quality of life they have.
  
2. Art Porgozola of 8101 Clarherst Drive
  - concern not just of Miles Road, but the traffic on Miles Road has caused problems in the other surrounding roads as well.
  - the amount of traffic that uses all of the side roads back there in an attempt to avoid Transit Road has increased dramatically.
  - the Town of Clarence has put speeding signs on Old Post in an attempt to slow the traffic down.
  - the DOT Traffic Studies concentrate on Transit Road, but Miles Road effects the daily life of all residents.
  - something this dense has a spillover effect, so if this is being considered as part of the Master Plan 2030 for the Town of Clarence, there needs to be some kind of give and take where if giving a variance, then something for the Town needs to be added.
  - it's not just walkability within the development community, it's walkability and quality of life for the entire community that surrounds it.
  
3. Penny Favale of 8115 Miles Road
  - on the south side of Miles Road, close to the extended property that Mr. Snider owns.
  - has a lot of problems with this project.
  - density, traffic, etc.
  - variances addressing tonight are height of buildings, all being addressed from daytime point of view, land will be cleared to put this development in with small plantings.
  - third story will have additional lighting and sound that will impact the neighborhood.
  - impact on the wildlife that live in the neighborhood as well as birds, especially with buildings that have so much glass.
  - urges them to consider not allowing the variance due to impact on the neighborhood and surrounding parcels.
  - look at it from a ranch and two-story homes, not from a birds-eye view.
  - three-story homes will have lighting coming in from the proposed properties.

- expects development and change, but this project as currently presented is not in the best interest of the neighborhood or the Town of Clarence.

#### 4. Steve Favale of 8115 Miles Road

- main concern is the traffic that this project will bring, especially during the construction phase with 2-3 years of dump trucks and heavy equipment traveling on Miles Road.
- Miles is small road, with no room for pedestrians as it stands now.
- doesn't understand why they have access to Miles Road.
- likes the traffic light planned for the Deer Creek intersection, hopeful it will be one of the first things that are completed.
- prefers all construction vehicles be kept on Transit Road and prohibit them from using Miles Road.

Public Participation was closed at this time for this item.

Mr. Hopkins returned to address and answer the questions that were presented by the residents, stating that the traffic has been analyzed exhaustively.

In terms of materials, the Zoning Board has asked some good questions in regards to what will be used on the buildings. After consulting with Mr. Sheedy as well as Megan Cumbo, in-house counsel, he feels it will be in their best interest to table the public hearing for this evening, and come back when they are able to completely answer all questions accurately.

Mr. Hopkins stated that while the traffic studies and DOT comment letters are not relevant to the variance requests, they want to assure any information that may be needed is available.

Mr. Drinkard asked about the traffic flow on the premises, and how it will evolve. Which will be a private road and which is the preferred traffic flow to the public road.

Mr. Drinkard stated that his other comment was relevant to the number of families, which Mr. Hopkins has pointed out, they would adjust the plans and spread the families out with an alternate option.

Mr. Drinkard would like to know the traffic flow as planned today, and how will it go if they need to re-plan with the volume spread elsewhere.

Mr. Hopkins asked if it would be helpful to show a potential conceptual plan, to get an idea what it would look like without the need for the variance.

Chairman Mills responded that it would be great, they would appreciate that.

Mr. Drinkard asked how the applicant would manage the leased homes. Could the single-family homes on Miles Road apply for condominium status?

Mr. Hopkins noted that a Homeowner's Association would need to be formed, explaining the process as to what would happen.

Discussion continued regarding the ownership and management of the homes.

Chairman Mills noted that the architectural components particularly related to the buildings that they are seeking the variances on.

Mr. Drinkard stated that the developer has the right to develop the land in accordance with the current zoning.

Mr. McNamara noted that at the Planning Board meeting and this meeting, the biggest thing he has heard is regarding the traffic, and asked Mr. Hopkins if there is something that can be done about getting rid of the private road, and making everything come in off Transit Road.

Mr. Hopkins responded, saying that the problem with the scenario is that it wouldn't comply with the NYS Fire code.

Mr. Bleuer stated that secondary access is required by the Town of Clarence Code, and the Miles Road access will be required if this project returns to the Planning Board for concept review.

Mr. McNamara asked if there is the need for a connection at all.

Mr. Hopkins referred to the Town of Clarence's Subdivision regulations, it is limited to 12 lots without secondary access.

Mr. McNamara stated no construction vehicles at all aside from using Transit Road. No shortcuts.

Mr. Hopkins responded, stating that previous issues and concerns regarding where the signal would go. Ultimately, the DOT decided it would go at the intersection of Transit Road and Deer Creek Lane.

Discussion continued regarding residential units, traffic, buses, etc.

Mrs. Burkard asked for the lighting issue on the tall buildings to be addressed when returning.

Chairman Mills asked for additional landscaping and mitigation techniques along Miles Road.

Mr. Hopkins stated that they will work on the requests of the Board, and bring back new plans for them to review.

**ACTION:**

Motion by Ryan Mills, seconded by Raymond Skaine to **table** Appeal No. 5.

**ON THE QUESTION:**

Mr. Bengart stated that they Zoning Board is requesting that the applicant return with responses to everything that has been discussed.

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

MOTION CARRIED

Meeting adjourned at 7:42 p.m. with a motion by Richard McNamara.

MOTION CARRIED

Amy Major  
Senior Clerk Typist