

Town of Clarence
One Town Place, Clarence, NY 14031
Planning Board Minutes
Wednesday May 1, 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

Jim Dorigo
Industrial Business Park

Requests Development Plan Approval of a
proposed Dog Kennel at 9785 County Road.

Item 2

Gabe's' Collision
Major Arterial

Requests Concept Plan Approval and a
recommendation under the State Environmental
Quality Review Act (SEQRA) for a proposed
Automotive Collision, Sales and Service Facility
at 5817 Transit Road.

Chairman Robert Sackett called the meeting to order at 7:30 p.m. Councilman Robert Geiger led the
pledge to the flag.

Planning Board Members present:

Chairman Robert Sackett
2nd Vice-Chairman Paul Shear
George Van Nest
Gregory Todaro

Vice-Chairperson Wendy Salvati
Timothy Pazda
Richard Bigler
Steve Dale

Planning Board Members absent: None

Town Officials Present:

Director of Community Development James Callahan
Junior Planner Michael Hutchinson
Councilman Bernard Kolber
Councilman Robert Geiger
Deputy Town Attorney Steven Bengart

Other Interested Parties Present:

Al Hopkins
Dan and Patti Gamin

Ron and Flossie Ziolkowski
Norma and Martin Rohman

Paul and Annette Nocera
 J. Ballachino
 Tony and Sue Barone
 Roger Maddigan
 Paul Cunningham
 Jack Walko
 James McCabe
 Ben Olivieri

Sal Ballachino
 Phil and Paula Gullo
 G. Montilino Sr.
 Ann Cunningham
 Steven Jagord
 Susan Walko
 Linde Madd

Chairman Sackett noted that although there is a full board this evening and Steve Dale will not be voting on any agenda items he will be voting on the approval for February 6, 2013 minutes because there were only four members at that meeting and he was one of them.

Motion by Paul Shear, seconded by Richard Bigler, to **approve** the February 6, 2013 minutes, as written.

Steve Dale	Aye	Gregory Todaro	Abstain
Richard Bigler	Aye	George Van Nest	Abstain
Timothy Pazda	Abstain	Paul Shear	Aye
Wendy Salvati	Aye	Robert Sackett	Abstain

MOTION CARRIED.

Motion by Gregory Todaro, seconded by Paul Shear, to **approve** the minutes of the meeting held on April 17, 2013, as amended with the following clarifications:

- page 72, first paragraph, the last two sentences are amended to read, "It was specifically asked if the Clarence Center Open Space Design was part of Spaulding Green and the answer was no. It was not listed as an exception; it was listed as a blank on the most recent Spaulding Green site plan (Phase 11).
- page 73, second last paragraph is amended to read, "...and that the lot layout for the proposed project may need to be adjusted."

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Recuse
Paul Shear	Aye	Wendy Salvati	Abstain
Robert Sackett	Aye		

MOTION CARRIED.

Chairman Sackett explained that Mr. Callahan will provide information on the projects. The petitioner will discuss the project with the Planning Board. The public will be invited to speak. The Board and/or the petitioner will address the questions/comments from the public. The Planning Board will then take an action.

Item 1

Jim Dorigo
 Industrial Business Park

Requests Development Plan Approval of a
 proposed Dog Kennel at 9785 County Road.

DISCUSSION:

Jim Callahan provided the background on the project noting that it is located on the south side of County Road, east of Goodrich Road along the previously approved private road known as Killdeer Lane. It is existing vacant land. The proposed kennel received a Negative Declaration under SEQRA and a Concept Plan Approval on September 5, 2012. The applicant is present seeking final Development Plan Approval on the project.

Al Hopkins with Metzger Civil Engineering is present along with the owner Jim Dorigo. Mr. Hopkins said the plan has not changed. The project received approval from the Town on the final engineering plans on April 22, 2013. They have also received approval from the Erie County Health Department on April 19, 2013.

Chairman Sackett noted that he received clarification that there will be no dumpster on site.

ACTION:

Motion by George Van Nest, seconded by Wendy Salvati, to **approve** the Development Plans for the proposed Dog Kennel located at 9785 County Road as submitted by Metzger Civil Engineering and dated April 4, 2013 with the following conditions:

- a. Subject to all conditions of the Town Engineer.
- b. Subject to all conditions of the Erie County Health Department.
- c. Subject to final landscape plan approval by the Landscape Committee prior to Certificate of Occupancy being issued.
- d. Subject to Open Space and Recreation Fees.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Paul Shear	Aye	Wendy Salvati	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Item 2

Gabe's Collision
Major Arterial

Requests Concept Plan Approval and a recommendation under the State Environmental Quality Review Act (SEQRA) for a proposed Automotive Collision, Sales and Service Facility at 5817 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 Highland Farms Drive. It is existing vacant land located in the Major Arterial Zone.

The applicant has been re-referred by the Town Board to the Planning Board for review and recommendation.

Jeff Palumbo, of Damon Morey LLP is present along with petitioner Jeff Mucciarelli. Mr. Palumbo noted the most recent changes to the plan which include the addition of approximately 25 evergreen trees and the parking has been moved from the rear of the site to the side. Mr. Palumbo addressed the issue of whether or not a collision shop is a permitted use in the Major Arterial/Commercial Zoning district. He knows there have been discussions regarding the Master Plan guidelines versus the Zoning Ordinance. He believes that New York Law sees the Master Plan as serving the Planning Board and the Town Board as a guideline, it is how you see development should take place in the future in certain designated areas. The Zoning Ordinance is very specific as to what is permitted and what is not permitted. In this case, the question is does the Master Plan control or does the Zoning Ordinance control. If it is the Zoning Ordinance, is this a permitted use? Mr. Palumbo believes that what NY Law allows the Town Board is to make a determination that collision can be interpreted as a permitted use in either the Major Arterial or Commercial Zone given the fact that it is not excluded. Collision is specifically mentioned in the Industrial Zone as a permitted use, but under NY State Law that does not mean that it is specifically excluded from any other zoning district unless it appears as an exclusion. Mr. Palumbo said it is either up to the Code Enforcement Officer or the Town Board to make the final determination. The applicant has done everything they've been asked to do. Mr. Palumbo asked that the Planning Board make a favorable recommendation to the Town Board.

Mr. Palumbo said the applicant was asked to submit information on the volatile compounds that may be emitted as a result of the collision shop being located on this premises. A report from Golder Associates has been submitted and is on file. It is noted that in all states a collision shop is allowed to emit a certain amount of pollutants. The emissions from Gabe's Collision shop are 98% less than what the state guidelines are. The petitioner is not placing anyone in danger, the emissions that would be coming from this are far less than the benzene that is emitted when gas is pumped at a gas station.

Mr. Palumbo addressed the concern of noise coming from the compressor. The compressor will be located inside a room, inside the building. The decibel level inside the building, not inside the room where the compressor is kept, is 69. A normal conversation is 60 decibels. There will be no compressor noise outside the building. There will be no vehicles stored outside the building with the exception of a situation where a car is towed there in the middle of the night, but that car will be taken into the building first thing in the morning. The dumpster is enclosed within the existing barn.

Chairman Sackett said from the Planning Boards perspective public opinion drives the Master Plan, drives the Zoning, drives the projects.

Mrs. Salvati said Town Law requires that zoning be in accordance with the Comprehensive Plan. The Planning Board did a thorough assessment of Transit Road from Wehrle Drive to County Road in terms of the uses that existed along each segment of that roadway and the amount of open space or separation that existed between commercial uses and residential uses. Out of that assessment came the recommendation to down zone the stretch of Transit Road from Roll Road to Clarence Center Road. That area was down zoned from Major Arterial to Commercial. One reason for this had to do with community character, the fact that there were a number of uses in the area that were considered sensitive and needed to be protected from larger and more significant uses. The Planning Board has also looked at other collision shops in the area. One determination was that a prior Planning Board looked at an application for a collision shop up the road from this particular location and they recommended denial of that project and it was not approved by the Town Board because of community

character issues. Currently the Zoning code does not enumerate a collision shop as a special exception use in a Commercial district. But a collision shop is enumerated in the Industrial Business Park zoning. Mrs. Salvati said that is how the Planning Board reads the law and that is what they based their prior denial on. She cannot come up with any reasoning to see their position change. They looked at Bitterman’s up the road and it has a lot of open space around it and not a lot of residential use around it. There is another use up the road called Corvette Performance, this was not approved as a collision shop but it has a separation between the residential uses. The West Herr Automotive project on Main Street also has separation between it and residential uses. A collision shop is not enumerated as a permitted use in the Commercial zone.

Chairman Sackett noted that all letters received have become part of the record.

ACTION:

Motion by Timothy Pazda, seconded by Wendy Salvati, after review of the submitted site plan and all supporting documentation, it is determined that the proposed collision shop represents an inconsistent use with Town codes.

ON THE QUESTION:

Mrs. Salvati said similar types of operations are located within the Major Arterial and Commercial zones along Transit Road and Main Street and they exist as pre-existing uses and provide substantial separation that is consistent with the Master Plan amendments.

Chairman Sackett said he does not see any compelling evidence that would allow him to tell the board that this is a special exception. He looked at the Master Plan and the Zoning. The project does not support what the Planning Board is being asked to do.

Mr. Van Nest said this matter has been thoroughly reviewed. It is unfortunate that this project has been bounced around as much as it has. A decision needs to be made. Mr. Van Nest referred to his comments from a prior meeting and said he believes this proposed use is consistent with the permissible uses within a Commercial Zone. The collision shop use is in large part consistent with the nature of uses as in hazardous substances, hazardous materials and operations of a gasoline service station, potentially a business/commercial park, an automotive service station, commercial garage, it is certainly a light manufacturing as well as indoor storage of hazardous materials. Mr. Van Nest said he believes the proposed project’s use is consistent with those types of operations. However, it is not the Planning Board’s decision. He suggested taking a vote and moving the project one way or the other.

Chairman Sackett said the following vote will be taken “to move the question, not on the question”. He said you have to vote on moving the question, Deputy Town Attorney Steve Bengart said that is right.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Paul Shear	Aye	Wendy Salvati	Aye
Robert Sackett	Aye		

MOTION CARRIED.

The following vote is on the previously stated motion made by Timothy Pazda, seconded by Wendy Salvati:

Gregory Todaro	Nay	Richard Bigler	Aye
George Van Nest	Nay	Timothy Pazda	Aye
Paul Shear	Nay	Wendy Salvati	Nay
Robert Sackett	Aye		

MOTION FAILED.

Deputy Town Attorney Steve Bengart said the Planning Board has the ability to do another vote or take another action.

Mr. Bigler clarified that the motion was to say that the proposal was inconsistent with Town use.

Deputy Town Attorney Steve Bengart clarified and explained the result of the vote; he said it shows this Board’s recommendation as the use being consistent with Town use. Mr. Pazda said his motion was to say it was inconsistent with Town Code; that motion failed.

Deputy Town Attorney Steve Bengart said another motion can be made but it cannot be the same one, that motion was made and voted on, that issue is done. He does not believe a vote can be taken twice on the same motion.

ACTION:

Motion by Wendy Salvati, seconded by Timothy Pazda, to **recommend denial** of a Special Exception Use for Gabe’s Collision at 5817 Transit Road as it is found to not be consistent with Town Code.

ON THE QUESTION:

On the record and on the question, Mrs. Salvati said she is clarifying this so that everyone understands the motion that the Planning Board is making is clearly to recommend denial of the Special Exception Use Permit for Gabe’s Collision at 5817 Transit Road because the Planning Board has reviewed this and it is the opinion of this Board that it is not a use that is allowed by Code.

Chairman Sackett said this action is being taken because the original motion was not clear to some people who were voting.

Mr. Palumbo objects to the re-vote.

Gregory Todaro	Nay	Richard Bigler	Aye
George Van Nest	Nay	Timothy Pazda	Aye
Paul Shear	Nay	Wendy Salvati	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Meeting adjourned at 8:05 p.m.

Carolyn Delgato
Senior Clerk Typist