

Town of Clarence
Planning Board Minutes
Wednesday October 29, 2008

Work Session 6:30 pm

Roll Call
Update on Pending Items
Zoning Reports
Committee Reports
Miscellaneous

Agenda Items 7:30 pm

Approval of Minutes

Item 1

Verizon Wireless
Traditional Neighborhood District

Requests Preliminary Site Plan Review of a proposed telecommunications tower at 8630 Main Street.

Item 2

Milherst Construction
Industrial

Requests Preliminary Concept Review of a proposed office/shop/storage yard on County Road west of Strickler Road.

Item 3

Patrick Development/Metzger Civil Engineering
Residential Single-Family

Requests Preliminary Concept Plan Review of a proposed 4-lot Open Development Area on Roll road west of Shimerville Road.

Chairman Gerald Drinkard called the meeting to order at 7:30 p.m. Councilman Peter DiCostanzo led the pledge to the flag.

Planning Board Members Present:

Chairman Gerald Drinkard
Jeffrey Grenzebach
Richard Bigler
Gregory Todaro

1st Vice Chairperson Wendy Salvati
George Van Nest
Albert Schultz

Planning Board Members Absent:

2nd Vice-Chairman Timothy Pazda

DISCUSSION:

Jim Callahan provides the background on the project. The property is located on the north side of Main Street east of Harris Hill Road behind the Harris Hill Fire Hall. The existing fire hall is located on approximately 8 acres in the Traditional Neighborhood District (TND). In terms of the Master Plan the property is located in the TND. The applicant is proposing to construct a new telecommunications tower and is seeking Preliminary Concept Review and, ultimately, referral to the TEQR Committee for coordinated review. Per the Zoning Law, the action will require a Special Exception Use Permit (SEUP) as issued by the Town Board, as well as site plan approval by the Planning Board. The project was introduced to the Town Board on October 8, 2008 and referred to the Planning Board to continue the review process.

Chairman Drinkard notes that a letter has been received from Verizon who has been in dialogue with Planning Office. The letter expresses some concerns, one of which is the presence of a tower on an adjoining piece of property. The tower belongs to the water company. The Town does not want to see two (2) towers in such close proximity. Verizon asked to have their project tabled this evening. The letter is on file in the Planning and Zoning Office.

ACTION:

Motion by George Van Nest, seconded by Jeffrey Grenzebach, to **table** agenda Item 1 per the applicant's request.

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|--------------------|-----|-----------------|-----|
| Gregory Todaro | Aye | Albert Schultz | Aye |
| Richard Bigler | Aye | George Van Nest | Aye |
| Jeffrey Grenzebach | Aye | Wendy Salvati | Aye |
| Gerald Drinkard | Aye | | |

MOTION CARRIED.

Item 2

Milherst Construction
Industrial

Requests Preliminary Concept Review of a proposed office/shop/storage yard on County Road west of Strickler Road.

DISCUSSION:

Jim Callahan provides background on the project. It is located on County Road west of Strickler Road. It is an existing vacant parcel and a former Christmas tree farm located in the Industrial Business Park Zone. The applicant is proposing to construct a new industrial facility for an existing construction company currently located in the Town of Amherst. The project was referred to the Planning Board to continue the planning process.

Jason Knight, of Greenmen Pedersen, and Jim Collins Jr., from Milherst Construction are present. Mr. Knight said the project will need a Special Exception Use Permit (SEUP) and a Minor Subdivision Approval from the Town. The SEUP is for the outside equipment storage and the size of the proposed buildings. The proposed office building will house about 9 employees and is approximately 5300 square feet; the two (2) adjoining shops are approximately 12,500 square feet

each. Mr. Knight will prepare and submit a landscape plan; he would like to meet with the Landscape Committee prior to submitting the plan.

Mr. Knight said there was an issue with the parking and explains that the proposed parking is not within the front 80' setback on the site. The proposal is for 30 parking spaces, by code 27 are required. The employees who work out in the field will not be parked in the lot all day, only the 9 employees who work in the office building will be parked in the lot. The applicant feels the plan is "over-parked" and would like to discuss a parking reduction.

Mr. Knight said there is a State Wetland and a State Wetland buffer. The applicant would like to explore a 50' reduction in the buffer to allow more stone area in the front of the site to provide extra storage for the equipment.

For the record, Chairman Drinkard explains that originally the agenda listed the zoning for this project as Agricultural Rural-Residential. This listing was incorrect; it has been corrected to reflect the proper zoning which is Industrial Business Park.

Mr. Schultz asked the applicant to provide details on where the parking would be expanded. Mr. Knight said it would be the stone area on the westerly end of the property. The 100' buffer runs 2' off the western edge of the stone area. The applicant is exploring the potential to request a reduction in the wetland buffer area to provide more stone area for storage of construction vehicles. Mr. Collins said there can be as many as 25-30 pieces of construction equipment on the site, and as little as none.

Mr. Schultz said traffic considerations are an issue. When and if this project is referred, it will be made part of the motion that the TEQR Committee is asked to pay special attention to traffic both on County Road and the north/south route. What route will the equipment travel to get to a job south of the proposed site? Mr. Collins said Strickler Road is a County road. His company works within a 100 mile radius of Clarence and Amherst, they would take the shortest, easiest route. Mr. Schultz explains that truck traffic is a big issue in Clarence Center.

Mr. Collins explains that the employees begin work at approximately 6:30am; they will pick up their vehicles and are off site until 3:30pm or 4:30pm. Wendy Salvati points out that there is a lot of traffic on Strickler Road near the Middle School during peak hours. Mr. Collins said there may be weeks or months that go by where his company would not use Strickler Road. He will inform his drivers of the bus schedule when they need to travel near any of the schools in Town. One building will be used for heated storage; the other will be used for cold storage which would include construction equipment. Gasoline and diesel will be stored at the facility. The fuel storage tank can hold 10,000 gallons. Mr. Collins is not familiar with the regulations for fuel storage in the Town of Clarence; however he will abide by the Town code. George Van Nest said the project will be subject to State standards. The Town Engineer will handle this issue.

Chairman Drinkard explains that the applicant must have a landscape architect draw a plan and submit it to the Landscape Committee. Mr. Knight said he would bring the architect to the meeting with the Landscape Committee.

Mr. Dolce owns property on Keller Road that abuts project site. He asked if he will have to face an unsightly mess; he does not want to be worried about this 10 years from now. Chairman Drinkard said Mr. Dolce's property abuts the southerly portion of the project site, this area is a wetlands area and nothing can be built on it. The applicant must avoid the wetland area. Mr. Schultz

said screening is very important in this area; it must be done in such a way that no one will see the construction vehicles from County Road. The views must be protected. Mr. Dolce asked how far the applicant is building from County Road. Mr. Knight said the façade of the building is approximately 134' from the right-of-way. Mr. Schultz said the proposed building is to be 405' from County Road. The applicant bought 16.9 acres of property, this includes the wetlands.

Mr. Collins said he will work with the Town to submit a presentable plan. He explains that his future plan is to put storage in the back of the property. He will store such items as pipes, shields and topsoil piles. In response to Chairman Drinkard's question asking how much topsoil will be stored, Mr. Collins said a few thousand yards of topsoil would be stored. The topsoil that comes off the site will be stored back there.

Don Wilson, a wetlands specialist and a private contractor, delineated the wetlands on the site. Ms. Salvati said the TEQR Committee should obtain confirmation from the Army Corp of Engineers on the wetlands. Mr. Schultz said it may be a segmentation issue. Ms. Salvati wants to see a site plan that shows the entire plan including the intended future use.

Chairman Drinkard said the time line for the project needs to be clarified. The entire site plan needs to be submitted prior to referring the project to the TEQR Committee.

Mr. Dolce's property is zoned Agricultural Rural-Residential. Chairman Drinkard clarifies that a 45' greenbelt is required because the project site adjoins a residential zone. Ms. Salvati said there are other setback requirements as well. Chairman Drinkard said the applicant will need to submit a plan showing how the applicant will provide for the greenbelt, making it as dense as possible, on the southern exposure. Mr. Collins said currently the greenbelt area is grass.

Mr. Van Nest asked if the DEC has reviewed the wetland delineation, Mr. Knight is not sure.

ACTION:

Motion by Wendy Salvati, seconded by Albert Schultz, to **table** agenda Item 2 to allow the applicant time to submit a revised site plan showing the full intent for use of the site.

ON THE QUESTION:

A specific wetland delineation is required to accompany the resubmitted site plan. The first elements of the Landscape Plan are required as well.

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|--------------------|-----|-----------------|-----|
| Gregory Todaro | Aye | Albert Schultz | Aye |
| Richard Bigler | Aye | George Van Nest | Aye |
| Jeffrey Grenzebach | Aye | Wendy Salvati | Aye |
| Gerald Drinkard | Aye | | |

MOTION CARRIED.

Item 3

Patrick Development/Metzger Civil Engineering
Residential Single-Family

Requests Preliminary Concept Plan Review of a proposed 4-lot Open Development Area on Roll road west of Shimerville Road.

Chairman Drinkard recuses himself; the appropriate form is on file. First Vice-Chairman Wendy Salvati will run the meeting.

DISCUSSION:

Jim Callahan provides the background on the project. It is located on the south side of Roll Road, west of Shimerville Road and consists of approximately 8.37 acres. The project was referred at the September 10, 2008 Town Board meeting.

Michael Metzger, of Metzger Civil Engineering, is present along with the owner of the land, Kevin Curry. Mr. Metzger said the parcel is 8.6 acres in size. There have been numerous proposals for this property dating back to 2004. The original plan showed a 3-lot Open Development with 2 frontage lots, one on either side of the entrance driveway. It was determined at the time that the plan was not adequate to comply with the requirements of the law and was denied. The next plan shows 3 Open Development lots and 2 larger frontage lots; this plan was also denied. The next plan was for a major subdivision with a 12-lot cul-de-sac, a public road and 2 frontage lots. This plan was also denied. The plan being submitted shows a 4-lot Open Development one lot is on Roll Road, the other 3 lots are behind it. A private drive is the plan. The applicant feels this plan fully complies with the Open Development Law.

Mr. Metzger has a copy of the Table of Considerations for the project. Mr. Schultz refers to the Table of Considerations and explains that the purpose of an Open Development is not an As-of-Right Use; therefore the applicant needs to comply with all the rules and the Town Board needs to decide if that land is suitable for an Open Development. The Plat provided is incorrect and incomplete; there is an error with regard to property lines along the eastern side of the proposed development. The lot lines are off by approximately 33'. The Plat must show gas line right-of-way and drainage. Erie County Water supply must be available on this site, currently it is not. Two acre minimum lots are required.

Mr. Schultz refers to issue number 1, Utilities, on the Table of Considerations. He references Section 193-24 of the Town Code with regards to water distribution and reiterates there is no County water supply in this area. Section 193-32 Requirements, sub-section (F) Water Supply discusses (1) Domestic Water. A minimum of a two-inch waterline, designed by a professional engineer...to provide adequate volume and pressure and approved by the Erie County Water Authority is required. (2) Fire protection shall require an eight-inch waterline and hydrant...within an open development area located more than 600 feet from an existing fire hydrant. Based on Erie County Framework for Regional Growth, it is questionable if Erie County will extend infrastructure into this area.

The second issue is easements. Section 193-22 Easements is referred to as follows: (A) All utility easements shall be plotted on both the preliminary and final subdivision plat. Known gas line easement is not shown on the plat. (B) Where a subdivision is traversed by a...drainage way...there shall be provided a...drainage way right-of-way.... (C) Drainage easements shall be provided...All drainage easements shall be plotted on the preliminary and final plats. There is a drainage way that cuts diagonally across the site; this might be problematic as it crosses the proposed private road. It is not shown on the plat.

The third issue is the private road. The plan shows an access called a right-of-way, by definition it is a private roadway. Section 193-32 Requirements and Section 229-168 Definitions are referenced.

The fourth issue is lot size. Section 193-32 Requirements (C) states that minimum size shall be two acres each. In order to achieve the two acre minimum lot size, the applicant includes the private road and land on the other side of the private road opposite the building lots. Removing the road from the calculated land would preclude a four-lot development.

The fifth issue is lot layout. Section 193-21 Lots is referenced as follows: (B) Side lot lines shall be substantially at right angles or radial to street lines. Lot lines, particularly at lots 3 and 4, do not follow this requirement. (C) All lots shall abut their full frontage on a publicly dedicated street or a... private road. Frontage for lot #4 is not on the private road and is, in fact, a side lot line for lot #3. Section 193-20 General Requirements (G) reads as follows: In order to preserve the existing public view, the minimum setback for lots from the existing public road frontage shall be determined by the Town Board...At a minimum, a setback of 200 feet shall be required from any existing public road right-of-way and the first lot proposed within a new subdivision involving a public road dedication. The proposed subdivision utilizes a "private road" and not a "public road", so there is no specific setback spelled out. It seems logical that the minimum would be consistent with that required for a public road. First house, as shown, is 100 feet from Roll Road.

Mr. Metzger will show the gas easement on the future plan. He explains that there is no drainage easement on the property; there is a ditch that runs across the property that the applicant would most likely re-locate. Mr. Metzger said there is potable water on Shimerville Road and he has been working with the water authority for an extension. There is an extension planned to come along Roll Road from Shimerville Road to provide water service to the site. At Development Plan the applicant would be able to provide a plan to show the domestic service and the 8" fire line.

For the balance of the issues, Mr. Metzger said it appears that portions of the Subdivision Law have been applied to an Open Development project. He said the plan shows a driveway, not a private road. He said the Subdivision Law is not applicable to an Open Development project. Ms. Salvati refers to Section 193-32 (P) which states all other applicable parts of this Subdivision Law and New York State Real Property Law shall apply. Mr. Metzger said the opening paragraph of the Open Development Law indicates that this method is applicable to projects having insufficient frontage. It seems inappropriate to apply frontage to a private driveway.

George Van Nest said the Planning Board should question whether or not the project should be looked at more closely and perhaps moved forward.

Mr. Metzger said his thoughts were to keep the driveway further away from the property lines, to allow more buffer for future homes that may be built in the area. Mr. Metzger said the roadway has always been calculated as part of the lot area.

Mr. Schultz points out many of the issues on the Table of Considerations generated from Section 193-32, which is the Open Development Law. The utilities section is 193-24 which is Required Improvements and is located in a general section applicable to all developments.

Mr. Van Nest said the utility question can not be answered until the project has reached further stages. He does not want to see the Planning Board hung up at an early stage on this project.

Jim Callahan explains that there is a legal opinion that would allow that driveway to be an easement. It has been identified that this is an acceptable mechanism. The Town has never included the roadway as part of a lot to meet the 2 acre minimum requirement. Mr. Curry wonders who will own the roadway; if the lot owner doesn't own it and the Town doesn't own it. Ms. Salvati explains

that if it is a private road there is a Homeowners Association established and the road would become common area and maintained by the Association. Mr. Curry said the plan is for a shared driveway. Mr. Schultz reads the Town Code definition of a shared driveway: it is a private roadway utilized for providing access from a public road to a permanent use. Ms. Salvati would like input from the Town Engineer.

With regards to the 200' setback issue, Mr. Metzger thinks this comes from another section of the Subdivision Ordinance other than the Open Development section. Mr. Schultz explains the setback requirement comes under a section called General Requirements. Mr. Metzger said the history of the Open Development Law is such that it was inserted into the Subdivision Law when the Subdivision Law was revised. He said the Open Development Law was always a stand alone law and he doubts it was ever meant to intertwine with the Subdivision Law. Mr. Callahan said it was always a part of the Subdivision Law. It was pulled out of the law at one point and a moratorium was set, the Open Development Law was then rewritten and inserted back into the Subdivision Law.

Mr. Curry said the existing homes on Shimerville Road are setback approximately 45'- 65', so he would imagine the lots on Roll Road would have a 45-65' setback as well. Mr. Van Nest refers to Section 193-32 Requirements (C) ...No home may be built closer than 150' from a public road right-of-way.... He points out the purpose of the Open Development Area as written in the code is to provide for a greater utilization and to allow properties to build out in such a way that is acceptable and efficient in keeping with the characteristics of the Town. The submitted plan does not reflect the purpose and Mr. Van Nest asked what else the applicant could do with this land.

Ms. Salvati would like the Town Attorney's interpretation of the law.

The width on the four lots is 100' each. The driveway needs to be moved over in order to give 100' clearance between that and whatever the driveway might be on that lot, unless the driveway is on another lot as shared access.

Mr. Schultz notes for the record that number 5 on the Table of Considerations needs to be amended. Section 193-20 General Requirements needs to be replaced with Section 193-32 Requirements, as the distance from the public road right-of-way must be 150'. The reason is because the road is not dedicated. Mr. Curry said he can move the house to 150' with no problem; he can address many of the issues. He would like to be assured that an Open Development makes sense in this area. Ms. Salvati speaks for the Board when she indicates that this area is suitable for an Open Development.

Dr. Paul Giordano, of 5458 Center Pine Lane, owns property to the west of the project site. He wonders what will happen to the portion of land that borders his property, will it be fenced?

Mr. Schultz said there is one drawing in the file; he would like to see more information provided. He would also like more information on the conversations that the applicant is having with the Water Authority that indicate water supply will be available for the development. Mr. Van Nest said if we ask for this information now, it becomes difficult for the applicant to move forward with the project. He is not sure, at this stage, the project should be held up for this information. Ms. Salvati said the TEQR Committee will look at the compliance of the project with the Framework for Regional Growth.

Mr. Curry said there will not be much disturbance to the neighbor as the project would be at a significant distance off the lot lines. If there is a need for buffering he tries to use vegetation as opposed to fencing. He agrees that the water issue may be a bit premature; however if he wasn't confident that water would be available he would not be before the Board this evening. Mr. Schultz said it is enough to know that the applicant is aware he needs water at the site and he is working on it.

Mr. Curry thinks the lot line issues can be corrected.

ACTION:

Motion by Wendy Salvati, seconded by Richard Bigler, to **table** agenda Item 3 pending the following:

- Town Attorneys office to provide legal opinion/interpretation on the applicability of utilizing driveway areas as part of the lot area determination.
- Clarification on whether the area is a driveway, an easement, a public or a private road.

ON THE QUESTION:

Ms. Salvati questions how this will be done with just an easement as opposed to a private or public road and can it be included in part of the lot area calculation.

Mr. Van Nest suggests the legal interpretation be rendered with all expedience given the amount of time that has been invested in this project. An opinion should be provided to the Planning Board prior to the next meeting. Once the legal opinion is obtained the applicant is welcome to attend an Executive Planning Board meeting to further discuss the project.

A new drawing is to be submitted showing the changes discussed this evening. It is to be submitted prior to the next Planning Board meeting.

If it is determined that three lots is the acceptable plan, but the applicant still wants four, it can only be passed with a super majority vote of the Town Board.

Mr. Schultz said there is a drainage channel which means a drainage easement is required.

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|--------------------|--------|-----------------|-----|
| Gregory Todaro | Aye | Albert Schultz | Aye |
| Richard Bigler | Aye | George Van Nest | Aye |
| Jeffrey Grenzebach | Aye | Wendy Salvati | Aye |
| Gerald Drinkard | Recuse | | |

MOTION CARRIED.

Meeting adjourned at 9:04 p.m.

Carolyn Delgato
Senior Clerk Typist