

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday December 9, 2014
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
David D’Amato	Patricia Burkard
Gregory Thrun	Richard McNamara

Town Officials present:

Director of Community Development James Callahan
Junior Planner Jonathan Bleuer
Deputy Town Attorney Steven Bengart
Councilman Peter DiCostanzo

Other interested parties present:

Fred Mallone	Matthew Barnaby	Bruce Wisbaum	David Huck
Brett Fitzpatrick	Michael Metzger	Sean Hopkins	

The Zoning Board of Appeals members entered into an Attorney Client Privilege closed session.

The meeting resumed.

New Business

Appeal No. 1

Fred Mallone
Agricultural Floodzone

Requests the Board of Appeals approve and grant a variance to allow for a front yard setback of 400’-500’ for the construction of a proposed single family residence located at 9150 Sesh Road.

Appeal No. 1 is in variance to §229-31.

DISCUSSION:

Chairman Michnik said there is one neighbor notification form on file.

Fred Mallone is present and said the property is unbuildable unless they build the house back that far. There is a pond that comes into the property and there is a gas pipeline. A house cannot be put up front. The reason the request is 400’-500’ is because they are unsure of where the gas pipeline is located. They want to build on the other side of that pipeline. When this property was subdivided it was done in such a way that the pond comes right into the property and it is unusable. Mr. Mallone said the neighbors want the

house in the back, they don't want it up front because the upper area floods a lot. Mr. Mallone can obtain the other neighbor notification letter.

Mrs. Burkard asked if you will be able to see the proposed house from the road. Mr. Mallone said no, they will cut enough to put a driveway in that leads back to the house. He believes the house has to be 75'-100' away from the pipeline.

Mr. Mills asked why the house can't be put up closer to Sesh, next to 9160 Sesh Road. The applicant referred to the aerial photo and said the dimensions of a house are at least 70' and if a pool is put in, the pond is in the way. Plus that area is a floodzone and the neighbors would not like it if a house was built there. The front of the property floods. Mr. Mills asked the applicant if he is amenable to a condition, if the request is granted, that a neighborhood notification form must be received from the owner of 9160 Sesh Road within a timely manner. Mr. Mallone said yes he would agree to that condition. The property is under contract. Mr. Mills asked if there were plans for an open development or any other structures to be built on this property. Mr. Mallone said no, the plan is for just one house with a pool.

Mr. Mallone clarified that the entire property is in the floodzone so they have to build a LOMAR pad to get the house out of the floodzone. Mr. Callahan confirmed that it is in the Density Floodzone.

Chairman Michnik voiced his concern with placing the house far back on the property because it opens up situations going forward for other people coming to the Zoning Board. If the applicant built in line with the neighbors he would have to find relief from the water anyway. Mr. Mallone said that is correct but it could never be done because of the pond.

Mr. D'Amato asked if the applicant knows for sure that a 360' setback would not work, Mr. Mallone said not they don't know that for sure because they don't know the angle of the pipeline. Once he stakes the driveway they will pinpoint the location of the pipeline. Mr. D'Amato suggested the idea of tabling the request tonight until the applicant can get a firm answer on the location of the pipeline. He thinks this is a huge variance request and he would be more comfortable with the 360'. Mr. Mallone said that won't work because it is 217' to the front of the pond and 105' to the back of the pond and there will be another 100' for the gas pipeline, at least, he knows for sure that you have to be 75'-100' from it.

Mr. McNamara referred to the survey and said the gas line is marked at about 400', so a 360' setback is tight. Another consideration is that a 200' leach field would be needed.

ACTION:

Motion by Gregory Thrun, seconded by Patricia Burkard, to **approve** Appeal No. 1 as requested with a maximum of no more than a 550' front yard setback with the hope that the house can be placed closer to the road based on the determination of where the pipeline is and how the leach field has to be laid out. A neighbor notification form from 9160 Sesh Road is required within one (1) weeks' time of this meeting date.

ON THE QUESTION:

Mr. Thrun said this property is distinguished from others because of the unique situation of the pond being subdivided, it is in a floodplain and the pipeline cuts diagonally across the property so it creates a unique situation and in order to get this relief the applicant has to require this type of setback.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D’Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Nay		

MOTION CARRIED.

Appeal No. 2

Judith Husband
Residential Single Family

Requests the Board of Appeals approve and grant:
 1.) An 8’ variance to allow for the construction of up to a 24’ tall detached garage.
 2.) A variance of 112 square feet to allow for the construction of an 832 square foot detached garage.

Both requests apply to the construction of a detached garage located at 8060 Clarence Center Road.

Appeal No. 2 is in variance to §229-55 (E)(2) and §229-55 (D).

ACTION:

Motion by David D’Amato, seconded by Ryan Mills, to **table** Appeal No. 2, to allow the applicant time to arrive at the meeting.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D’Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Old Business

Appeal No. 7 (from September 2014)

Regent Development
Commercial

Requests the Board of Appeals approve and grant an area variance for the density originally proposed at 124 apartments, modified to 112, for the multi-family component of the proposed project at 8230 Wehrle Drive.

Appeal No. 7 is in variance to §229-126 (D)(1)(c). Per the amendment to the Town’s Multi-Family Law, adopted by the Town Board July 23, 2014, the allowable density for this proposed project is 93 units.

DISCUSSION:

Deputy Town Attorney Steve Bengart clarified that this meeting is to deliberate, it is not being held to take anymore facts or information from any of the parties. Chairman Michnik concurred.

The State Environmental Quality Review Act (SEQRA) report will be read into the record and debated by the Zoning Board members. If there are questions or concerns from the Board members they will ask for input.

Richard McNamara recused himself and left the meeting room. A disclosure form has been filed with the Town Clerk's office on Mr. McNamara's behalf.

Mr. Mills referred to the Full Environmental Assessment Form Part 2-Identification of Potential Project Impacts, it is a proposed draft created by the Planning Office, and reviewed and analyzed by the Zoning Board of Appeals members. The form is on file. Item #1 refers to the impact on land, in which it indicates that the proposed action will involve construction on, or physical alteration of, the land surface of the proposed site. Chairman Michnik said he has a concern with item "e" in which it is indicated that the proposed action may involve construction that continues for more than one year or in multiple phases. He asked for clarification on the Phase 2 business section of the project and asked if that will have an impact, it was clarified that it will not. Mr. Mills asked if the area consists of a lot of bedrock. Mr. Callahan said it is very close to the surface and varies in size, potential blasting was identified by the applicant. All Zoning Board members are in agreement that item #1 is answered accurately and they have no further questions.

Item #2 regarding impact on geological features is answered "no". The members agree on the answer and have no further questions or concerns regarding this item.

Item #3 references the impacts on surface water and is answered "yes". Items "a" through "k" all result in no, or small impact may occur. The members agree on the answer and have no further questions or concerns regarding this item.

Item #4 references impact on groundwater and is answered "yes". Items "a" through "h" are answered "no, or small impact may occur". Mr. Mills referred to item "d" and asked to what extent is the wastewater discharged to groundwater. Mr. Callahan said it will discharge to Erie County Sewer District #5. He referred to item "h" and said local as well as regional permitting will be required to make the project acceptable. The members agree on the answer and have no further questions or concerns regarding this item.

Item #5 references the impact on flooding and is answered "no". The members agree on the answer and have no further questions or concerns regarding this item.

Item #6 references impacts on air and is answered "no". The members agree on the answer and have no further questions or concerns regarding this item.

Item #7 references impacts on plants and animals and is answered "yes". Items "a" through "i" are answered "no, or small impact may occur". The members agree on the answer and have no further questions or concerns regarding this item.

Item #8 references impact on agricultural resources and is answered "no". The members agree on the answer and have no further questions or concerns regarding this item.

Item #9 references impact on aesthetic resources and is answered "no". Mr. Thrun referenced item "e" which states the proposed action may cause a diminishment of the public enjoyment and appreciation of the designated aesthetic resource. He said right now there is a golf dome and some open land at the site, if the proposal is to build something there won't that diminish the public space or recreational facility? It is noted that the site is not the most attractive as it stands today. Mr. Thrun has no further concerns. The members agree on the answer and have no further questions or concerns regarding this item.

Item #10 references the impact on historic and archeological resources and is answered “no”. The members agree on the answer and have no further questions or concerns regarding this item.

Item #11 references the impact on open space and recreation and is answered “yes”. Items “a” through “e” are all answered “no, or small impact may occur”. Item “e” covers the fact that the proposed action will result in loss of recreational opportunities associated with the existing golf dome and outdoor driving range. It is clarified that the property is privately owned, it is not a public recreational area and is not listed in the Town’s Master Plan as a recreational obligation. Deputy Town Attorney Steve Bengart said it is still considered recreational and the Board needs to make a determination. The members agree on the answer and have no further questions or concerns regarding this item.

Item #12 references impact on critical environmental areas and is answered “no”. The members agree on the answer and have no further questions or concerns regarding this item.

Item #13 references impact on transportation and is answered “yes”. Item “a” states that projected traffic increase may exceed capacity of existing road network and is marked as a moderate to large impact may occur. Items “b” through “e” are all marked “no, or small impact may occur”. Chairman Michnik said a letter was received today from Erie County regarding this issue, that letter will be identified and read into the record under the Part 3 of the Environmental Assessment Form. The members agree on the answer and have no further questions or concerns regarding this item.

Item #14 references impact on energy and is answered “yes”. Items “a” through “c” are answered “no, or small impact may occur”. Item “d” indicates a moderate to large impact may occur. Mr. Mills noted that this project will be all gas, no geo-thermal or solar power will be used. The members agree on the answer and have no further questions or concerns regarding this item.

Item #15 references impact on noise, odor and light and is answered “yes”. Items “a” and “c” through “f” are answered “no, or small impact may occur”. Item “b” indicates a moderate to large impact may occur. Mrs. Burkard asked if there will definitely be blasting. Mr. Callahan said it has been identified that there is the potential for blasting but it would be short term during construction. Deputy Town Attorney Steve Bengart said they have to meet all regulations if they blast, and if they cause damage they are responsible. The members agree on the answer and have no further questions or concerns regarding this item.

Item #16 references impact on human health and is answered “yes”. Item “a” indicates a moderate to large impact may occur. Items “b” through “l” are all answered “no, or small impact may occur”. The members agree on the answer and have no further questions or concerns regarding this item.

Item #17 references consistency with community plans and is answered “yes”. Items “a”, “b” and “d” through “h” are answered “no, or small impact may occur”. Item “c” indicates a moderate to large impact may occur. It is noted that this item refers to the violation of the Zoning Law which was recently adopted by the Town Board in June 2014. The members agree on the answer and have no further questions or concerns regarding this item.

Item #18 references consistency with community character and is answered “no”. The members agree on the answer and have no further questions or concerns regarding this item.

The Board members review the Part 3 of the Environmental Assessment Form. The members agree with the Part 3 and have no further questions or concerns regarding this item. It is noted that a letter from the Erie County Traffic Engineer was received today regarding the traffic, the letter is on file. In the last week letters have also been received from Mr. Wisbaum, Mr. Lippes, Mr. Metzger and Mr. Hopkins. All letters have been reviewed by the Zoning Board of Appeals members and are on file.

Chairman Michnik asked each member to voice his/her opinion, for the record, on the Part 2 and Part 3 Environmental Assessment Form. The following members agreed with the forms: Gregory Thrun, Patricia Burkard, David D'Amato, Ryan Mills and Daniel Michnik.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, pursuant to Article 8 of the Environmental Conservation Law, to **issue** a Negative Declaration on the proposed Wehrle Dome Mixed Use Development located at 8230 Wehrle Drive, Town of Clarence, Erie County, New York. This Type I Action involves the development of a mixed use project, including a multiple family housing component that will require a Special Exception Use Permit and an area variance to allow for a density of greater than 8 units per acre for the multiple family housing component and other required approval and permits. Based on thorough review of Parts 1, 2 and 3 of the Environmental Assessment Form (EAF) and the extensive documentation identifying and evaluating the potential adverse environmental impacts associated with the proposed action as received by the Zoning Board of Appeals, it is determined that the proposed action will not result in any potentially significant adverse environmental impacts and that therefore the Zoning Board of Appeals issues a Negative Declaration pursuant to the State Environmental Quality Review Act for the action.

ON THE QUESTION:

All project related documentation and information received by the Zoning Board of Appeals including letters, reports, studies, plans, previous Town Board, Planning Board and Zoning Board of Appeals minutes, and statements made by all interested parties during the two public hearings held by the Zoning Board of Appeals provide the basis for this determination. The letters received within the last two weeks have also been reviewed and considered as part of this determination.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **approve** Appeal No. 7 under Old Business, as written.

ON THE QUESTION:

The Board was provided a variety of documents, a great deal of testimony. In making the decision the Board has had the opportunity to review all minutes from Town Board meetings, Planning Board meetings and prior Zoning Board meetings. They have reviewed letters from people adjacent to the property as well

as letters from the attorney representing the applicant and letters from the attorney against the project. The Board is asked to look at Town Law §267, under this law it is asked whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance. The Board does not feel that this project will create an undesirable change in the character of the neighborhood based upon where it is located, the evidence heard regarding the details of the project, specifically related to greenspace layout of the project. The Board is next asked to review if the benefit sought by the applicant can be achieved by some method that will be feasible for the applicant to pursue but would not require a variance. The Board does not believe this can be achieved by another method based upon the testimony provided, the layout of the property, the cost, the overall development scheme and location. Based upon the unique nature of the time line of this project, specifically the law adopted by the Town Board on June 26, 2013 and the Multi-Family Law adopted on July 23, 2014 the Board does not believe this is a substantial variance. The Board does not believe the project will have an adverse effect on physical or environmental conditions of the neighborhood or district given the overall plan, the landscape related mitigation and the overall development. The Board does not believe that the alleged difficulty was self-created given the time line of the project, changes in laws and density of nearby projects.

Mrs. Burkard said Regent Development has answered many of the concerns that the neighbors and the Town have had. She is also pleased that they reduced the variance to 20%. This project was in the works for the past two (2) years, this makes it an exception; it is not something proposed after the law was changed.

Mr. Thrun said based on the usage of the areas which include Coventry at 12 units and Stonegate would be over the limit if they took out the driveway. The applicant worked well with the Zoning Board in trying to reduce the footprint. He agreed with Mrs. Burkard in that this project was in the works prior to the changes in the law. There should have been a timeframe where this should have been grandfathered or at least as of a certain date, that would have clarified a lot of what the Board is struggling with now. The SEQRA shows that there will be no environmental impact. These are the reasons Mr. Thrun would approve the motion as presented.

Chairman Michnik said if this project gets passed by the Zoning Board of Appeals he hopes that Regent Development works with the neighbors to make sure that this project is a win not only for the developer but also for the surrounding communities. It is important to be good neighbors to each other. Chairman Michnik is requesting the developer work with the surrounding complexes if this is passed.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Chairman Michnik thanked the Board for all the time and effort they put into this project. He also thanked the supporters and non-supporters of the project for attending the meetings and voicing their concerns.

Meeting adjourned at 7:55 p.m.

Carolyn Delgato
Senior Clerk Typist