

Town of Clarence  
One Town Place, Clarence, NY 14031  
**Planning Board Minutes**  
Wednesday January 23, 2019

**Work Session 6:00 pm**

Status of TEQR Coordinated Reviews  
Review of Agenda Items  
Miscellaneous

**Agenda Items 7:00 pm**

Approval of Minutes

**Item 1**

Benderson Development/Eastgate Plaza  
Major Arterial Zone

Requests Development Plan Approval for a  
proposed 10,000 square foot out-building at 5195  
Transit Road.

**Item 2**

John Vaccaro  
Traditional Neighborhood District

Requests a Recommendation for Approval of an  
accessory structure at 7081 Transit Road.

**Item 3**

Stephen Development/  
Innovative Concepts in Entertainment  
Commercial

Requests Development Plan Approval for a  
35,000 square foot commercial structure at 10075  
Main Street.

Second Vice-chair Wendy Salvati called the meeting to order at 7:00 p.m. James Callahan led the  
pledge to the flag.

Planning Board Members present:

2 <sup>nd</sup> Vice-Chairperson Wendy Salvati	Timothy Pazda
Gregory Todaro	Jason Geasling

Planning Board Members absent:

Chairman Robert Sackett	1 <sup>st</sup> Vice-Chairman Richard Bigler
Jeffrey Buckley	

Town Officials Present:

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

## Other Interested Parties Present:

Al Schweitzer  
John Vaccaro

Mark Spoth  
Noel Dill

James Boglioli  
Michael Metzger

In the absence of Planning Board Chairman Robert Sackett and Planning Board Vice-Chair Richard Bigler, Second Vice-Chair Wendy Salvati will preside over the meeting.

Jason Geasling is now a full member of the Planning Board.

The minutes from the December 19, 2018 meeting cannot be approved this evening as there is not a quorum.

Second Vice-Chair Salvati explained the protocol for the meeting noting that Mr. Callahan will introduce each project. The applicant will be given an opportunity to add comments regarding the project. The Board will ask the applicant questions on the project. The audience will be invited to ask questions or provide comments on the project. The applicant will be asked to answer any questions the audience had. A Planning Department representative and/or Planning Board member may also answer questions if appropriate. The Board will then decide what action to take on the project.

**Item 1**

Benderson Development/Eastgate Plaza  
Major Arterial Zone

Requests Development Plan Approval for a  
proposed 10,000 square foot out-building at 5195  
Transit Road.

**DISCUSSION:**

Jim Callahan provided the background on the project noting that it is located within the Eastgate Plaza, in front of BJ's Wholesale. It is an existing parking lot area for the plaza. The applicant is proposing to construct a 10,000 square foot outbuilding. A Negative Declaration under the State Environmental Quality Review Act (SEQRA) and Concept Plan Approval were granted by the Planning Board on December 19, 2018.

James Boglioli, attorney for Benderson Development, is present and explained they are proposing to maintain the landscaping canoe, a row of parking, a drive aisle and then start the building which will take up two (2) rows of parking. The store front will face the south. As part of the comments received they added a pedestrian connection across the front to the dumpster, behind Spot Coffee as those are the dumpsters they will be using. The building has been set back 15' from the main drive aisle so those vehicles that stop can see clearly, there is a low landscaping bed in front of that building. Since the applicant has received Concept Approval they have received sign-off from the Landscape Committee, who required the change out of 16 species of plantings along the north wall to evergreen species so they will stay green year-round. The Town Engineer has also signed off on the project and the County has signed off on the sewer. The architecture on the back of the building has been modified to break up the flat look of the building, they have also added stone pillars and will have landscaping across the bottom.

Second Vice-Chair Salvati asked for confirmation that there will be approximately 40 parking spaces lost due to this proposal. Mr. Boglioli confirmed that is correct. He explained that the Dollar Tree store will move from its existing location to the proposed outbuilding, there will be two (2) new tenants in the space where Dollar Tree was. With regards to the dumpster sharing, the Spot Coffee tenant agreed to

share it. Using the existing dumpster works for everyone involved, the dumpster is currently completely screened and is not seen, otherwise another dumpster would have had to be placed in the parking lot. Second Vice-Chair Salvati said if he has to add a dumpster he would have to come back before the Board, Mr. Boglioli understands, however does not anticipate needing an additional dumpster.

Albert Schweitzer, of 8085 Greiner Road, is concerned about this building going up. He has owned his house for eighteen (18) years and realized that Benderson was putting in a large scale plaza. He said promises were made and some were kept and others were not. His biggest concern is the trash, the prevailing wind blows through the plaza into his and his neighbors backyards on Greiner Road. His son is out 2-3 times a day picking up the trash. The lights are on constantly by the gas pumps, they were supposed to be shut off at night and they are not. He cannot entertain in his backyard because it is disgusting due to the light, he can't enjoy the rural ambiance of living in Clarence. Benderson did put shutters on some of the lights at BJ's, but it's disgusting ever since they tore the house down. The shrubs along the driveway don't do diddley, a fence would be nice to shield that whole road off. Mr. Schweitzer referenced the dumpster situation and asked where Firehouse Subs garbage will go? In the same dumpster? Now there will be another company throwing loose trash in there and the wind catches it and it blows through the parking lot and down the access road and makes one of the main entrances to Clarence look trashy. All the other neighbors pick up garbage off their property constantly as well. The neighbors take pride in their homes and it's really tough when people who patronize the plaza come out and treat his neighborhood like garbage. Mr. Schweitzer is also concerned with the upkeep of what is going on in the plaza, they are supposed to take care of the property around it, they cut the grass and that's nice but it was approved that they were supposed to come through a couple times a year to pick garbage up, they don't. He said they did for a couple years but it faded off. He said one of the stipulations of putting the sidewalks in was that they were to care for it. Currently there is a foot of snow on his sidewalk. Mr. Schweitzer is slightly disabled, he is not going out to shovel after somebody from some corporation said they agree to take care of it as a condition of putting the road in. They maintained it for a couple years, but no more. People had to walk out in the road. He understands letting the Town grow but he does not think this building is great. Where will the tuck docks be to service this building? He would like to see a brick wall closing it off so he does not have to hear or see the trucks. What are the time frames of the deliveries? Are the drivers going to be using the access road? Benderson has other property with vacant buildings, why can't they utilize that space? The tenants staying in that building and other parcels in the plaza for a certain amount of time will sign a lease for a year or two and then they are gone and they will be store fronts again. He has two daughters who walk the plaza and one was accosted the other day by a pan-handler. When those people need to relieve themselves they go in the woods behind his house. He has called the troopers and he knows the police are aware of it. What Benderson is doing is not right and they are not good neighbors. He thinks the Board should seriously sit down and think about what is going on with this building and what they want Mr. Benderson to do and not to do. He invited any Planning Board member to come to his house for a cup of coffee and watch the plaza with him for a couple hours. He said you will be surprised what the Town Board said would never happen, happens. Mr. Schweitzer has a lot of time on his hands and his favorite perch is in front of a window that looks out that way, he likes to watch people, it's a nice hobby.

Mr. Boglioli said he will address what applies to this project, he referenced the lighting and said there will be no change in lighting regarding this building. As far as the complaint on the trash, the parking lot is vacuumed once a week. The landscapers pick up the trash as they go while they are landscaping. Mr. Boglioli cannot stop people from throwing trash out the window. The building is not going to make the trash situation any worse, they will continue to pick up the trash as they do. They cleaned up the area behind the house and planted trees. He referenced the sidewalk issue and said their contractor is being paid to plow the sidewalk, they have plowed it every year. Mr. Boglioli said he just contacted the

property manager who said the sidewalk will be plowed tomorrow morning. Up until today, Mr. Boglioli had not received any complaints on the sidewalks. The dumpster is used by Spot Coffee, Firehouse Subs and Dollar Tree, they must consolidate dumpster use or they would have dumpsters all over the plaza for each individual tenant. There is no change in truck pattern, the trucks come in off Transit Road, come around the back of the building and back out Transit Road. There are no formal loading docks, there are striped areas on the east side of the building for deliveries. Deliveries are off business hours, usually prior to the morning. Mr. Boglioli said they have been dealing with the vagrants and trying to have them removed. Clarence does not have a pan-handling law so they have been calling the police, but the police cannot force them to leave. Legally Benderson cannot do anything about it. Mr. Boglioli said they would be willing to install fencing in that area along the driveway, although he does not think that will help the lighting situation because the lights in the parking lot are 35' tall and a 6' fence is not going to solve the lighting problem. Mr. Geasling said the fence will act as a visual screen and catch any garbage that is blowing off the property. Mr. Boglioli said they will install a 6' board on board wood fence along the property line where the house was. Tenants sign for 5-10 years with renewal options, he cannot guarantee any tenant will stay longer than their lease. Dollar Tree has a 10 year lease with 4 or 5 renewal options. The other tenants are big name national tenants that will sign 10 year leases.

Mr. Pazda asked what the conditions were for lighting from the gas station, are they violating an agreement? Should they be shutting them off? Mr. Boglioli said he does not know the answer, he did not work on the project when it was approved and he is not familiar with the conditions. If the Board finds the conditions and BJ's should be turning those lights off Benderson will send them a copy of those conditions. Mr. Pazda doesn't think it is a bad thing to ask them to shut them off leaving only security lighting on. Mr. Geasling pointed out that the gas pumps operating hours are only until 9:00pm, so they should not have an issuing turning them off. Mr. Boglioli said if there are conditions he will relay them to BJ's, if there are no conditions he will still reach out to them.

Mr. Pazda showed Mr. Boglioli a picture on his phone that he took during the summer and he asked that the grounds people take care of the landscaping in front of the fire hydrants, as they completely obscure the fire hydrant. The hydrant is approximately in front of the fitness building. Mr. Boglioli said all those islands are getting ripped out this summer anyway, they are widening the sidewalk and new islands will be put in. The sidewalk is being straightened all across the front, the islands are being pushed back, it is already approved. Mr. Geasling asked that the landscaping not consist of ornamental grasses as they completely obscure the line of sight. Mr. Boglioli said he will look at something shorter.

#### **ACTION:**

Motion by Gregory Todaro, seconded by Timothy Pazda, to **approve** the Development Plans for the proposed 10,000 square foot outbuilding at 5195 Transit Road as per the submitted drawings from Benderson Development dated November 20, 2018 and received in the Planning and Zoning Office on December 19, 2018, with the following conditions:

1. Subject to Building and Engineering review and approval of required permits prior to construction.
2. The building and addition of a 6' board on board wood fence along the east side of the Greiner Road access drive, along the area where the prior house had been removed. The fence is to be maintained as needed.
3. Subject to Open Space and Recreation Fees on Building Permits.

**ON THE QUESTION:**

Mr. Pazda suggested a condition be added to the motion regarding the BJ’s lighting issue. Mr. Boglioli said if lighting conditions were set forth in the original approval it is easy for him to enforce, but if they were not, all he can do is ask BJ’s to address the lighting issues, he will research this. Mr. Todaro said the issue of lighting on a separate building is not part of this project and does not make sense to be part of this approval. 2<sup>nd</sup> Vice-Chair Salvati said it is suggested that the applicant work with Mr. Callahan on investigating the prior approval with regards to the issue of the lighting at the BJ’s fuel pump station and come up with some mitigation for that. Mr. Boglioli said he will work on the lighting issue as discussed.

Mr. Pazda asked that the applicant follow-up on the sidewalk snowplowing issue. Mr. Boglioli has already contacted the appropriate individual and the sidewalk will be taken care of.

Mr. Boglioli understands and accepts the conditions.

Jason Geasling	Aye	Gregory Todaro	Aye
Timothy Pazda	Aye	Wendy Salvati	Aye

MOTION CARRIED.

**Item 2**

John Vaccaro  
Traditional Neighborhood District

Requests a Recommendation for Approval of an  
accessory structure at 7081 Transit Road.

**DISCUSSION:**

Jim Callahan provided the background on the project noting that it is located on the east side of Transit Road, north of Stahley Road. It is an existing residence and salon located in the Swormville Traditional Neighborhood District. The applicant is seeking approval to construct an accessory structure to the rear of the property. The Town Board will have final approval authority for new construction in this Traditional Neighborhood District.

Mr. Vaccaro is present and explained he wants the opportunity to put a pole barn on his property for personal storage, Aqua Systems has a few structures next to him so he thought he could have the privilege of having one too. He would store his trucks in the building. His brother-in-law has a small landscaping business and he stores his trucks on his property, as well.

Mr. Todaro asked if any operation or business will run out of this building. Mr. Vaccaro said it will be personal, no business operation from this structure.

Mr. Vaccaro explained that the existing garage caved in so he built the entire front of it, he wants to Stucco the whole thing. He owns a hair salon which is on the property as well and appearance is everything to him, if his clients see a broken down shed, that doesn’t work for him. The accessory structure will increase his property value and make it look much cleaner.

Second Vice-Chair Salvati asked if there will be any outside storage of any material. Mr. Vaccaro said there will be no outside storage. He has two vehicles and a pick-up truck. He uses his other garage for his workshop. Second Vice-Chair Salvati referenced the rendering and asked if the plan is for two-tone

coloring and the knee board around the bottom. Mr. Vaccaro said yes, and he will do knee board around the whole building, along with landscaping. Second Vice-Chair Salvati said it will not be required to obtain landscaping approval from the Landscape Committee but the Planning Board had discussion with the applicant regarding the landscaping on the property. The main concern was the potential views of this building from Transit Road on the north side next to Mr. Spoth's property. The Board discussed the intent to have some additional plantings like small shrubs. Mr. Vaccaro said he will put the shrubs more towards Transit because he has a vegetable garden along the north side of the property.

Mr. Todaro asked about the other structure on the property, that was damaged, the one where the façade is made of cinder blocks. Mr. Vaccaro said he will either paint it or Stucco it and it will be clean by the spring.

Mr. Pazda asked what type of lighting there will be on the building. Mr. Vaccaro said there will be no lights on the building.

Mark Spoth, of 8345 Lapp Road, owns the property just north of the applicant's property. His concern is drainage. There was a ditch on Mr. Vaccaro's property that Mr. Spoth used to maintain. There is a 16" pipe that goes out to the road but it is completely plugged. The back 20 acres of the farm is supposed to drain out that way, it doesn't anymore because the Ash trees in the ditch are all dead. He would like to see the ditch opened back up and the culvert replaced. This needs to be addressed before anything else is done on this property. Second Vice-Chair Salvati asked if the culvert pipe is on Mr. Vaccaro's property, Mr. Spoth said he is pretty sure it is. Mr. Vaccaro said no, there is a spike on the property and if Mr. Spoth looks at the spike he will see that it goes right into his (Mr. Spoth's) property. Mr. Vaccaro said he asked the Town to take care of the ditch in the past but they said they could not do anything about it because there is no easement. The pipe is not on Mr. Vaccaro's property. It is unclear as to whose property the ditch and pipe are on.

Deputy Town Attorney Steve Bengart has recused himself from the discussion.

Mr. Pazda asked if the Town would want an easement on this property. Mr. Callahan said if it is a regional drainage problem and if it is something the Highway Department could correct or the Town wanted to spend money then yes they will need access to the property, however he does not know if it is a private issue. He suggested, if this is approved, to condition it on review by the Town Engineer.

Second Vice-Chair Salvati suggested the applicant contact the Town Engineer's office to see if a representative can come out to the property and determine what is going on. Mr. Vaccaro asked if that area would be re-piped or dug out with regards to the easement. Second Vice-Chair Salvati said the easement would allow the Town to access the property if they need to come in and do something, the land would not be deeded to the Town, it is nothing physical. The drainage concern is along the applicant's northern property line. It is suggested that Mr. Vaccaro and Mr. Spoth work together for a solution.

#### **ACTION:**

Motion by Timothy Pazda, seconded by Gregory Todaro, to **recommend** approval of an accessory structure as per the submitted application and elevations from John Vaccaro and received in the Planning and Zoning Office on January 16, 2019 with the following conditions:

1. Proposed structure to be only utilized for personal storage.
2. No dumping or storage of materials on the property.
3. Two (2) evergreen trees to be planted as a screen for the new structure from Transit Road on the north side of the property.
4. Architecture style of the building to include two-tone color scheme as per submitted drawing received on January 16, 2019.
5. No outside storage of vehicles.
6. Repairs are to be completed on the existing accessory garage structure.

**ON THE QUESTION:**

Mr. Todaro added condition #6, Timothy Pazda agreed.

Second Vice-Chair Salvati said for the record that with the construction of this garage there is a condition that it can only be for personal storage and there cannot be a secondary business operated from the garage.

Mr. Vaccaro will work with Mr. Spoth and will contact the Town Engineer’s office to address the drainage problems that Mr. Spoth has concerns about. This needs to be remedied separate and apart from this approval.

Mr. Vaccaro understands and agrees with the conditions. He promises to have the garage done before he builds the barn.

Jason Geasling	Aye	Gregory Todaro	Aye
Timothy Pazda	Aye	Wendy Salvati	Aye

MOTION CARRIED.

**Item 3**

Stephen Development/ Innovative Concepts in Entertainment Commercial	Requests Development Plan Approval for a 35,000 square foot commercial structure at 10075 Main Street.
--	--

**DISCUSSION:**

Jim Callahan provided the background on the project noting that it is located on the south side of Main Street, west of Shisler Road. It is an existing vacant property. The Planning Board previously issued a Negative Declaration and Concept Approval on the project. The Town Board has issued a Special Exception Use Permit for the structure as well as approved the architectural style.

Noel Dill, of Stephen Development, is present representing the applicant. He noted that besides all the approvals that Mr. Callahan mentioned they also received a letter from the Town Engineer. The lighting will consist of goose neck lights and the wall packs will be shielded. All lighting will be dark-sky compliant, they do not need parking lot lighting. There will be a stone wall in front, they have incorporated the pond and the landscaping. The pond will only be 3’-4’ deep in the deepest spots, it will have a general sloping contour. It is their intention to maintain the pond as lawn.

Second Vice-Chair Salvati noted that the Landscape Plan was approved and shows that the Walnut trees will be preserved at the northeast corner of the lot, the applicant will preserve any other vegetation that exists, and will supplement vegetation wherever possible to further screen use of the building. From the west there are plantings around the detention pond. A grass area has been added on the south side behind the loading dock. Second Vice-Chair Salvati asked if the septic system is big enough. Michael Metzger, of Metzger Engineering, said yes, it is actually over-sized. It is a 1500 gallon tank and a large open bottom sand filter, it is more than adequate. If they need to expand in the future there is room on the opposite side of the driveway which is already served by a pump so it will be easy to run a line if ever needed. Mr. Pazda asked where the sand filter is located. Mr. Metzger said if you come in off of Main Street, pass the forebay area of the pond and then turn into the parking lot its right there. The tank is adjacent to the building.

**ACTION:**

Motion by Jason Geasling, seconded by Gregory Todaro, to **approve** the Development Plans for the proposed 35,000 square foot commercial building at 10075 Main Street as per the submitted drawings from Metzger Engineering received in the Planning and Zoning Office on January 14, 2019, with the following conditions:

1. Subject to Building and Engineering review and approval of required permits prior to any construction.
2. Subject to Open Space and Recreation Fees on Building Permits.
3. All lighting to be dark-sky compliant.

**ON THE QUESTION:**

Mr. Pazda thanked all parties who worked on this project and said it will be a nice addition to Main Street.

Jason Geasling	Aye	Gregory Todaro	Aye
Timothy Pazda	Aye	Wendy Salvati	Aye

MOTION CARRIED.

Jason Geasling is welcomed to the full complement of the Planning Board.

Meeting adjourned at 7:58pm.

Carolyn Delgato  
Senior Clerk Typist