

Town of Clarence
 One Town Place, Clarence, NY
 Zoning Board of Appeals Minutes
 Tuesday March 10, 2015
 7:00 p.m.

Vice Chairman Ryan Mills called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Vice-Chairman Ryan Mills	Richard McNamara
David D'Amato	Gregory Thrun

Zoning Board of Appeals members absent: Chairman Daniel Michnik, Patricia Burkard.

The Zoning Board Members and Deputy Town Attorney Steve Bengart entered into Attorney-Client privilege.

The meeting resumed.

Town Officials present:

Director of Community Development James Callahan
 Junior Planner Jonathan Bleuer
 Deputy Town Attorney Steven Bengart
 Supervisor David Hartzell
 Councilman Bernard Kolber
 Councilman Peter DiCostanzo
 Councilman Robert Geiger

Other interested parties present:

Rose Sickler	Charles A. Sickler	Joe Dudek	Susan Dudek
Bonnie Gaynor	Janelle Kurtzman	Alan Kurtzman	Jim Romanowski
Tressa Romanowksi	Anthony Napoli	Joseph Nuara	Elaine Nuara
Joseph V. Valenti	Michael McLaughlin	J. Patricia McLaughlin	
Jean Marquart	Robert Marquart	Mike Dunn	Diane Trippie
Andrew Pavlock	Julie Trippie	Ken Thompson	Dawn Thompson
Ryan Storke	Joe Haller	Larry Higley	Donna Baia
Ben Baia	Susan Wickenhiser	Bob Dixon	Marc Wasserman
Frank Menza	Marie Menza	William Schneider	Thom Palmer
Diane Palmer	Tom Klebes	Helen Klebes	Dave Haney
Kelly Wooley	Deb Fritz	Joe Fritz	Anthony Vizzi
Lynne Vizzi	Jeff Palumbo	Richard Battaglia	Lucille Battaglia
Frederick Thiele	Michael Sanders	John Lopez	Richard Pfentner
Keith Parwulski	Susan Taverna	Peter Reiter	Paul Nenni
Paula Nenni	Joe Henning	Rich Hershberger	Gretchen Hershberger
Kathryn McEvoy	David Crisp	William Hoppe	Patricia Hoppe

Skip Mitchell	Marcia Mitchell	Kelly Rossi	Jeff Grenzebach
Chuck DiBella	Karl King	Al Coffield	Donna Coffield
Cindy Blankenberg	Kathleen McCollum		

Vice-Chairman Mills explained that due to the high volume of attendees there will be a three (3) minute time limit per speaker. He asked that everyone exhibit professional behavior and to be respectful of each other. Everyone will have the ability to speak, be heard and make their points.

Motion by Gregory Thrun, seconded by David D'Amato, to **approve** the minutes of the meeting held on Tuesday, February 10, 2015 as written.

Richard McNamara	Aye	Gregory Thrun	Aye
David D'Amato	Aye	Ryan Mills	Aye

MOTION CARRIED.

Old Business

Appeal No. 1 (from October 2014 meeting)

CEC-Energy/Ryan Storke
Residential Single Family Zone

Requests the Board of Appeals approve and grant a 73.5' variance to allow for the construction of a 133.5' wind turbine located at 8850 Clarence Center Road.

Appeal No. 1 is in variance to § 173-4(C).

DISCUSSION:

Dawn Trippie, applicant and owner of Thompson Brothers Greenhouse, said she would like to clear up a few misconceptions about the windmill that have been generated from the previous two meetings. It has come to her attention that it is the belief of the Board and the Town that this wind turbine is to power her house and minimal power going to the greenhouse. She referred to the Tuesday, August 12, 2014 meeting minutes in which Ms. Trippie explained they want to power their greenhouses with the turbine. Her house is not mentioned in that at all. The original drawing from CEC Energy was because her house is located on the same property as the greenhouse. They have two (2) meters, one on the house and one on the greenhouse. The run from the turbine in the middle of the property is a shorter run to the house, than to the greenhouse. This is allowed for agriculture as long as the power generated by the windmill powers the farm, any excess can go to the house up to 10%. It came to her attention on August 27, 2014 from New York State Energy Research Development Authority (NYSERDA), who gave them the grant, that they cannot run it to the house, it has to go to the greenhouse. Ms. Trippie referred to the October 14, 2014 meeting minutes in which there was discussion about the turbine, possibly having two turbines. She quoted the minutes, "Mr. Stork said that it is not possible to do multiple wind mills on the property because there is only one (1) meter and it cannot connect to the home. And they cannot interconnect the meter, they can only have one turbine as per NYS standards." This was clarified at the October 14, 2014 meeting and plans have been submitted to this effect. Ryan Storke with CEC-Energy distributed updated drawings and site maps, these documents are entitled Electrical Line Diagram E3-1 dated March 10, 2015 and C1 Site Plan revised connection location March 10, 2015. Mr. Storke explained that the interconnection point was originally placed on the home, with a short run to the greenhouse, but now the new interconnection point goes directly to the greenhouse itself.

Joseph Haller, of 8831 Millcreek Road, submits a presentation which shows a view from above were CEC currently has windmills. There are five different sites on larger areas of mostly rural nature, but then you get to the proposed site, which shows the overview would have quite an impact on the surrounding houses. Mr. Haller said it was noted in the August 12 minutes that CEC indicated they have not installed a turbine in such a residential area in the past, so this would be setting a precedent. He asked the Board to look at Town Law §267 that says “when analyzing a variance, the first item to review is whether an undesirable change would be produced in the character of the neighborhood”. This has been stated before so he won’t get into details on how granting this variance would produce an undesirable change to the character of the neighborhood. Another item he would like to address is maybe the two sides could meet in the middle. Solar power is another option. Mr. Haller said the alleged difficulty is self-created because this particular parcel has been in place for quite some time. Mr. Haller said the Board should reject the project at the proposed height. The nine (9) page document that Mr. Haller submitted has been entered into the record and has become a permanent part of the file. Town Attorney Steve Bengart said he provided a copy of this document to the applicant.

Vice-Chairman Mills summarized the emails that were received the day of the meeting regarding the wind turbine: one from Christine Hellerer in support of the turbine, another from Nikki Shanley who is not in support of the project, another from John Akiki who is strongly opposed to the turbine, another from Alan & Janelle Kurtzman who are against the construction of the windmill, a letter from Judy and Michael Pabst state they are in strong opposition to the turbine, e-mails from Richard and Elaine Werner who are not in favor of the project, another from Thomas Klebes who is opposed to the turbine, another from Joe Haller who is not in favor of the project, Pamela Lopez objects to the height restriction variance being granted, Gerald Drinkard is not in favor of the project, Lindsay Haller is not in favor of the project, Helen Klebes strongly objects to the project, Patty and Michael McLaughlin do not want the turbine in their neighborhood, Joe and Joanne Valenti object to the variance height restriction, Betty Schneider is against construction of the wind turbine, Deborah Berg is concerned about the height and it is too close to the residences. All other e-mails/letters are in the file and have all been provided to the Board members to review. All correspondence from this meeting and past meetings, including meeting minutes, are part of the record and should be part of the deliberations at this hearing tonight.

Donna Baia of 8841 Millcreek, asked the Board to deny the request of a variance for this wind turbine. She is not opposed to green energy, the issue here is the location. A wind turbine of 133.5’ does not belong in a residential area of densely populated homes, with a bike path that is well utilized running through it. She would also like to address the comments made by Ryan Storke at the October 4, 2014 meeting regarding the existing wind turbines in the Town of Newstead. At that meeting, Ryan Storke mentioned approval of two 140’ self-supporting lattice wind turbines in the Town of Newstead. Both were bergy wind turbines and located at 12375 Biehl Road and 11936 Rapid Road. On January 22, 2015 the Newstead Zoning Board approved another CEC Energy 140’ wind turbine located at 7269 Sandhill Road. Ms. Baia said she spoke with Kristine Polcowski, the Town of Newstead Building and Planning administrator. Ms. Polcowski informed Ms. Baia that Newstead has many turbines and many are from CEC-Energy. The difference between Clarence and Newstead is the property they are located at. There are no subdivision homes in site near the turbines in Newstead, they are on large parcels with lots of land and very far apart from any neighboring homes, if any. There are many clusters of homes located behind, next to and across the street from this proposed turbine location in Clarence. There is also a bike path in the area. Ms. Baia said this is clearly not the right location for a wind turbine of this size. She submitted photos of three (3) locations of the turbines in Newstead as well as photos of the proposed site in Clarence, they are in stark contrast to each other. Ms. Baia said Ms. Polcowski also informed her that

when the final approvals for the locations were made for the wind turbines in Newstead, there was not a single objection from any area resident, nor did any resident show up at the meeting. In contrast, there is a room full of concerned residents that are opposed to this wind turbine at this meeting. Reasons for the opposition include depreciation of property value, safety, noise, health and aesthetic issues.

Vice-Chairman Mills stated, for the record, that photographs for 41936 Rapids Road, 12375 Biehl Road, 7269 Sandhill Road, and 8850 Clarence Center Road have been received.

Larry Higley of 6223 Willow Run Court continued to read the letter that Ms. Baia prepared: on January 22, the Town of Newstead Zoning Board of Appeals members were polled for their approval or disapproval of the CEC Energy wind turbine on Sandhill Road. A motion was made to approve the turbine because the adjacent property owner had no problem with the placement. There are many people in the audience at this meeting who oppose the placement of a turbine on Clarence Center Road as proposed. The Town of Newstead has been very considerate of their nearby property owners and if it would affect them in a detrimental way. Mr. Higley hopes this Board will do the same and make the right decision to deny this variance to the Town Code. Please remember that as elected officials you are obligated to serve the entire community of Clarence. Mr. Higley said property values in the area will go down, residents will challenge their assessments, therefore causing the Town to lose revenue.

Bob Dixon, of 6230 Willow Run Court, said 130' tall is 13 stories, which is larger than most buildings in downtown Buffalo. There are approximately 135 homes in the area with values at about \$300,000, that is over 40 million dollars worth of assessments, if this is reduced even by 2% because of a windmill, that's \$800,000 reduced assessments. Mr. Dixon suggested reducing the property owner's taxes by the same amount as the property values will be reduced. He thinks it is important to deny the request.

Anthony Vizzi, of 8801 Millcreek Drive, is exactly in line with the construction of this project. He and his wife are prepared to support any and all opposition to the project. He cited an article from General Electric which stated that typically these wind turbines are placed no closer than 300 meters from homes. Mr. Vizzi estimated that his house is about 150 meters from the proposed location and has concerns about the noise levels, as well as the many other issues previously stated. The wind mill will affect all of the residents but his home will be affected directly.

Thom Palmer, of 6024 Jessica Place, would like to express his objection to the Town of Clarence approving the height variance for the wind turbine to be erected in this residential community. He moved into his home in 2011. He and his wife researched all aspects of the development they chose, including greenspace agreements included in the Master Plan which profiles the future of how the Town sees itself now and in the future. Mr. Palmer said he feels if this variance is granted it would be similar to the rules of a game being changed after the game has started. He said he supports Thompson Greenhouses in their efforts to control their costs. But the many families who consider their homes as possibly the most significant part of their financial worth also have a right to protect their investments and they rightfully view a 133' wind turbine in their backyards as a detraction to the salability of their home and the value of their net worth. He asked the Board to please support the residents and deny this request.

William Hoppe, of 6058 Samantha Lane, said he took a series of five (5) pictures trying to establish a reference point in terms of the height of an average telephone pole, which is 40', and use that as a reference point for the proposed 133' wind turbine. The turbine would be 2 and a half times taller than the telephone pole. This wind turbine would be 93' higher than the tree line along Millcreek Drive, the

windmill would be nine (9) times higher than the Thompson's greenhouse. From a visual effect, Mr. Hoppe said the proposed wind turbine would provide a negative effect.

Susan Wickenhiser, of 8710 Clarence Center Road, has many health and safety concerns regarding the proposed wind turbine. Her children play outside all year round, especially her son, who uses outside as a coping skill. Her driveway is where the children play which is on the side of the proposed turbine. Her worry is if something malfunctions. Nobody can safely say what the outcome would be if that occurred, especially with all of the snow and ice this year. Ms. Wickenhiser referred to the symptoms that come from wind turbine syndrome such as the infrasound, which we do not consciously hear, but we feel. She cited a case crossover study done by a doctor at John-Hopkins who said it is not ethical to put others in harm's way to see if they get sick during exposure to a wind turbine. She submitted the paperwork. The height of this turbine is more than two (2) times the requirement of Town Code. It will look like a cell tower and will be a detriment to her property value causing it to decrease as well as the surrounding homes in the area. She is opposed to this variance, and she asked the Board if it is unreasonable to be concerned for the safety of all who will encumber this wind turbine, its noise, vibration, shadow flickers and such within the community? Therefore I ask the Board to deny the variance. Vice-Chairman Mills said the six (6) page Wind Turbine Syndrome article is entered into the record, a copy will be provided to the applicant as well.

Richard Battaglia of 6161 Shamrock Lane is adamantly opposed to this project. He referred to a document from the Walker Foundation entitled "The Emissions of Noise and Vibration" and submitted a portion of the article that addresses "Noise Guidelines for Turbines". That article referred to background decibel levels (dBA) and stated that most rural environments have a background noise level of 18-25 dBA, approximately averaging 22 dBA at night. This represents an increase in audible sound. Increases of 10 dBA at night are long known by acoustic consultants to raise complaints, and increases of 15-20 dBA are associated with widespread complaints and legal action. He suggested the Board check what the noise level will be. The "Wind Turbine Noise" document has become part of the file and has been provided to the applicant for review.

Paul Nenni of 8835 Clarence Center Road said he is concerned with the safety of those vehicles traveling through the intersection of Clarence Center and Shimerville Roads. It is a busy intersection and with such a freakishly large structure nearby he fears that drivers will pay more attention to the wind turbine, and less attention to the road. He firmly opposes any change in the statute, which is put in place for a good reason. He is sure there was good reason when the statute was originally written and he thinks the Board should abide by that.

Kathy McEvoy of 8845 Clarence Center Road read from and submitted an article from the Intertek Air Test Center in Otisco, NY, and another article entitled "Pros and Cons of Wind Energy". Both articles are on file. Ms. McEvoy said the first article stated the location of a turbine in an area with rolling hills and cow pastures, which is not the case on Clarence Center Road. Owners of homes in the area including Millcreek contribute a lot of tax dollars to coffers, this should be considered. Ms. McEvoy said common sense tells her that it seems interesting that in our community the needs and desires of one individual, with no benefit to others, and even possible harm, has become so important. Also, since our tax dollars will be funding a piece of this project, it seems that the taxpayers against the project, and appear to be in the majority, should have the final say. Wouldn't it be better to deny this now, rather than deal with the complaints of noise and possible personal injury which may occur at a later date?

Hal Kreher lives in Clarence, he is the District Director for Farm Bureau, representing four counties. He hears many cases where there is an issue with a farm and the Town's zoning in which they conflict. It's his understanding that the farm is in an agricultural district, and an agricultural district provides a lot of protection for farms. One of the protections it provides is the protection against unreasonable rulings on zoning issues. His experience has been that if the Department of Agriculture and Markets has reviewed a project and made a ruling on it that then goes through their legal department. It is also his understanding that they have never lost a case. If the variance is restricted and the Department of Agriculture and Markets rules that it is an unreasonable restriction, they will overturn the ruling of the Zoning Board.

Ben Baia lives at 8841 Millcreek Drive, his property is close to the proposed site for this wind turbine. He speaks for many members of the community, he has never seen so many people work so hard to present information and develop a case that affects so many people in our neighborhood. Many people have done a balanced job trying to present factual information which relates to the detrimental impact of something of this nature in our neighborhood. Mr. Baia built a house in 1999 in Clarence, close to where he lives now, he had an opportunity to move overseas to work, he returned to Clarence seven years later. He would have never purchased a home in a development that had a wind turbine in the area. He said anyone who owns a home that costs \$300,000-\$500,000 would never purchase a home close to something so high and so commercial as what's being proposed here. There are many alternatives to wind energy that don't need height. The last hearing back in October, 2014 the representatives from the energy company indicated that the price differential was somewhere in the range of 20% more. He strongly suggests asking Thompson Brothers to consider other ideas to power their business. The Board needs to take the residents views into consideration, and it is clear that this is strongly opposed in this community.

An audience member read a letter on behalf of Gerald Drinkard of 6035 Samantha Lane who was unable to attend the meeting. The letter is on file. Mr. Drinkard noted reasons he believes the request for any height variance greater than the allowed 60 feet should be denied.

Ryan Mills asked Ryan Storke if the visual impact study that was requested at the last meeting had been completed yet. Mr. Storke said he assumes that the study was done but he does not know because it is handled out of a different department. He does not have a copy of the study. Mr. Callahan clarified that the study was not provided to the Town.

Mr. Storke stated that he can only answer questions that he is confident in answering pertaining to the project. He apologized to the area residents because the website was not updated, the projects on the web are from 2012 and were done in rural areas and considered commercial scale turbines, not residential small scale turbines. Since 2012 they have done 36 projects across New York State and he is more than happy to supply information on those turbines to anyone who would like it. He confirmed that none of the turbines they installed have been in a densely populated residential area.

Mr. Callahan clarified that the visual impact study is an addendum to the back of the Environmental Assessment Form that was submitted and just identifies a map. There was no visual impact analysis as part of the record.

Ryan Storke provided numerous measurements for turbines. He then pointed out that the exact same style wind turbine has been installed near Ralph Wilson Stadium and it is close to dense residential area. Anyone who is interested in how the turbine affects property values should contact the individual that owns that turbine. Mr. Storke has the contact information. He said regarding health issues related to the turbine, the 2012 Wind Turbine Syndrome document has been updated in 2013, not by the same

individual but by another hospital in California and it disproves the findings from 2012. From a professional standpoint of installing and maintaining wind turbines, Mr. Storke said they have not seen any health effects in any surrounding areas.

Ms. Trippie said they have 20 acres of their farm remaining, some people in the surrounding area are living on land that they sold off 10 years ago when her husband decided to semi-retire and wasn't farming 40 acres of land anymore. She went on to say that when someone moves into a Town with a Right-to-Farm law they need to understand that the (her) farm is grandfathered in, they are not going away. She explained that her farm is an agricultural business and the definition in the Erie County and Clarence's Right-to-Farm Laws indicates that her business is a working farm. She read from the Erie County and Town of Clarence Right to Farm Laws Section 4, in which it referred to new technologies, a wind turbine is considered new technology and is farm equipment. She said solar power is not a feasible solution for a greenhouse, the greenhouses are solar but there is no way to harness that power to use it at night. She said she is sorry that this it is a "not in my backyard" issue but they did not surprise anyone with the farm, the residents chose to move near a farm.

Vice-Chairman Mills said since the visual impact study was not done, does the applicant want to table the request to allow them time to obtain the study or would the applicant want to proceed with a vote. Ms. Trippie asked were the visual impact study falls under the SEQRA Laws. Mr. Callahan stated that the Lead Agency has the right to develop as much information as they deem necessary to make an informed decision. Ms. Trippie said since it was already referenced in the letter that came from NYS Department of Agriculture and Markets, she would like clarification about the Type II SEQRA and if the visual impact falls under that. Deputy Attorney Steven Bengart stated that this meeting is not to provide the applicant with legal advice, it is the Town's opinion that this could potentially be a SEQRA issue dependent on what the Board decides. Ms. Trippie referred to the letter from the Department of Agriculture and Markets in which it stated that a Type II Action under SEQRA unreasonably restricts the farm operation and possible violation of the law. It is her understanding from the Department of Agriculture and Markets that she did not have to provide a visual impact study. Deputy Town Attorney Bengart explained that Ms. Trippie has and is entitled to her opinion, as does the Department of Agriculture and Markets. It is the Town's opinion that if this Board feels it necessary they can issue a Positive Declaration and require the study, along with any other issues they feel necessary. This issue is not up for debate, the Town believes it is appropriate and the applicant is required to provide the study.

Vice-Chairman Mills suggested that this agenda item be tabled to allow the applicant time to provide the visual impact study. Ms. Trippie asked if it is tabled, can she be on next month's agenda. Mr. Callahan said that would depend on the timely submittal of the visual impact study. Ms. Trippie agreed to have the request tabled.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **table** Appeal No. 1, under Old Business, until next meeting.

Richard McNamara Aye
David D'Amato Aye

Gregory Thrun Aye
Ryan Mills Aye

MOTION CARRIED.

New Business

Appeal No. 1

Chuck DiBella
Residential Single Family

Requests the Board of Appeals approve and grant a 1,520 square foot variance to allow for a 1,520 Square foot addition to a pre-existing non-conforming detached accessory structure located at 5525 Shimerville Road.

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

DISCUSSION:

Chuck DiBella is present and explained that he built his house in 1984 and since that time has acquired five (5) classic cars. He would like to put an addition on the back of his pole barn so he can keep his cars on site. He currently pays for winter storage for the classic cars, this addition would give him access to work on his cars on site. He submitted two (2) neighbor notifications and noted that his neighbors have no issue with his request. The materials will match the existing barn and there will be no noticeable difference from the road. He has 50' of woods to the back of his property, even if those neighbors could see his barn it would look no different than it does today.

Mr. Thrun asked if the siding will match. Mr. DiBella said that exact siding is not available anymore but he will match it the best he can.

Mr. D'Amato asked if he could go any smaller in size. Mr. DiBella actually said he wanted to go bigger but he appreciates what the Town has let him do so far. Mr. DiBella confirmed that there will be no business operating from the barn. He is looking to start construction this May or June. If the Board denied the request Mr. DiBella said he would be disappointed and would just have to continue paying \$500 a month for storage.

Deputy Town Attorney Steven Bengart asked if Mr. DiBella would be amenable to a condition, if approved, that there would be no business operated out of the structure. Mr. DiBella said yes.

Vice-Chairman Mills referred to the elevation drawings from Parco Building Systems dated February 9, 2015 in which it shows asphalt shingles and vinyl siding will be used, and asked Mr. DiBella if that is his intention, Mr. DiBella said yes. The matching siding will be on the side of the addition facing 5501 Shimerville Road. Vice-Chairman Mills asked if there are plans for landscaping around the addition. Mr. DiBella said he has no plans because only the front of the existing building is visual from the street. The structure will not be heated. There will be a doorway from the existing structure leading to the addition. No plumbing or electricity will be in the addition.

ACTION:

Motion by Ryan Mills, second by David D'Amato, to **approve** Appeal No. 1, as written with the following conditions:

- The structure will not be used for any business purpose.
- The applicant will make the best effort to match the existing siding along the side that faces 5501 Shimerville Road.

ON THE QUESTION:

The conditions are acceptable to Mr. DiBella.

Richard McNamara Aye
David D'Amato Aye

Gregory Thrun Aye
Ryan Mills Aye

MOTION CARRIED.

Appeal No.2

Kathleen McCollum
Restricted Business

Request the Board of Appeals approve and grant an 8'3" variance to allow for a 16'9" setback for an addition of 480 square feet on the principle structure located at 8865 Sheridan Drive.

Appeal No. 2 is in variance to §229-79 (B) (3).

Vice-Chairman Ryan Mills recused himself and left the dais. David D'Amato presided over the meeting.

Kathleen McCollum, owner of the café at 8865 Sheridan Drive, is present. She opened the café in June of 2014 and she is looking to expand the kitchen area in which she would need a variance for a property line setback.

Mr. Thrun asked if the storage space in the proposed addition will be used for cold storage. Ms. McCollum said it will be just storage. She confirmed that her business has grown so much that they have outgrown the facility and need to add on.

Ms. McCollum said the neighbors have been notified. Mr. McNamara asked about deliveries for the café. Ms. McCollum said all deliveries for the café come through the front of the building; there will be no parking in the back. Business hours are from 8:00am-9:00pm. She has owned the building since 2005.

ACTION:

Motion by David D'Amato, seconded by Richard McNamara, to **approve** Appeal No. 2, as written.

Richard McNamara Aye
David D'Amato Aye

Gregory Thrun Aye
Ryan Mills Recuse

MOTION CARRIED.

Vice-Chairman Mills returns to the dais.

David D'Amato recused himself and left the dais.

Appeal No. 3

Don Rugg
Residential Single Family

Request the Board of Appeals approve and grant an 18'3" variance to allow for a 26'9" setback for An addition to the principle structure located at 4240 Shimerville Road.

Appeal No. 3 is in variance to §229-52 (3): established front yard setback of 45'.

DISCUSSION:

Appeal No. 3 has been removed from the agenda at the applicant's request per a letter dated March 10, 2015 from Don and Elizabeth Rugg. The applicant will be put on an agenda at a future date. The letter is on file.

Appeal No. 4

Gabe's Collision
Major Arterial

Requests the Board of Appeals approve and grant:
1.) A 20.75 square foot variance to allow for a freestanding sign of 80.75 square feet.
2.) A 25' variance to allow for a freestanding sign with a setback of 15'.
Both requests apply to 5817 Transit Road.

Appeal No. 4 is in variance to §181-3 (A) and §181-3(A) (4).

DISCUSSION:

Jeff Palumbo from the Law Firm of Damon Morey is present and represented the applicant. His associate Ms. Holmes and Jeff Mucciarelli, owner of Gabe's Collision, are also present. Mr. Palumbo explained that there are three (3) separate businesses being developed at this location, one is a collision shop, another is the sale of automobiles, and the third is an Enterprise rental center. The first variance is for the total square feet of a proposed sign. The code allows 60 square feet per side and they are proposing 80.75 square feet, thus a variance of 20.75 square feet is being requested. The second variance has to do with the front setback. The code requires a 40' setback, they are proposing is a 15' setback, thus a 25' variance is being requested. The application contains a site plan with a proposed location on the most northern portion of the site, however, their preference is a location which is in the middle of the parking lot. They would remove one parking space in order to put the sign in the middle of the lot. Mr. Palumbo explained that they did not propose it in the center location originally because they thought there might be underground water storage issues if they did, however, their contractor has assured them there will be no issues placing the sign in the center location. The setback is still 15'. They drew a line on both site plans which signifies where the 40' setback would be. This line shows that they have problems locating it anywhere at 40' because of the parking lot. Both the Town Board and Town Board asked the applicant to keep the building as close to Transit Road as possible, in order to keep it as far away as possible from the existing homes that are located adjacent to the site, to the east. By doing that, it brings the parking closer to Transit and creates the problem with the setback.

Mr. Palumbo submitted a synopsis of what has taken place over the years on Transit Road with regards to signage. If the proposed sign was setback at 40' it would actually be out of line with the other signs on Transit Road. They submitted photos that included five examples of other signs along Transit Road that are very close to the sidewalk, their proposed sign would be set back further than the existing signs shown in the examples.

Mr. Palumbo said in terms of the size, they are asking for an area variance. The applicant needs to prove that the benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood or the community. He referred to the Transit Valley Plaza sign which is to the north of the proposed sign and noted that the proposed sign is far smaller than the Transit Valley Plaza sign. He noted that the Eastgate Plaza sign received a variance for 250 square feet, making a total of 310 square feet. Mr. Palumbo said it important for people to know where the applicant is as far in advanced of the site as possible because Transit Road is so busy. The benefit to the applicant is having a sign that adequately advertises the new businesses that are going on the site. Mr. Palumbo does not see any potential detriment to the health, safety and welfare of the community and surrounding areas given the fact that they are in harmony with what is already along Transit Road.

Mr. Palumbo pointed out that when the applicant proposed the building they did not ask for any variances in setback, size, etc., they were in complete compliance with the ordinances. The only thing they're here for is the sign.

Mr. Thrun referred to the speed along Transit Road and noted that the applicant is located across from the school and there are a couple of lights there so there is a speed restriction, especially during the school year. Regarding the size comparison to the other signs on Transit Road, the other locations are larger plazas which have to benefit the signs of their occupants, whereas at this location there are only three occupants with two of them being owned by Gabe's and the other will be affiliated with Gabe's. He asked if the sign could be any smaller in size. Mr. Palumbo said he thinks the speed restrictions are even more of a problem because they're typically ignored. They originally had a larger sign but met with the Planning Board Executive Committee and reduced it. They have adjusted the size of this sign numerous times at the Committee's request. They feel that the extra 20' is extremely important and will not add any detriment to the health, safety and welfare of the neighborhood.

The location to the north of this project site is owned by Mr. Palumbo's client also. Mr. Palumbo explained that the plans are to develop it, however, they do not have a buyer at this time. The applicant has made arrangements on both the north and south side of the property to have access to the adjoining properties. Vice-Chairman Mills asked if the applicant looked at locating the sign toward the end of the parcel where it would not require a variance. Mr. Palumbo said setting the sign back 40' is just too far back and would be blocked by the neighboring sign to the north. There is also a gas and water line in the area that the applicant needs to work around. Mr. Palumbo said they have explored every other potential location and discussed it with the Planning Board Executive Committee but no one came up with a practical feasible alternate plan.

Mr. Palumbo confirmed that with regards to the actual sign itself, the middle component of the sign will be color LED, the top and the bottom will not be LED. Vice-Chairman Mills asked about the lighting on the sign. Mr. Mucciarelli said the top and bottom portions of the sign will be internally lit. He went on to explain that the remaining portions of the sign is concrete block base with a stucco-type material and metal clad roofing.

Mr. Mucciarelli explained that Village Import Auto sells high end used sports cars. There will only be a few vehicles inside the building, there will not be a building where there are cars all over the front lot. He is registered for this business in the state of New York, DMV has already approved the Transit Road location. He noted that there will be about 3-5 cars on site for the retail auto business.

Neighbor notification forms are on file. Mr. Mucciarelli said there were no objections from any of the neighbors.

Vice-Chairman Mills asked if there will be additional signage on the building. The applicant stated there will be two (2) small back-lit band signs mounted to the building. Enterprise has a standard band sign that they use and Gabe's Collision will use a similar band sign. Village Imports will have back-lit letters mounted on to the building. Vice-Chairman Mills asked if the applicant could accomplish their goals with anything less size sign than what they are requesting. Mr. Mucciarelli explained that they have already trimmed the size down a few times. The importance of the digital lighting is that Gabe's Collision is a claim center, they are not just fixing cars, insurance companies house their claims operations inside his business, so this is a sub-station for the adjusters who will be in their office every day, including Saturdays. They need the sign for specific messages regarding important claim information. Vice-Chairman Mills asked if the applicant can compromise the size of the Gabe's Collision portion of the sign. Mr. Mucciarelli said if they were marking up the building with a bunch of other signs he would say yes to the compromise, but they are not putting up a bunch of signs, they are trying to keep it classy; they don't want it to look like a huge billboard. The building signs are not very big, they are discreet. Vice-Chairman Mills asked if the applicant can provide a rendering of how the building signs and the free-standing signs would look. Mr. Mucciarelli said the signage on the building has been on the documents that have been submitted to the Planning Board. Those documents were submitted for approval of the building which took place over the past couple of years.

Mr. Bleuer noted that a separate application is required for the wall signage. Mr. Mucciarelli understands that.

Mr. Mucciarelli explained that Gabe's is the hub of this business and will generate business for the other two operations at the site, so the Gabe's Collision sign has to be the largest and it has to be on the top of the sign.

Mr. McNamara said the entire sign structure seems large. Mr. Mucciarelli said they had to make it conform with the building, the building is large. If the building was set back 20 more feet, that would be a different story, but they were forced to bring the building forward and a pencil sign would not look right. Mr. Mucciarelli said he could narrow the size of the columns on the sign structure from 24" to 18" on each side, which reduces the columns by a foot, total. Vice-Chairman Mills asked if the applicant could look into more architectural styles for the structure like bricks or stacked stone. Mr. Mucciarelli said the base of the column is actually architectural stone; it is not split-face block. It is clarified that the base of the structure will be reduced by 6 inches on each side making the measurement of each base 28.5", and each column will be reduced to 18" wide.

ACTION:

Motion by Gregory Thrun, second by Richard McNamara, to **approve** Appeal No. 4, as written with the following conditions:

- Each column is to be reduced by 6 inches, for a total of 18 inches.
- Each base is reduced by 6 inches, for a total of 28.5 inches.
- Appropriately, the height and the cap will be amended to fit to that conformity.
- A Memorandum of Agreement must be signed by the applicant.

- The location of the sign is as depicted on the document entitled "Signage Display-2". This document is on file.
- The setback is amended to 16'.

ON THE QUESTION:

Mr. Thrun said the approval is based on other signs that the Board members saw.

Vice-Chairman Mills said the applicant presented evidence of testimony that due to the unique sight lines of this structure and this particular parcel, that some additional signage is required for the applicant's desired outcome to be achieved as to the first prong Appeal No. 4.

As to the second component, the setback, the applicant has presented testimony and evidence that the parcel had to be moved up to accommodate requests of neighbors during the planning process and because of that, along with the location of parking spaces as well as utilities, the locations for the sign are very limited and there really is not any other feasible location on the site for the sign to be in compliance with the required set back.

Mr. Bleuer noted that with regards to LED signage, a Memorandum of Agreement must be signed by the applicant before anything is approved. The Memorandum of Agreement states that there are regulations that need to be followed for the LED sign. This could be an added condition. Mr. Thrun agreed to amend his motion to include the signing of a Memorandum of Agreement as a condition. Mr. McNamara agreed to amend his second to the motion to include the signing of a Memorandum of Agreement as a condition, as well.

Since the base is being reduced by almost a foot, the setback can be reduced by a foot as well, making it a 16' setback.

Mr. Callahan said the location needs to be clarified, is it at the north end of the property or is it centrally located? Vice-Chairman Mills said the most recent request is for the central location as depicted on the document labelled "Signage Display-2", dated March 3, 2015, this document is on file. Mr. Mucciarelli confirmed that is the location they are requesting. Mr. Thrun agreed to amend his motion to include the specific location of the sign as depicted on the document entitled "Signage Display-2", that document is on file. Mr. McNamara agreed to amend his second to the motion to include the specific location of the sign as depicted on the document entitled "Signage Display-2", as well.

Mr. Thrun agreed to amend his motion to reflect the change in setback from 15' to 16' based on the size changes to the sign. Mr. McNamara agreed to amend his second to the motion to reflect the change in setback from 15' to 16', as well.

Richard McNamara Aye
Ryan Mills Aye

Gregory Thrun Aye

MOTION CARRIED.

Meeting adjourned at 9:02 pm.

Carolyn Delgato
Senior Clerk Typist