

Town of Clarence
One Town Place, Clarence, NY 14031
Planning Board Minutes
Wednesday May 16, 2018

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

Settlement Agreement

Upstate Tower Co. LLC et al vs. Town of Clarence et al, 8135 Sheridan Drive.

Item 2

Damian Baird
Residential Single Family

Requests an Amendment to a previously approved Subdivision and a Recommendation on a 2-lot Open Development Area (7 total lots including 2 existing homes) at 5645-5685 Shimerville Road.

Item 3

Barbill Northtowns
Traditional Neighborhood District

Requests Site Plan and Architectural Approval on a Rehabilitation of an existing Restaurant at 8326 Main Street.

Chairman Robert Sackett called the meeting to order at 7:05 p.m. Councilman Paul Shear led the pledge to the flag.

Planning Board Members present:

Chairman Robert Sackett
2nd Vice-Chairperson Wendy Salvati
Gregory Todaro
Jeffrey Buckley

1st Vice-Chairman Richard Bigler
Timothy Pazda
Steven Dale
Jason Geasling

Planning Board Members absent: none

Town Officials Present:

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

Other Interested Parties Present:

Steve & Lynn Carlo Kathy Lopian Edwin & Trisha Velez Jaweed & Adiba Shariff

Motion by Gregory Todaro, seconded by Steven Dale, to **approve** the minutes of the meeting held on March 21, 2018, as written.

Jeffery Buckley	Aye	Steven Dale	Aye
Gregory Todaro	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Richard Bigler	Abstain
Robert Sackett	Abstain		

MOTION CARRIED.

Motion by Wendy Salvati, seconded by Richard Bigler, to **approve** the minutes of the meeting held on April 4, 2018, as written.

Jeffery Buckley	Aye	Steven Dale	Aye
Gregory Todaro	Abstain	Timothy Pazda	Abstain
Wendy Salvati	Aye	Richard Bigler	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Chairman Sackett 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

Settlement Agreement

Upstate Tower Co. LLC et al vs. Town of Clarence et al, 8135 Sheridan Drive.

DISCUSSION:

Jim Callahan explained that this agenda item is a settlement agreement between Upstate Tower Co. LLC and the Town of Clarence at 8135 Sheridan Drive.

Town Attorney Larry Meckler is representing the Town of Clarence for agenda item number 1. Mr. Meckler stated this is a litigation that was commenced in Federal Court and this resolution discontinues that litigation.

ACTION:

Motion by Richard Bigler, seconded by Steven Dale, to authorize the Town’s Special Counsel, Bond, Schoeneck & King PLLC, to execute and file a Stipulation and Order dismissing the Upstate Tower Co.,

LLC and Buffalo Lake Erie Wireless Systems Co, LLC vs. Town of Clarence, New York and the Planning Board of the Town of Clarence, New York litigation (Index No. 1:17-cv-00983).

ON THE QUESTION:

The action was commenced in United States District Court, Western District of New York with respect to property located at 8135 Sheridan Drive, Clarence, New York.

The Zoning Board of Appeals will take separate action on this item at their next meeting.

Jeffery Buckley	Aye	Steven Dale	Aye
Gregory Todaro	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Richard Bigler	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Item 2

Damian Baird
Residential Single Family

Requests an Amendment to a previously approved Subdivision and a Recommendation on a 2-lot Open Development Area (7 total lots including 2 existing homes) at 5645-5685 Shimerville Road.

DISCUSSION:

Jim Callahan provided the background on the project noting that the property is located on the east side of Shimerville Road, north of Roll Road. This is existing residential and vacant property. The applicant is proposing an amendment to a previously approved subdivision plus a 2-lot Open Development creating five (5) new building lots. A coordinated review under the State Environmental Quality Review Act (SEQRA) has been completed.

Michael Metzger, of Metzger Civil Engineering, is present and said he is looking for a determination regarding SEQRA. A wetland biologist has looked at the site, they know where the wetlands are. They are not proposing to impact any wetlands nor any floodplain areas. An archeological study was done on April 30, 2018 and the State Office of Parks, Recreation and Historic Preservation issued a letter of no impact. The NYS DEC issued a letter with several items in it, the applicant has addressed all those items and they are ready to move forward with the environmental determination. Mr. Metzger referred to the plan and the lot that had no frontage. The client offered to give up one of the lots in the minor subdivision and add it to the “no frontage” lot creating a legal lot. The original subdivision proposed four (4) homes, this current proposal is for the same number of homes just a different configuration. The property consists of 38 acres and will have six (6) homes on it. There are four (4) estate lots of five (5) acres each along the Gott Creek Corridor plus two (2) frontage lots.

Mr. Pazda requests the applicant consider moving the driveway to the north side of the lot to be neighborly to the existing property owner. Mr. Metzger said this was discussed with his client and the concern is that if the driveway was moved it would have to run along the back of another lot in order to serve the lot it’s meant for. It is the applicant’s preference to leave it along the southern property line, it will be set 5’ off the property line. Chairman Sackett asked what the distance is between the proposed driveway and the home to the south. Mr. Metzger said at least 40’. Chairman Sackett noted that the

driveway will be finalized through an easement and that easement will be reviewed by the Town Attorney's Office. The Town Attorney will be advised to look at any codes relative to the distance between the driveway and a house to be sure it is in conformance with the building code. Mr. Pazda would still like to suggest the driveway be moved north. Mrs. Salvati noted that it is the garage side of the home that faces the driveway, so the house is actually further away from the proposed driveway, plus there is an out building there. Mr. Pazda said part of his rationale for wanting the driveway moved is that there is a water problem there. A driveway that close to the property line will have a tendency to pool and puddle the water. Mr. Metzger said the Town Engineer is sensitive to grading and drainage. When the time comes for a building permit the applicant will have to provide a grading and drainage plan to prove to the Town Engineer that the applicant will not create any drainage issue for a neighbor or anybody, otherwise they do not get a building permit. Mr. Metzger noted that previously there was a property line that went through the existing pond, they have amended the plan to have the property line jut around the pond so that it is wholly included in the lot. There was a strip of land, which was a carryover from the old Collana subdivision, that was made part of a lot.

Mrs. Salvati reiterated that there is no home proposed for the lot that contains the blueberry vegetation. Mr. Metzger confirmed this and said his client intends on operating the blueberry farm as he has purchased all the equipment. The only reason a house is shown on the plan is because it is a building lot that someone could build on in the future.

Kathy Lopian, of Chatham Lane, asked where the creek and the wetlands are on the drawing. She asked if a larger house will be built on the property, Chairman Sackett said that depends on the stipulations of the Building Code. The white lines on the plan are the property lines. She is concerned about people cutting trees down, she heard chainsaws the other day. When the trees lose their leaves Ms. Lopian can see the Goodwin's house from her property, it looks like there will be another house behind their house which is in close proximity. Chairman Sackett reminded the audience that the action before the Board is to subdivide the land, in terms of building permits the Planning Board is not sanctioning any building in terms of the position, the size or the location of the driveway. Ms. Lopian asked if the lot lines are on wetlands and how far can they build up to. Chairman Sackett said they cannot build on wetlands.

Mr. Metzger said the creek follows the back property line of the project. The blue line on the plan is the 100 year floodplain line from Gott Creek. There is a State Wetland line on the plan. The green line is the 100' buffer which is an area that is adjacent to State Wetlands and cannot be touched. Vegetation removal is strictly prohibited in State Wetlands. The adjacent area for the State Wetland is the limit to which something could be built, nothing can be built any closer than the green line depicted on the plan. There is a pocket of Federal Wetland on the site, which can be built right up to the wetland lines.

Mr. Pazda asked how the pond was put in if the wetlands cannot be touched. Mr. Metzger said he does not know, it was put in before his involvement. He went on to explain that years ago it was not uncommon for subdivisions to have the storm water retention pond placed in the adjacent area, this does not happen now. Mr. Geasling said delineations change every time they go out, the house was built in the 1990's and wetlands grow.

Chairman Sackett advised that copies of the documents in the presentation are available in the Planning Office.

Mr. Bigler said there appears to be a considerable distance between any proposed home and the neighboring development. He asked if Mr. Metzger can address the concern about hearing chain saws. Mr. Metzger said he knows of nothing with reference to chain saws that is going on at this property.

ACTION:

Motion by Wendy Salvati, seconded by Steven Dale, pursuant to Article 8 of the Environmental Conservation Law, to **approve** the Part 2/3 Short Environmental Assessment Form as prepared and to **issue** a Negative Declaration on the proposed Damian Baird Subdivision and Open Development Area located at 5645-5685 Shimerville Road. This Unlisted Action involves a modification to a previously approved subdivision and the development of a 2-Lot Open Development area for a total of 7 lots, 2 of which contain existing homes. After thorough review of the submitted site plan and Environmental Assessment Form, including coordinated review among involved agencies, it is determined that the proposed action will not have a significant negative impact on the environment.

Jeffery Buckley	Aye	Steven Dale	Aye
Gregory Todaro	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Richard Bigler	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Motion by Wendy Salvati, seconded by Gregory Todaro, to **approve** the amendment to the previously approved subdivision at 5645-5685 Shimerville Road to create 5 frontage lots along Shimerville and Roll Roads as per the submitted site plan from Metzger Civil Engineering dated May 1, 2018, with the following conditions:

1. Subject to review and approval by the Erie County Highway Department on any new access points along Shimerville Road to service the proposed lots.
2. Subject to review and approval by the Erie County Health Department on any new on-site sanitary facilities for homes on the newly created lots.
3. Subject to review and approval by the Town of Clarence Building and Engineering Department for any proposed new structures and issuance of required permits on the newly created lots.
4. Subject to cross access, maintenance and repair easements and agreements for any common driveways. The terms of the easements and agreements shall run with the land. Such easements and agreements shall be filed by the applicant in the Erie County Clerk’s Office after review and approval by the Town of Clarence Attorney’s Office. Applicant shall provide the Town Attorney’s office with copies of the filed easement and agreement.
5. No additional curb cuts beyond those identified on the approved site plans dated May 1, 2018.
6. Subject to Open Space and Recreation Fees.

ON THE QUESTION:

Mr. Metzger understood and agreed with the conditions of the motion.

Jeffery Buckley	Aye	Steven Dale	Aye
Gregory Todaro	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Richard Bigler	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Motion by Wendy Salvati, seconded by Gregory Todaro, to **recommend** to the Clarence Town Board, issue Concept Approval for a 2-lot Open Development Area at 5685 Shimerville as per the submitted site plan from Metzger Civil Engineering dated May 1, 2018 and subject to the following conditions:

1. Common infrastructure to be addressed in final Development Plan Approval by the Planning Board after review and approval by the Town Engineer.
2. Subject to approval of an access, maintenance and repair easement and agreement for the common driveway as reviewed and approved by the Town Attorney's Office. The terms of the easement and agreement shall run with the land. Such easement and agreement shall be filed by the applicant in the Erie County Clerk's Office after review and approval by the Town of Clarence Attorney's Office. Applicant shall provide the Town Attorney's office with copies of the filed easement and agreement.
3. Subject to Open Space and Recreation Fees.

ON THE QUESTION:

Mr. Metzger understood and agreed with the conditions of the motion.

Jeffery Buckley	Aye	Steven Dale	Aye
Gregory Todaro	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Richard Bigler	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Item 3

Barbill Northtowns
Traditional Neighborhood District

Requests Site Plan and Architectural Approval
on a Rehabilitation of an existing Restaurant at
8326 Main St.

DISCUSSION:

Jim Callahan provided the background on the project noting that it is located on the north side of Main Street, west of Harris Hill Road. It is an existing commercial structure, the former Old Red Mill Restaurant, located in the Traditional Neighborhood District. The applicant is present seeking approval

for renovations and rehabilitation of the existing structure. The Planning Board will have final approval authority for the updated site plan and for the architectural style.

Michael Metzger, of Metzger Civil Engineering, and David Sutton, of Sutton Architecture, are both present. Mr. Metzger explained that a comment from NYS DOT was to close off one of the two existing entrances, so the applicant did that and now there is enough room for a 24' lane to come in and out of the property. There is plenty of maneuverability for delivery trucks to manage the site. Much of the asphalt will be replaced with greenery. The domestic water will now have proper backflow prevention, there will be sprinklers in the building, a new on-site sewage treatment system will be installed, the access to the site will be improved and landscaping will be done. There was 4 parallel parking spots proposed but that has been changed to 2 spots due to the concern of the spots being so close to the road that it might create issues with vehicles moving in and out of the property. There is an existing tree in that area that will be maintained. There will be some green and landscaped islands put in the middle of the parking lot behind the building. The plan exceeds the minimum requirement for parking, plus there is existing pavement in the back that the applicant will leave for overflow parking.

Mr. Sutton explained that all the add-ons to the farmhouse have been taken down and it has been brought back to its original state. They want to preserve and highlight the farmhouse as much as possible. Some additions need to be made to meet the program requirements, these include a kitchen area, a patio area, indoor dining and bathroom facilities. They will refurbish the existing brick and any additions will be done in a respectful manner not to duplicate or mimic but to compliment and allow the original building to be highlighted. The addition to the back will be split face CMU block, which is a decorative concrete block. The entrance and the patio will be done in a wood-like material, an AZEK material which is maintenance free. The window wall on the west side is a collapsible wall and in good weather it will be opened up for outdoor dining. Mr. Sutton went on to say that they have been asked to put a stone wall in front of the building, this is on the site plan. There is a series of architectural lighting to highlight the features of the building. The lighting in the back of the building will be partially off the building plus there is an existing light pole in the back that the applicant will evaluate and either refurbish it or replace it appropriately. Mr. Metzger said the light pole had a large cobra head on it which illuminated the whole area when it was functioning properly. The applicant has no desire to use this light. They are proposing two (2) lower poles in the back area that will illuminate the back portion of the property. The height of the poles will be approximately 15' high and it will be dark sky compliant.

Mr. Dale referred to the proposed stone wall and asked if it will look the same as that which is located on the property across the street. Mr. Metzger said because of the age of the building and the fact that it is more of a rural type building they are proposing a boulder-type pile as opposed to a stacked stone wall. Mr. Sutton said it is more random and authentic which you would find on a farm house setting. Across the street is a more structured designed wall, they have no intent to do that because it would detract from the feel they are trying to create. Chairman Sackett noted that the Landscape Committee will review the stone wall.

Ms. Salvati asked for an explanation on the drainage of the rooftop patio. Mr. Sutton said it is a flat roof system and will have an established pitch that will allow for property drainage to be collected with the guttering system. It is currently designed to pitch towards the back where there would be an open gutter system. The rubber rooftop paver system that people walk on on the roof would be slightly elevated, it has an irrigation system underneath. Any water would migrate through the pavers and find their way over to the gutter system and be collected and taken off the roof. They designed the rooftop for 100 pounds per square foot to handle the people that will be on it, snow is only 50 pounds per square foot so by default they are designing the roof double what the snow load requirement is.

ACTION:

Motion by Timothy Pazda, seconded by Steven Dale, to **approve** the site plan and architectural style of the proposed Barbill Northtown Rehabilitation located at 8326 Main Street as per the submitted site plan from Metzger Civil Engineering dated May 9, 2018 and the Building Elevations and Renderings from Sutton Architects dated May 10, 2018, subject to the following conditions:

1. PIP Permits as issued by the Town Engineer. In addition to drainage facilities, required details to include a stone wall and sidewalk installation to specifications as per sidewalk project for Main Street as approved by the NYS Department of Transportation (NYSDOT).
2. A highway work permit as issued by NYSDOT.
3. Final Landscape Plan approval by the Landscape Committee to include a stonewall feature.
4. Subject to review and approval by the Erie County Health Department on any modifications/additions/replacements to the on-site sanitary facilities.
5. Subject to review and approval by the Town of Clarence Building Department for renovations to the building.
6. Subject to Open Space and Recreation Fees on the required Building Permits.
7. A separate application for a Temporary Conditional Permit to allow for the outside dining must be made to the Clarence Town Board. The Planning Board recommends the outside dining locations area(s) as per the approved site plans.
8. All lighting is to be dark sky compliant.

ON THE QUESTION:

Mr. Metzger and Mr. Sutton both understand and agree with the conditions.

Mr. Dale said he is not sure he agrees with the interpretation of the stone wall and the large stones.

Mrs. Salvati thanked the applicant for preserving the 40 inch diameter Maple tree.

Jeffery Buckley	Aye	Steven Dale	Aye
Gregory Todaro	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Richard Bigler	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Meeting adjourned at 7:55 p.m.

Carolyn Delgato
Senior Clerk Typist