

Town of Clarence
One Town Place, Clarence, NY 14031
Planning Board Minutes
Wednesday October 30, 2013

Work Session 6:30 pm

Status of TEQR Coordinated Reviews
Review of Agenda Items
Miscellaneous

Agenda Items 7:30 pm

Approval of Minutes

Item 1

Barry Family Trust
Agricultural Rural Residential

Requests Subdivision Approval to create five (5) Residential Building lots on County Road east of Strickler Road.

Item 2

Paul Bonito
Industrial

Requests a Building Permit and Architectural Approval for an addition to the existing building at 9620 County Road.

Item 3

Dry Dock Marine
Restricted Business

Requests a Building Permit and Architectural Approval for an addition to the existing building at 7171 Transit Road.

Item 4

Bubble Boy Car Wash
Commercial

Requests a Building Permit and Architectural Approval for a new accessory structure at 6707 Transit Road.

Item 5

AutoZone
Major Arterial

Requests a Change In Use and Architectural Approval for a new business at 5185 Transit Road.

Vice-Chairperson Wendy Salvati called the meeting to order at 7:30 p.m. Councilman Peter DiCostanzo led the pledge to the flag.

Planning Board Members present:

Vice-Chairperson Wendy Salvati
Timothy Pazda
Gregory Todaro

2nd Vice-Chairman Paul Shear
Richard Bigler
Steven Dale

Item 2

Paul Bonito
Industrial

Requests a Building Permit and Architectural Approval for an addition to the existing building at 9620 County Road.

DISCUSSION:

Jim Callahan provided the background on the project noting that it is located on the north side of County Road east of Goodrich Road. It is an existing commercial structure located in the Industrial Business Park Zone. The applicant is proposing to construct an addition to the existing structure. Per the Zoning Law the Planning Board will have review and approval authority on this addition.

Dave Sutton, of Sutton Architecture, is present along with Paul Bonito, owner of the property. Mr. Sutton said the structure will consist of a three-bay addition that is approximately 5,250 square feet. The building will stay very similar in architectural styling to what it is now. The parking will expand as well. The applicant has added a berm which buffers the property to the north, which is about 15' high. The applicant has been working with the Planning Department to keep the berm going; it is built as the dirt becomes available.

Vice-Chair Salvati said there are concerns from neighbors in the area regarding the landscaping and proper screening of the subject property. There is a letter on file dated October 28, 2013, addressed to the Town of Clarence, from Richard F. Voelker of 9601 Martin Road. The letter lists Mr. Voelker's concerns which include the past track record of the property whereby there were conditions of an approval that were not followed or completed in a timely manner. Mr. Voelker feels the auto repair business should only allow 10 vehicles on the premises at one time; there are unregistered vehicles in excess of 10 on the property. There are campers and construction type vehicles being stored on the premises, he us not know if a permit needs to be obtained to allow the trailers. In the Town Board meeting of March 23, 2011 Mr. Voelker, another neighbor, Councilman Weiss and Councilman Kolber all requested a "U" shape berm be installed at the back of the property with regards to landscaping. The approved plans for the "L" shaped row of 15 pine trees never materialized. Mr. Voelker asked what Mr. Bonito's purpose is in adding on to the existing building, is it an extension of the automotive business, will there be additional vehicle stored there? He doesn't understand how Mr. Bonito was issued a permit and allowed to operate an automotive repair business in 2011 before he met the conditions that were stipulated by the Town Board. Mr. Voelker asked the Board to take his concerns into consideration.

Mr. Shear visited the site and the number of vehicles exceeds 10, there are probably 12 vehicles on site. There are trailers in the back of the property, but the original approval did not address trailers. A significant berm has been installed although it doesn't wrap around the property. Mr. Shear said the applicant can look at extending the berm or installing a fence. The Board recognizes that this property is in an Industrial Zone.

Mr. Sutton explained that they are proposing additional bays for future tenants. They do not have tenants right now but there has been interest. If one of those tenants would run an automotive use, Mr. Sutton understands that it would have to go before the Town Board for approval.

Vice-Chair Salvati lists the conditions of the March 23, 2011 Town Board approval as follows:

1. The Temporary Conditional Permit shall be for a period of one year.

2. Outdoor storage of vehicles limited to paved and striped surfaces.
3. No more than 10 vehicles to be stored at any given time.
4. No automotive sales/display in the front yard setback area.
5. The hours of operation are to be from 7:00 a.m. and not later than 6:00 p.m. Monday through Friday and Saturday from 9:00 a.m. to 5:00 p.m.
6. No firearms on premises.
7. Landscape Committee to recommend horseshoe berm with other features.

Lynn Hugenschmidt, of 9665 Martin Road, said she appreciates what Mr. Bonito has done with the berm because she cannot see the cars from the automotive shop anymore. She did not agree with all the cars Mr. Caito had on the property. She can still see the trailers so if the berm can continue to be worked on she would appreciate it. She is concerned with what the storage will be used for. Will there be more trailers stored behind the addition?

Dr. Sayeed lives at 9625 Martin Road. He asked if there are three more bays added will there be cars between the end of the bay and his property.

Margie Mast, of 9615 Martin Road, has lived there for 12 years. She has never had a problem with the business until after the 2011 addition. The berm was taken down that ran across the back of the property. As soon as the addition went in, she understands the dirt was his, she called the Town and they said he could sell it off, the berm was taken down and the view was left open. The trees never materialized for well over a year/year and a half. She called several times. The fifteen trees were planted, the majority of them died within a month and a half. Now all she sees is a junkyard parking lot with a bunch of black trailers and a camper and some building materials. She hopes he has started the berm because her property is the one that butts up to the gap at the western corner of the applicant's property. She doesn't understand why the berm isn't continued in a "u" shape around the property, she would have no problem with that. She does not want the blight and the noise; she is concerned with what type of business may go in there. If an automobile business goes in there, a permit must be obtained but what about any other type of business, will it need a permit, too? Vice-Chair Salvati said it would depend on what type of business. Ms. Mast said in 2011 the Board and some councilmen recommended this berm, then it never materialized. She thinks the Landscape Committee should take into consideration meeting with some of the neighbors. She invited anyone to come out to her property to see the view that she sees. Ms. Mast referred to a site plan she obtained from the Planning Department and said an existing grassy area is indicated on the plan, that area is not grassy now it is where some of the trailers are parked. What is going to be allowed between the back of the additional building and the property line? Will it stay grassy or will you pack more things in there? She is not opposed to this but if the concerns are not addressed she and some of the neighbors will have to get legal representation.

Mr. Sutton thanked the neighbors for voicing their concerns. He noted that when the project was initially done, Mr. Bonito planted, per the approved plan, not 15 trees but 25 trees. The difficulty was watering them and keeping them alive; they were not an effective screening device. Mr. Bonito met with Tim Lavocat and Mr. Callahan on site and it was determined that a berm was a much better approach; a 5' high berm was suggested. The berm is in excess of 5' and fortunately Mr. Bonito's business allows him to acquire soil to achieve that berm. Mr. Bonito is prepared to wrap the berm around with the understanding that it will be done when the soil becomes available. The reason there was a pile of dirt last time is because that was top soil. Currently, they are putting in a permanent berm. They would have done a "U" shaped berm but with the dirt that was available it would have been a much lower berm. If the applicant is allowed to continue to work with the Town and neighbors

he will fulfill the obligation to do the “U” shaped berm to protect the property from adjacent residences. The building will be approximately 180’ from the property line. The applicant is aware of the abutting residences and wants to be a good neighbor, a 15’ high berm is a substantial effort.

Mr. Bonito said some of the trailers on site are from his construction business; the buildings on site are not wide enough to store the trailers. Other trailers are for the landscaping company that is renting space, they are not junk trailers, they are brand new and are associated with businesses on site.

Vice-Chair Salvati noted that the applicant is not to exceed the storage of 10 unlicensed vehicles on site. Mr. Sutton explained that the tenant thought that he could not have more than 10 vehicles on the property any given night, the idea was they would pull as many cars in as they could at the end of the day. Mr. Sutton thinks the Planning Department has already contacted the tenant to remind him of his obligation to conform, knowing that they are in a renewal for a Special Use Permit and they must abide by the rule. Vice-Chair Salvati clarified that the rule is no more than 10 vehicles at any given time. The applicant will further clarify that to the tenant.

Mr. Bonito said he has already started the berm on the west side of the property and as the dirt becomes available he will continue it. Vice-Chair Salvati said it is important to keep anything planted on that berm alive. She is also concerned with how long it may take for the berm to be completed especially if the applicant is always waiting for the soil to become available. Mr. Sutton said it would be acceptable if a reasonable term was placed on the completion of the berm with the understanding that if the dirt isn’t available at that time Mr. Bonito needs to find other means to make it available. Mr. Sutton agreed with the time frame for completion to be July 2014. The details can be worked out with the Landscape Committee.

Mr. Bonito originally planted 25 trees, they cost \$125 each, he did not want those trees to die.

It is clarified that the berm will replace the line of trees.

Mr. Shear noted that there is a significant concern with the number of cars on the property that are not licensed and not operable. He understands that there are vehicles that are related to the landscaping business.

ACTION:

Motion by Gregory Todaro, seconded by Richard Bigler, to **approve** the site plan and architectural style of the proposed addition at 9620 County Road as per submitted drawings from Sutton Architects dated October 7, 2013, subject to the following conditions:

1. Subject to Landscape Committee review and approval of an updated landscape plan to ensure adequate buffering occurs by July 1, 2014 to adjoining residential properties to the north and west property lines. Preliminary landscape plan review and approval prior to issuance of Building Permit and Final approval required prior to Certificate of Occupancy.
2. Subject to Building and Engineering Department review and approval of any required permits for construction of the proposed addition.
3. The height level of the berm will be maintained with the existing height of the berm.

ON THE QUESTION:

Mr. Todaro clarified that the buffer must curve around the corners of the northwest and northeast part of the property.

The applicant understands and agrees with the conditions.

Steve Dale	Aye	Gregory Todaro	Aye
Richard Bigler	Aye	Timothy Pazda	Aye
Paul Shear	Aye	Wendy Salvati	Aye

MOTION CARRIED.

Item 3

Dry Dock Marine
Restricted Business

Requests a Building Permit and Architectural Approval for an addition to the existing building at 7171 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 Lapp Road. It is an existing commercial structure with a marina use located in the Restricted Business Zone. The applicant is proposing an addition to the existing accessory structure. Per the Zoning Law, the Planning Board has review and approval authority on the addition.

Michael Metzger, of Metzger Civil Engineering, is present along with the owner of the property, Mr. Hallac and Mr. Hallac's son Zack. Mr. Metzger explained the addition will be used for the storage of parts, currently these parts are stored outside. The area where the addition would go is already a hard packed stone base, thus there will be no impact on drainage. The proposal is compliant with the setbacks. The building will not be evident from the road.

Mr. Shear asked if the addition will be used for inside storage of boats. Mr. Metzger said no, it will be used strictly for storage of parts. Mr. Hallac confirmed that the addition will be used strictly for storage of parts.

Dave and Lisa Biniskiewicz, of 7165 Transit Road, are present. Mr. Biniskiewicz said he can see everything of Mr. Hallac's business from his own property. There are trees but they do not block anything. Looking out all his windows and when they leave their house through the side door it faces Mr. Hallac's business, Mr. Biniskiewicz's yard faces the business as well. There are more and more boats, there is a backhoe and a tractor on site, it is becoming more and more unsightly. He did not hear how big the addition would be or if it has doors on it. If Mr. Hallac is working on an engine all that sound is coming Mr. Biniskiewicz's way. It has taken away from his quality of life; they have lived there for 13 years. There is a ditch between the properties, Mr. Hallac's property is 2' higher in spots so when it rains the run-off is going onto Mr. Biniskiewicz's property, and still nothing has been done about this. Mr. Hallac said he would do something about the run-off or put up a fence, but he only put up a partial fence, said how much it cost and that was it. He said Mr. Hallac screamed at him because he received certified letters regarding his property and thought it was Mr. Biniskiewicz complaining about his business. But Mr. Biniskiewicz walks out his door and sees a half a dozen boats throughout the year, some stay there forever. He asked if there was a limit to how many boats can be stored on

that parcel of land. Vice-Chair Salvati is not sure if that was a condition when the business was approved. Mr. Biniskiewicz said an 8' fence 25'-30' long was erected, but it is behind Mr. Biniskiewicz's garage so it helps him when he is in his yard but when he walks out his side door he sees everything; the whole length of his driveway faces the business. He would like to see the fence continued. Mr. Shear noted that from the mid-point of Mr. Biniskiewicz's house to the street is not an issue because the neighbor's property is grass adjacent to that area. Mr. Biniskiewicz agreed. Mr. Biniskiewicz said Mr. Hallac had a retention pond but it was filled in to store more boats. It is confirmed that the business was in place prior to Mr. Biniskiewicz purchasing his home.

It is noted that when the business was built the property was probably zoned Major Arterial, it is now zoned Restricted Business. Mr. Biniskiewicz said it is still quite a residential area.

Mr. Metzger noted that Mr. Hallac has operated this business for 30 years, 28 of those 30 years at this location. It is confirmed by Mr. Hallac that there were no limits set forth as to the number of boats allowed on the property at the time of his approval. Mr. Hallac agreed to extend the fence 40'-50' towards the road. The existing fence is 64' long. It is clarified that the fence will be extended to the large pine trees. Mr. Hallac said he will install a yard drain at the end of the fence, which will lead to his ditch. This is the area that the neighbors are complaining about; with the yard drain it won't flood the neighbor's property. Mr. Metzger said there was a previous drainage issue whereby Mr. Hallac immediately met with the Town Engineer to remedy the situation. The Town Engineer said he would look at the issue in the Spring and get back to Mr. Hallac if there was a problem. Mr. Hallac never heard from the Town Engineer. In response to Deputy Town Attorney Steve Bengart's question regarding Engineering Approval, Mr. Metzger said it would be acceptable if a condition indicating the Town Engineer needs to give his approval was made part of the overall project approval, as long as it doesn't delay anything.

Mr. Metzger clarified that the pond the neighbors referred to as being filled in, was not filled in. There is a storm water detention pond on site, it was rough-looking. Mr. Hallac brought some topsoil onsite to top it and then seeded it. He did not fill the pond; he dressed it up to make it look better.

Mr. Metzger asked the Board to move forward with approving the addition with the agreement that the applicant will work the issues out with the neighbor and the Town Engineer, as discussed at this meeting.

Mr. Pazda said he thinks it will help if the applicant extends his fence closer to Transit Road, so that it gets to the pines, and if the Engineering Department will take a look at the drainage issue, this project can move forward.

ACTION:

Motion by Richard Bigler, seconded by Paul Shear, to **approve** the proposed addition to the existing accessory structure at 7171 Transit Road as per the submitted site plan from Metzger Civil Engineers dated October 2, 2013, subject to the following conditions:

1. Subject to Building and Engineering Department review and approval of required building permits.
2. Removal of outside storage of parts and materials upon completion of new storage building.

- 3. Subject to review and approval of existing drainage along the south property line with Town Engineer including the installation of a yard drain, if necessary.
- 4. Subject to the addition of approximately 40' of 8' fencing.

Steve Dale	Aye	Gregory Todaro	Aye
Richard Bigler	Aye	Timothy Pazda	Aye
Paul Shear	Aye	Wendy Salvati	Aye

MOTION CARRIED.

Item 4

Bubble Boy Car Wash
Commercial

Requests a Building Permit and Architectural Approval for a new accessory structure at 6707 Transit Road.

DISCUSSION:

Jim Callahan provided the background on the subject noting that it is located on the east side of Transit Road, south of County Road. It is an existing car wash located in the Commercial Zone. The applicant is proposing to construct an accessory structure for use as a detail shop. Per the Zoning Law, the Planning Board will have final review and approval authority on this building.

Calvin Caruso, Jr., owner of Bubble Boy Car Wash, is present.

Vice-Chair Salvati said it is the Board’s understanding that the applicant is currently detailing cars; this would be the construction of a formal facility to undertake this work. Mr. Caruso said that is correct.

Mr. Pazda asked if any drainage has to be changed at the site. Mr. Caruso said they will wash cars, dry them and then bring them into the addition to vacuum them, clean the windows and wax them.

Mr. Pazda noted that even after this portion of the project is completed, the applicant will still have the required amount of greenspace on his property.

ACTION:

Motion by Timothy Pazda, seconded by Paul Shear, to **approve** the construction of an accessory structure at 6707 Transit Road per the submitted plans from Silvestri Architects dated September 24, 2013, subject to the following conditions:

- 1. Building and Engineering Department review and approval of required building permits for the construction.

Steve Dale	Aye	Gregory Todaro	Aye
Richard Bigler	Aye	Timothy Pazda	Aye
Paul Shear	Aye	Wendy Salvati	Aye

MOTION CARRIED.

Item 5

AutoZone
Major Arterial

Requests a Change In Use and Architectural Approval for a new business at 5185 Transit Road.

DISCUSSION:

Jim Callahan provided the background on the project noting that it is located on the east side of Transit Road between Sheridan Drive and Greiner Road. It is an existing commercial structure located in the Major Arterial Zone. The applicant is proposing a change in use to accommodate a new AutoZone retail store. Per the Zoning Law the Planning Board has review authority for Change in Use and Architectural Style.

Carolyn Thaemert, pre-construction specialist on the project, provided a revised elevation of the project for the Planning Board members to view. The plan is dated 10-18-13 and entitled CE-1, the plan is on file. A sample board of colors that will be used for the project has also provided for the members to view. One red line of color was removed from the original plan and the white color has been changed to a creamier color. The colors from the sides of the building have also been removed. Ms. Thaemert was at the project site and noticed that the proposed colors are complimentary with the Fire House Sub building that is next door. The material used for the exterior of the building will be Exterior Insulated Finish System (EIFS), which is a coating that goes on a foam board. If this is not a product that does well here, they can use Stucco. A new wall will be built.

Mr. Pazda asked if neon will be used in the entire top. Ms. Thaemert said there is no neon, they do not use neon anymore, it is an internally illuminated sign.

It is confirmed that the sign meets the sign requirements in terms of size.

There is a man-door in the back of the building and some windows. Ms. Thaemert said the door can be painted a darker shade to help make it more identifiable.

Mr. Pazda asked for clarification on the color shade at the bottom of the building. Ms. Thaemert confirmed that the color shades will be brown, not gray.

A sign is allowed facing the back end of the property, permitted through the Sign Review Board.

Mr. Pazda asked if Ms. Thaemert can speak to cross access. Ms. Thaemert said there has been a discussion with Benderson within the past year regarding cross access. There was no clear resolution on the issue; it will take some time to negotiate something with Benderson. She is hoping to get approval for the building so they can start the project and in the meantime work out the other issues such as cross access. The applicant would like to see the rear access; she would probably change the location of the access to the other end of the parking lot due to the difference in elevation being much less at that end.

There is not rear entrance to the proposed building, customers who park in the back of the building will have to walk around to the entrance but there are sidewalks on the side of the building. The rear access will also help with deliveries.

Mr. Pazda asked about side connectivity. Ms. Thiemert said she is not opposed to that but there is a utility pole and a guide wire in that area, and there are site light poles all along that area. There isn't much room to put in a drive; it would probably be a single-car wide. This will be another negotiation with Benderson.

The Planning Board would like to see the line of parallel parking spaces removed from the plan. Ms. Thiemert does not have a problem with this request.

Phil Casilio, landlord, is in favor of AutoZone negotiating rear and side cross access with Benderson and ask that the project be moved forward while negotiations take place.

ACTION:

Motion by Richard Bigler, seconded by Paul Shear, to **approve** the change in use and associated site plan update and architectural style of the proposed AutoZone project at 5185 Transit Road based upon the submitted site plan from AutoZone dated October 18, 2013 (as amended by the Planning Board at the 10/30/13 meeting) and subject to the following conditions:

1. Landscape Committee review and approval of a landscape plan prior to building permit issuance and final approval required prior to Certificate of Occupancy.
2. Cross access attempt to be negotiated with Benderson up to the rear and the north side of the property.
3. The parallel parking spaces along the north property line along the main driveway are to be removed.

Steve Dale	Aye	Gregory Todaro	Aye
Richard Bigler	Aye	Timothy Pazda	Aye
Paul Shear	Aye	Wendy Salvati	Aye

MOTION CARRIED.

Meeting adjourned at 8:55p.m.

Carolyn Delgato
Senior Clerk Typist