

Town of Clarence
Planning Board Minutes
Wednesday April 4, 2012

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

Robert Flaglor
Restricted Business

Requests a Change In Use from Residential to Professional Sales Office at 7767 Transit Road.

Item 2

Benderson Development
Major Arterial

Requests a Building Permit and Architectural Approval for a Façade Renovation at 5089 Transit Road.

Item 3

Northwoods Open Space Design Subdivision
Residential Single Family

Requests Final Scope Approval to initiate a Draft Environmental Impact Statement for an Open Space Design Subdivision on the north side of Greiner Road, east of Shimerville Road.

Item 4

Dan Palumbo
Industrial Business Park

Requests State Environmental Quality Review Act (SEQRA) Determination and Concept Approval for an Industrial Business Park at 9210 County Road.

Item 5

Damon Morey, LLP
Major Arterial

Requests Preliminary Concept Review of a proposed Automotive Sales/Service Operation at 5817 Transit Road.

Chairman Al Schultz called the meeting to order at 7:30 p.m. Deputy Town Attorney Steve Bengart led the pledge to the flag.

Planning Board Members present:

Chairman Al Schultz
2nd Vice-Chairperson Wendy Salvati
George Van Nest
Paul Shear

Vice-Chairman Robert Sackett
Timothy Pazda
Richard Bigler
Gregory Todaro

Planning Board Members absent: none

Town Officials Present:

Director of Community Development James Callahan
Planner Brad Packard
Deputy Town Attorney Steve Bengart

Other Interested Parties Present:

Ismet Hallac
Bob Meadow
Bob Flaglor
Randy Bolt
Joe Janson Jr.
Victor Miller
Dan Palumbo
Karen Willyoung
Gary Talboys

Motion by Paul Shear, seconded by Wendy Salvati, to **approve** the minutes of the meeting held on March 21, 2012, as written.

Paul Shear	Aye	Richard Bigler	Abstain
George Van Nest	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Robert Sackett	Abstain
Al Schultz	Abstain		

MOTION CARRIED.

Chairman Schultz explained the procedure noting that Jim Callahan will introduce each agenda item and explain the responsibility of the Planning Board with each proposal. The public will be given the opportunity to comment on each agenda item.

Item 1

Robert Flaglor
Restricted Business

Requests a Change In Use from Residential to Professional Sales Office at 7767 Transit Road.

DISCUSSION:

Jim Callahan provided the background on the project. It is located on the east side of Transit Road, north of Wolcott Road. It is an existing residential structure located in the Restricted Business Zone. Per the Zoning Law, the Planning Board has authority to approve Changes In Use.

Robert Flaglor is present and explained that his intention is to use this location as a showroom for windows and doors. He plans to use it as a practical example by replacing the windows and doors with brand new windows and doors of different varieties. There will be some additional samples of the products inside the building. Mr. Flaglor usually goes to his client's homes to do business, so there is no need to keep inventory on the premises. There is no outside storage planned, nor will this be a cash and carry facility. He has been operating this business from his Lapp Road address for 12 years and he has had no necessity for outside storage. He wants to grow the business and has recently been certified to represent Pella Windows.

Mrs. Salvati asked why the handicap ramp is so big. Mr. Flaglor said the door is set high on the back of the building so the ramp is large in order to get the grade required by law.

Mr. Flaglor noted that the building has been vacant for several years. He will require signage for his business and is aware that he needs a permit.

Judy and Bob Meadow are present. Mrs. Meadow said they are there in support of Mr. Flaglor's request for Change of Use. They will be his neighbor's directly to his north at 7777 Transit Road. Mr. and Mrs. Meadow have owned their property for over 40 years and fully encourage business zoning on Transit Road. They would like to see Major Arterial Zoning restored. Mr. and Mrs. Meadow welcome Mr. Flaglor and his business.

Chairman Schultz explained that Restricted Business allows for many uses in that corridor.

Chairman Schultz said there is a code issue with the setback for parking. The applicant had thoughts of using the space alongside the garage and eliminating a couple of spaces out front. If this proposal is moved forward it will be conditioned on the applicant working with the Planning and Zoning Office to establish the parking setback per the Code. The applicant understands and agrees with this.

ACTION:

Motion by George Van Nest, seconded by Wendy Salvati, to **approve** the Change In Use from Residential to Professional Sales Office in the Restricted Business Zone at 7767 Transit Road, with the following conditions:

1. Parking is restricted to the area beyond the 45' setback as per Town Code.
2. Subject to Building Department approval on a building permit for any structural modifications/interior renovations.
3. Subject to Town Engineer approval for additional parking/impervious surface development.
4. Subject to Landscape Committee approval for any exterior landscaping.

ON THE QUESTION:

In the event the applicant wants to park within the 45' setback, he will be required to apply to the Town Planning and Zoning Office who will review the request and most likely deny the application at which point the applicant would have to pursue the request further with the Zoning Board of Appeals.

Paul Shear	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Robert Sackett	Aye
Al Schultz	Aye		

MOTION CARRIED.

Item 2

Benderson Development
Major Arterial

Requests a Building Permit and Architectural Approval for a Façade Renovation at 5089 Transit Road.

DISCUSSION:

Jim Callahan provided the history on the project. It is located in the Eastgate Plaza which is on the east side of Transit Road, south of Greiner Road. It is an existing plaza located in the Major Arterial Zone. Per the Zoning Law, the Planning Board has the authority to approve architectural changes.

James Boglioli, attorney with Benderson Development, explained that a new tenant, LA Fitness, is going to occupy the vacant space in the plaza. Façade changes are planned to take off the existing peaked roof and expansion of the front; the building will be flattened. A bowed rotunda will be created where the LA Fitness is. The materials will be consistent with the existing shopping center. The same red brick will be used, the E.I.F.S. band will be the same color as the shopping center, and there will be a dark brick at the entrance. There will be a metal element at the top as shown in the renderings on file. The changes will be consistent and symmetrical with the shopping plaza.

Chairman Schultz said the sign permit application will need to be reviewed and approved by the Sign Review Board; the action at this meeting does not approve the sign. Mr. Boglioli understands.

ACTION:

Motion by Wendy Salvati, seconded by Paul Shear, to **approve** the architectural style of the proposed façade renovation at 5089 Transit Road and authorize the Building Department to issue necessary permits.

Paul Shear	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Robert Sackett	Aye
Al Schultz	Aye		

MOTION CARRIED.

Item 3

Northwoods Open Space Design Subdivision
Residential Single Family

Requests Final Scope Approval to initiate a Draft Environmental Impact Statement for an Open Space Design Subdivision on the north side of Greiner Road, east of Shimerville Road.

DISCUSSION:

Jim Callahan provided the background on the project. It is located on the north side of Greiner Road between Shimerville Road and Thompson Road. It is existing vacant land located in the Residential Single Family Zone. The applicant is proposing an Open Space Design Subdivision. A Positive Declaration was issued on November 16, 2011; a draft scope was approved on February 29, 2012. The applicant is present seeking approval of a final scope to initiate development of a Draft Supplemental Environmental Impact Statement.

Chairman Schultz explained that the Open Space Design is a Zoning Overlay which means the final decision on approval of the concept will be the Town Board's.

Timothy Pazda recuses himself from the discussion and vote on this agenda item as he owns property close to the project site.

Jeffery Palumbo, of Damon Morey, LLC, is representing the applicant. Mr. Palumbo has reviewed the proposed changes to the scoping document and believes it is in accord with the comments that the Town received during the 30 day comment period.

Wendy Salvati makes the following changes to the Draft Scope document:

- Page 2, Section II, item “G-Cumulative Impacts” is to be added.
- Page 2, Section II, item “H-Other Sections” is to be added as required per 6NYCRR-617 of the regulations as they pertain to the contents of an EIS.
- Page 4, Section III, item D-Aesthetic Resources the following shall be added, “Provide an analysis of how views of the site will change including the provision of sight line diagrams or other visual simulations depicting site entry points particularly from Greiner Road and Country Club Drive.”
- Add item “G-Cumulative Impacts Analysis-to evaluate the development of the proposed project along with other projects approved for development in the area including the build-out of Waterford and Spaulding Green.” to Section III.
- Other sections that are required and should be included are: Growth of Impacts, Conservation of Energy Resources, and Irretrievable Resources.

Mr. Palumbo said the Board cannot ask for cumulative impacts on proposed projects. Mrs. Salvati agreed and changed the wording to “approved” as noted in the fourth item listed above.

Mr. Van Nest said the EIS must comply with the SEQRA regulations. Mr. Palumbo does not have a problem with this.

Mr. Van Nest clarified that if the Planning Board votes to accept the Draft Scope, it does not mean the project has been approved. It means that the scope of issues related to the project, which have been identified by the public, identified by the involved agencies, identified by the Planning Board and identified by the applicant is being approved such that the applicant will take the document and use it as an outline for the environmental impact statement which needs to be prepared and will subsequently come back before the Town for review.

Mr. Palumbo said there have been comments regarding the configuration of the lot itself; they have not made any changes to that because the Concept may change based on the decisions made from the SEQRA process. Those comments have not been ignored.

Dan Palumbo lives behind the project site and said that he is “OK” with the subdivision abutting his property.

Ismet Hallac owns 15 acres of property adjacent to the project site. The project site borders approximately 75% of his property. He asked that he be treated the same as all the other neighbors and be provided with a buffer zone behind parcels on the west side of the property.

Mrs. Salvati noted that Section C of the scoping document includes an item listed as Historical and Archeological Resources, so the applicant must take historical resources in the vicinity of the project site into consideration.

Victor Miller, of 5221 Shimerville Road, is concerned with the cumulative impact this project could have on the residents of the area and beyond. He is concerned with density, increased traffic and traffic control, and sewer capacity. He asked that the residents be kept up to date with the findings of the impact studies. Chairman Schultz explained that once the document is prepared it will be made public and all those interested can view and comment on it. The Draft Environmental Impact Statement (DEIS) will be made available through the Planning and Zoning Office, the Clarence Library and it will be on-line at www.clarence.ny.us.

Mrs. Salvati read from the DEC letter dated March 28, 2012: “Section V. Alternatives-This section should include a discussion of alternative designs meant to explore off-site and on-site avoidance and minimization of wetland impacts. This would include alternative locations for the proposed project and alternative designs and layouts of the subdivision at the proposed site.” Mrs. Salvati asked what the DEC meant by “alternative locations”. She would need to contact the DEC to obtain an answer. Mr. Palumbo said he thought it meant alternative locations for mitigation. He will contact the DEC for clarification. Mrs. Salvati also questioned what “preferred alternative” meant in the scoping document Section V (3).

ACTION:

Motion by Wendy Salvati, seconded by George Van Nest, to **accept** and finalize the scope of the proposed Draft Supplemental Environmental Impact Statement (DSEIS) as prepared and modified through comments from the public that were received at the Planning Board meeting of February 29, 2012, comments received through letters from the public that were received during the scoping review period and comments received from involved agencies including a letter from NYSDEC dated March 28, 2012, and to allow the project sponsor to proceed with development of the DSEIS on the project.

ON THE QUESTION:

Chairman Schultz noted that one of the base documents is a scope that was updated on April 4, 2012.

Paul Shear	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Recuse
Wendy Salvati	Aye	Robert Sackett	Aye
Al Schultz	Aye		

MOTION CARRIED.

Timothy Pazda returned to the meeting.

Item 4

Dan Palumbo
Industrial Business Park

Requests State Environmental Quality Review Act (SEQRA) Determination and Concept Approval for an Industrial Business Park at 9210 County Road.

DISCUSSION:

Jim Callahan provided the history on the project. It is located on the north side of County Road, east of Heise Road. It is existing vacant property located in the Industrial Business Park Zone. The applicant is proposing to develop an industrial building per the submitted design.

Dan Palumbo, resident of the Town of Clarence, is present.

Chairman Schultz said the issue of drainage has been brought up several times. At Development Plan Approval the applicant will need to obtain approval from the Town Engineer.

Mr. Palumbo said the paperwork for the drainage has been approved by the property owner behind him. He understands that he will need this paperwork before the Town Engineer approves the drainage on the project and before Development Plan Approval.

Mr. Shear noted that the DEC said the project site may be potentially archeologically significant; they are suggesting an evaluation be done by the Town prior to action under SEQRA. Clear evidence of transfer of ownership of the property is required.

Mrs. Salvati said this site falls at the edge of a circle on the NYS Office of Parks and Recreation Historic Preservation Circles and Squares map. This gives a 1 mile radius around possible archeological finds. Mr. Callahan noted that the industrial park project across the street and two other projects in the area received a Negative Declaration; these projects all fell within private land that was previously disturbed. The determination on previous projects is that it is not an issue.

Mr. Sackett said he was comfortable with the DEC indicating the project is in the Town's discretion, he would be willing to waive it as a cost element. Mr. Shear agreed and said it should be discussed now.

Chairman Schultz noted the Part II of the SEQRA form the project is listed as archeologically sensitive and minor impact.

Keith Seitz, of 9211 Martin Road, said the applicant did not talk to him to make arrangements to have the water run through the ditch. Mr. Seitz submits four (4) photos to the Board. The first shows the culvert that runs across Martin Road, the water is from a standard rain storm, and from time to time the water runs over the road. Another photo shows the creek that runs alongside his property; the water easily gets to be 3' high in a standard rain storm, he does not want more water running into it. The other photos show similar situations across the street from Mr. Seitz' home where a standard rain storm floods the front yard of one neighbor and a driveway of another neighbor. The photos are on file. Mr. Seitz is concerned with the drainage. He has small children who play in his back yard; he is requesting a 20' berm with trees be installed between his property and the project site for the safety of his children. Chairman Schultz pointed out that the plan shows a 45' landscaped berm between the project site and Mr. Seitz' property.

Ken Seitz, of 9201 Martin Road, said his concerns are the same as his son's, Keith Seitz, but he also has a visual concern. The location of the parking lot will allow headlights of the cars to shine onto his property. He also questions the lighting in the parking lot. He does not want to stop the project but wants to make sure there is a proper berm, proper landscaping and a follow up on it.

Joe Janson, of 9218 Martin Road, lives across the street from the project but the ditch runs through his front yard. If there is more run-off added to that ditch it will impact his yard and he cannot afford to do anymore re-digging, re-trenching or adding large pipes. The drainage needs to be addressed.

Mrs. Salvati explained that the applicant is required to make sure he has facilities to accommodate storm water run-off, the plan shows a storm water detention basin at the back of the site. The Town Engineer has to review the plans for the design of the basin to ensure that it will hold run-off that comes off any paved surfaces or the roofs of buildings and discharge it so that it doesn't allow any more water to come off the site than what comes off under pre-construction conditions. The applicant has to guarantee that this facility for the storm water drainage is designed so that it will not allow any more water than what is coming off the site now and the volume of water can't run into that ditch faster, it can't put any more water than what is going there now. The Planning Board will not make a final decision on the site plan until the Town Engineer approves the design.

Chairman Schultz said the specifics on building and driveway lighting will be addressed at the Development Plan discussion. The standard is that the lighting is downcast. Mr. Palumbo said there would be minimal lighting at the site. No one will be using the site at night.

ACTION:

Motion by Timothy Pazda, seconded by Richard Bigler, pursuant to Article 8 of the Environmental Conservation Law, to **issue** a Negative Declaration on the proposed Dan Palumbo Industrial Business Park Structure. This Unlisted Action involves the construction of a new building in the Industrial Business Park Zone with associated parking and infrastructure. After thorough review of the submitted site plan and Environmental Assessment Form it is determined that the project will not have a significant negative impact upon the environment.

Paul Shear	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Robert Sackett	Aye
Al Schultz	Aye		

MOTION CARRIED.

ACTION:

Motion by Timothy Pazda, seconded by Richard Bigler, to **grant** Concept Plan Approval on the proposed Dan Palumbo Industrial Business Park building located at 9210 County Road in the Industrial Business Park Zone, subject to the following conditions:

- a. Subject to Town Engineer approval on the required grading and drainage plans at Development Plan submittal.

b. Subject to Landscape Committee approval on required buffering to adjoining residential uses.

ON THE QUESTION:

It is clarified that there must be an agreement that is acceptable to the Town Engineer on the applicant’s acquisition of land that allows the drainage to reach the ditch. Mr. Palumbo is aware of this. He also understands that the agreement must be submitted to and accepted by the Town Attorney’s office.

Paul Shear	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Robert Sackett	Aye
Al Schultz	Aye		

MOTION CARRIED.

Item 5

Damon Morey, LLP
Major Arterial

Requests Preliminary Concept Review of a proposed Automotive Sales/Service Operation at 5817 Transit Road.

DISCUSSION:

Jim Callahan provided the history on the project. It is located on the east side of Transit Road, north of Highland Farms Drive and is existing vacant land. The applicant was tabled at the March 21, 2012 meeting of the Planning Board to develop additional information on the Concept. The applicant is present to further detail the project and receive a formal environmental review.

Jeffery Palumbo, of Damon Morey, LLP, is representing the petitioner. Mr. Palumbo explained that the parking calculations have been broken down on the most recently submitted plan. The number of bays and buildings has been taken into consideration. The required parking is 69 spaces; however the plan shows more than that. The applicant would like to have less parking spaces and more green space. Based on the applicant’s experience he feels the proposed number of parking spaces is accurate. Mr. Palumbo was aware that the Master Plan 2015 calls for this parcel to eventually be rezoned to Commercial; however he was unaware of the ordinance that prohibits parking in the front setback area in Major Arterial. Mr. Palumbo said he does not see any prohibition in the ordinance.

Mr. Palumbo said there is a tremendous amount of interest in this parcel because of the newspaper articles; he is under specific time frames and if he does not meet them the parcel could be sold to the next interested party.

Mr. Palumbo noted that the plan has been modified to show access to the parcel to the south.

Mr. Palumbo was asked to address the drainage and detention. The plan shows the retention within the 45’ setback area. He considered the retention area as part of the 45’ buffer area and although that retention can be considered towards the overall green area for lot coverage, it cannot be considered as part of the 45’ buffer area. He said he will make the retention work without going on to the next parcel. He will also make the parking work.

Mr. Palumbo addressed the issue of segmentation. He does not know what will happen with the parcel immediately adjacent to the project site. That parcel is not dependent in any way on the parcel that is being developed, nor is the project site dependant on that parcel. This allows the Board to move forward on the proposed project without examining the SEQRA ramifications of the other parcel until such time a use for that parcel is brought forward.

The vacant existing building at the rear of the property is a non-conforming structure; they are not required to remove it. The applicant will use the building for storage.

Rob Ferrini, of Highland Farms, said he is speaking for three other families that could not attend the meeting. He is in the car business and as a neighbor to this type of business he does not want the noise and the paint fumes. The direction of the wind will carry the fumes into the neighborhood.

Mr. Van Nest asked if the applicant will be required to have a Clean Air Act Permit from the State DEC since there will be a paint booth on the premises. Mr. Palumbo said yes and went on to explain that the applicant will be using water based paint so the issues with particles being released are much different than before. This is state-of-the-art equipment, there will be no smells. The booths will be inside the structure, the painting and the drying will take place inside the building.

Mr. Bigler said there should be zero emission from the paint booths because it should be monitored and inspected regularly. Mr. Palumbo guessed that there would be an annual inspection of the booths.

Chairman Schultz said he walked through the applicant's facility on Sheridan Drive and the only noise was the air compressor on the inside of the building, the noise lessened to almost nothing once outside the building and 20 feet away. Chairman Schultz was told that the new standard is to put a compressor inside a building, inside the building so that it is not noisy in the bays.

Mrs. Salvati said she would like to see a revised plan that has a 45' greenbelt and 70% or less lot coverage. The applicant could bring this before the Executive Planning Board for discussion.

It is clarified that there is no segmentation.

Mr. Sackett said if the applicant needs the parking spaces, and must obtain the 70% or less lot coverage, and must accommodate 25' in front and must accommodate a sidewalk; the applicant might have to encroach that 1.1 acre. Mr. Palumbo assured the Planning Board that the applicant will not encroach on that 1.1 acre. In order to make the project work they cannot invade that parcel, the property is too expensive. They will give up parking spaces if need be.

An engineer has not been hired for the project yet.

Mr. Palumbo explained that the existing building on the south end of the property encroaches on the 45' buffer, but it is a pre-existing non-conforming use so it is allowed to remain there.

Jim Callahan clarified that the Master Plan was amended to identify this parcel as Commercial. When this project comes in, the Planning Board should recommend that it be Commercial. A Public Hearing should be held for a Special Exception Use Permit and prior to that hearing a public hearing for re-zoning should be held.

Mr. Palumbo will submit a revised plan per the discussion this evening.

Mr. Callahan said a site plan is sent to involved agencies with coordinated review. Mr. Sackett said he is not comfortable sending a site plan that is off-code, thus he would not vote to initiate SEQRA. Mr. Sackett asked how the project would be effected if the applicant submitted a revised plan and it was discussed at an Executive Planning Board Committee meeting then action was taken in two weeks at the next Planning Board meeting. Mr. Palumbo said it would hurt the project. He will have a compliant plan to the Planning and Zoning office by Monday.

Mr. Pazda asked if a compliant plan could be made a condition on any action taken at this meeting. Deputy Town Attorney Steve Bengart said the only condition that could be made is that a compliant plan is received, as the Executive Committee does not have authority make decisions. If that condition was made, the Board would be stuck with whatever plan the applicant submitted. Mrs. Salvati said if that plan was non-compliant the Board would not commence SEQRA review.

Mr. Van Nest noted that this plan is maximum build-out.

Mr. Palumbo said the cars “in process” will be inside the buildings. The applicant needs 102 parking spaces for various reasons: people will bring in several vehicles at one time, customers park in the front and in the back, and the time of day and weather also play a role.

ACTION:

Motion by George Van Nest, seconded by Paul Shear, to **recommend** the Town Board accept the Part 1 Environmental Assessment Form as complete and seek Lead Agency status and commence a coordinated review under the State Environmental Quality Review Act on the proposed Special Exception Use Permit for an automotive use at 5817 Transit Road. This Unlisted Action involves the development of an Automotive Sales/Service Operation in the Major Arterial Zone.

ON THE QUESTION:

It is clarified that the Town Board is seeking Lead Agency on this project.

Chairman Schultz said the applicant is to submit a revised plan showing 70% maximum lot coverage, and a 45’ landscaped greenbelt.

Mr. Sackett noted that based on Mr. Van Nest’s statement that this is maximum build-out, he changes his position.

Paul Shear	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Robert Sackett	Aye
Al Schultz	Aye		

MOTION CARRIED.

Meeting adjourned at 8:55 p.m.

Carolyn Delgato
Senior Clerk Typist