

## Clarence Planning Board Minutes

Wednesday, August 16, 2006

### Work Session 7:00 PM

Patricia Powers, Chairperson, called the meeting to order at 7:00 PM.

Planning Board Members Present:

Patricia Powers  
Richard Bigler  
Gerald Drinkard

Wendy Salvati  
Jeffrey Grenzebach  
Timothy Pazda

Other Town Officials Present:

Councilman Scott Bylewski  
James Callahan, Director of Community Development  
James Hartz, Asst. Director of Community Development  
David Donohue, Deputy Town Attorney

Other Interested Parties Present:

Patricia Powers announces the resignation of Phil Sgamma effective August 14, 2006 as he and his family are moving to Florida.

Patricia Powers asks Jim Callahan to clarify the procedure once the changes to the Zoning Law are recommended by the Planning Board, is it then sent to the TEQR Committee? Jim Callahan advises, at some point, it needs to go through the TEQR process for review. Mr. Callahan suggests recommending the changes to the Town Board and referring it to the TEQR Committee, as well. It can be put on the TEQR September 2006 meeting agenda.

A recommendation to the Zoning Law can be made at this meeting. In Councilman Scott Bylewski's opinion, as long as a regularly scheduled Planning Board meeting is held, the Zoning Law discussion is listed on the agenda and minutes are taken, it is acceptable to make a recommendation at this meeting.

Patricia Powers asks how the Zoning Law revisions will be approved. Jim Callahan explains that the Town Board would have to set a date for a public hearing and advertise it, then, pursue adoption of the Zoning Law revisions.

All members of the Planning Board have a copy of the paperwork reflecting the suggested Zoning Law changes. The most updated change shows the addition of the definitions. Jim Callahan explains that the revisions stem from the May 31, 2006 Planning Board meeting where the potential changes were discussed. The majority of the revisions are clarifying existing portions of the law. Mr. Callahan refers to Chapter 2 General Provisions Section 2.2 item (e) and explains that it was amended to reflect where and how private roads may be allowed. Item (e) was amended to identify that there are exceptions to paved public right-of-ways and those are the Open Development, the Open Space

Design and those as determined by the Town Board where public benefit can not be derived with extension of a public road. Item (f) was eliminated.

Gerald Drinkard said that this does not deal with the issue of paving. Jim Callahan explains that the paving issue is still in the Open Development section of the Subdivision Law and can be amended by the Town Board with a Super Majority vote.

Gerald Drinkard asks if each recommended change needs to be voted on individually or can the Planning Board vote on it as a package. Jim Callahan said the Planning Board can recommend the entire package at once.

Councilman Scott Bylewski said that, for consistency of language sake, when we talk about a "private driveway" in the Open Development Area under the Subdivision Law, is this what we are trying to effectuate under the change for Section 2.2 (e)? Do we want it to be a "private driveway", like the same thing in the Open Development Area. Jim Callahan said it also includes Open Space Design private roads, so it is not limiting and this is where some of the confusion was; can you allow a private drive beyond an Open Development? Councilman Bylewski said he was referring to the actual terms. The term "private driveway" is used in both the Zoning and Subdivision Laws. Jim Callahan agrees, the term should be "driveway".

Tim Pazda asks if the term is changed to "driveway", isn't there a need to specify "drive" somewhere else, because Open Space projects are going to be more than just driveways, they may be private drives, as well. Councilman Bylewski said the Zoning definition for a driveway is a private roadway utilized for providing access from a public road to a permitted use. He then provides the definition of a "driveway" as listed in the Subdivision Law: An access point serving one or more lots that provides ingress or egress to a local or collector road or street. Mutually owned driveways must have reciprocal easements and a common maintenance agreement. Councilman Bylewski's question is which definition to use in the Zoning Law.

Gerald Drinkard said the definition of a "driveway" in the Subdivision Law is much more inclusive.

Wendy Salvati voices her concern regarding the use of the word "public" in the Zoning Law definition of a "driveway" will get misinterpreted. What this means is just a road used by the public, whether it is a public or private road.

Gerald Drinkard said when you get into the Subdivision Law it presumes you are going to build on the lots.

Wendy Salvati likes the Subdivision Law definition for a "driveway" better than the Zoning Law definition. Even if only the first line of the definition is used, this way the definitions in each law are consistent. Councilman Bylewski thinks both lines in the definition should be carried over to the Zoning Law. The second line is not taking anything away, it's just further explaining what a driveway is without limiting to people, except that if they are going to be mutually owned they better have a maintenance agreement of some sort, which would actually hit into commercial driveways.

Wendy Salvati asks if in saying a group of five or more residential lots must have access available from a public street with a sixty foot (60') right-of-way, does this presume that all of our roads have a minimum of sixty foot (60') right-of-way? What if someone wants to subdivide on a road

that does not have a sixty foot (60') right-of-way? Jim Callahan advises all the Town roads have a sixty foot (60') right-of-way. Councilman Bylewski asks, along these lines, what do we have on the subdivision side in dealing with the roadways, at least for ones going in there, maybe not necessarily some of the roadways in existence, there could be a smaller Town road somewhere.

Wendy Salvati refers to page 22 of the Subdivision Law where it defines right-of-way widths, alleys are listed as thirty-six feet (36') wide. She thinks this was added to accommodate TND development. Her point is that this is in the regulations and someone could say they want to build a Traditional Neighborhood Design development and it is going to have alleys, could they split lots off the alley? How do we define an alley? She refers to the definition of an alley in the Subdivision Law: A strip of land over which there is a right-of-way, municipally or privately owned, serving as a secondary means of access to two (2) or more properties. The definition clears the issue.

Patricia Powers refers to the change on page 6 of the Zoning Law, Chapter 2, item 2.10.2. Jim Callahan explains that this clarifies that no other commercial vehicles are allowed. Wendy Salvati asks for an explanation on Walgreen's being located in a TND, she thinks they should be allowed more than one (1) parking space per one-thousand square feet (1,000'). Jim Callahan explains that this is related to commercial vehicles parked in a residential or agricultural zone. Wendy Salvati was ahead one page and referencing the next recommended change which is Chapter 2, page 11. Returning to page 6, Councilman Bylewski asks if this refers to any commercial vehicle parked for any period of time. David Donohue thinks that is the intention. Councilman Bylewski uses the example of a moving truck coming in to the neighborhood. Patricia Powers said if you are the mover, you own the truck and you plan to park it in your driveway, this happens often around Town. Councilman Bylewski is referring to a person who rents a moving truck. Jim Callahan said if this was brought to the attention of a Zoning Enforcement Officer, they would be cited and given ten (10) days to clean it up. Councilman Bylewski replies, "But that's not what this says, it says all other commercial vehicles are prohibited." David Donohue then said it can not be a rental vehicle because the vehicle must be owned and registered within the last year to the owner or occupant of the property where it is placed. Jim Callahan goes on to read the remainder of the item: The requirement shall not be interpreted to prohibit vehicles from loading and unloading household goods in any zoning district for a period of up to twenty-four (24) hours. Wendy Salvati said this will prevent people from putting dump trucks or trailers in their yard.

Patricia Powers refers to the recommended change within Chapter 2, page 11 of the Zoning Law, which refers to the parking for Commercial Uses in a TND. Wendy Salvati asks, "What about Walgreen's?" David Donohue explains Walgreen's is retail use, not commercial, therefore, the parking is one (1) per one hundred-fifty (150) square feet. Wendy Salvati asks for "commercial use" to be defined. The definition of "commercial use" per the Zoning Law is all retail sales establishments, office uses (medical, financial), service industry uses (restaurants, hotels/motels/inns), wholesale businesses, and general business (automotive repair). Wendy Salvati points out this includes Walgreen's. She asks why it was changed to one-thousand (1,000) square feet. Jim Callahan explains it is in the Master Plan to try and encourage adaptive reuse within the TND. Wendy Salvati said it is too general. Jim Callahan explains where you reduce parking, you reduce setback. Councilman Bylewski refers to page 13, item (D), of the Master Plan 2015 which states off-street parking standards will be relaxed to allow a minimum of the following: for business uses: the lesser of one space per employee/occupant or 1 space per 1,000 square feet of usable commercial floor space. Wendy Salvati explains this requirement is for the Hollow. Councilman Bylewski suggests the requirement could be for more than just the Hollow.

Gerald Drinkard asks if it is meant to cover a major building that has many businesses in it, some might be medical, commercial or retail. Jim Callahan said in the TND, you want to keep the scale small.

Councilman Bylewski said the Planning Board can recommend a deviation from the parking requirements, he further explains that a Super-Majority vote by the Town Board would be needed to allow the deviation. Gerald Drinkard said this allows the interpretation to come, it allows the law to remain general and interpretive, which is good.

Tim Pazda refers to the second (2<sup>nd</sup>) paragraph on page 11 of Chapter 2 with regards to shared access. He wonders if more detail should go into this paragraph since this is the only reference to shared access. He suggests encouraging shared access. Jim Callahan said the process for shared access is in place and there is enough built in flexibility in the Zoning Law for the Planning Board to mandate as they see fit. Gerald Drinkard provides a scenario to reflect how the flexibility of the law can be an advantage to the Planning Board in making a recommendation.

Jim Callahan refers to the Zoning Law Section 3.1 and explains that “Two-Family Homes” have been added under Section 3.1.2 Permitted Uses. “Secondary Living Units” have been added under Section 3.1.3 Uses Permitted with a Special Exception Use Permit. The adopted date has been added under Section 3.1.4 Lot Area Provisions, however, the date should read March 9, 2005 in lieu of March 9, 2006. This will be corrected. Under this same section Wendy Salvati wants the word “legally” to be added with regards to the platted lots; anywhere it reads “lots platted” she wants to see “lots legally platted”. David Donohue does not think the word “legally” needs to be added because of the word “platted”. Wendy Salvati reads the definition of plat from the Subdivision Law: A map cover of a major or minor subdivision that is filed with the Erie County Clerk’s Office pursuant to these regulations. David Donohue said a plat map can not be filed without going through the whole process of a major or minor subdivision. He explains that a minor subdivision is not the same as doing a deed for different parcels. It is decided that the word “legally” is redundant and will not be put in the Zoning Law as suggested.

Patricia Powers refers to Section 3.1 Agricultural Flood Zone. Jim Callahan explains that the wording “in order to be built on.” has been eliminated. Other wording has been clarified as well and further identification of corner lots has been added. Wendy Salvati suggests adding the word “both” to change the following sentence: Corner lots must front along a minimum of two-hundred feet (200’) along **both** publicly dedicated right-of-ways.

Jim Callahan refers to the added paragraph in Section 3.1 Accessory Structures page 3, this is a carry over from the old Zoning Law. Wendy Salvati would like to see a map put in this section like the ones shown in Sections 3.2.9 and 3.3.10, this will illustrate where the structures can go, they have to go behind the house. Jim Callahan explains the minimum setback from the principal structure was changed from ten feet (10’) to six feet (6’) because of the fire code. The Building Department suggested this change to be compatible with New York State.

Councilman Bylewski asks if there are any accessory structures in the front yard in the Agricultural Flood Zone. Jim Callahan said, since the old law required a minimum setback of seventy-five feet (75’), he would guess there are currently no accessory structures in front yards, he does not know of any. Councilman Bylewski asks how to accommodate a bus stop shelter put in the front yard for children who wait for a school bus. Wendy Salvati suggests listing school bus shelters in the paragraph that allows mailboxes, newspaper boxes, etc. in any front, side or rear yard.

Wendy Salvati points out there are no page numbers on some of the pages.

Councilman Bylewski refers to Section 3.3.5 Lot Width: In areas served by public sewer service, the minimum may be reduced to 125' of publicly dedicated R-O-W on each public street. He asks if the Planning Board really wants to do this even on the corners. Jim Callahan said yes, this is Residential Single-Family and that is the minimum. Gerald Drinkard asks why the minimum became 125', Jim Callahan explains that the 125' is the requirement for sewered lots. Wendy Salvati thought typically corner lots were required to be larger, she suggests changing the required footage to 150', this will provide some extra width. Jim Callahan explains that this section has been added into the text as is, it was not a change in wording or requirements.

Jim Callahan refers to Section 3.3 Residential Single-Family. The minimum setback for the side yard has been corrected from 15' to 12.5'. This is not a change, just a typographical correction. The drawing needs to be changed to reflect the correction, as well.

The changes in Section 3.3.10 Accessory Structures are acceptable by all Planning Board members. Jim Callahan points out the addition of the following requirement: No overhead door shall exceed 9' in height.

Patricia Powers refers to Section 4.0 Open Space Design Development Overlay. Jim Callahan explains this change reflects the addition of four-plexes. It also reflects the addition of "and housing types" under Section 4.2 (C). David Donohue asks if the building will occupy the entire lot. Wendy Salvati said no they will be next to each other. Jim Callahan said four (4) attached units are allowed. This can help with Open Space design by clustering.

Jim Callahan explains the wording has been changed in Section 4.3 (B) because if a project has access to public sewers than it should be allowed to cluster to save fifty percent (50%).

Gerald Drinkard refers back to page one (1) of the Open Space Design Development Overlay, Section 4.1 Purpose, and asks if a definition for "significant views" is needed. Jim Callahan explains when the Open Space Design formula is applied, significant views are not talked about. This section is talking about the design, and in the design you do want to save those significant views and you want to save the best fifty percent (50%). In the same paragraph Wendy Salvati suggests changing the "important lands" to "important resources". Councilman Bylewski suggests the sentence read "important lands **or resources**". Wendy Salvati agrees.

Wendy Salvati refers to Section 4.3 Regulations Governing Open Space Design Development and suggests replacing the word "cluster" with "Open Space Design". She also wants the word "public" removed from Section 4.3 (B) (6) (iv). Councilman Bylewski refers to 4.3 (B) (3) and would like to see something to the effect of "**up to** four-unit, one or two-story", Wendy Salvati said the units can be attached or detached. David Donohue explains a minimum lot size must be obtained for detached units. It is agreed that the word "detached" will be added to this section.

Gerald Drinkard refers to Section 4.3 (B) (6) (ii). He questions the floodplain area and asks if it shouldn't improve the one-hundred foot (100') buffer area, is it a subtractable land? Wendy Salvati said it should be. Gerald Drinkard asks if the buffer part of the wetlands is subtracted when calculating the density. It is agreed that the sentence will be amended to read, "designated wetlands and designated wetlands buffer."

Jim Callahan refers to Section 4.3 (B) (6) (iii) and suggests inserting the following sentence: or lands deemed important to preserve the existing views and character. Wendy Salvati agrees.

Councilman Bylewski refers to Section 4.3 (B) (6) (ii) and suggests removing the words “dense areas of mature” and leave only the word “woodlands”.

Wendy Salvati suggests adding a minimum lot size to section 4.3 (B) (3).

Councilman Bylewski asks if you have multiple lots in the Open Space just for four-plexes, do you accomplish the same thing? You are then looking at a half acre per lot for the four units. Wendy Salvati said it depends on what the Town Board is going to decide. It also depends on whether the units are considered townhouses or condominiums. Condominiums are just the building, townhouses can come with land. Jim Callahan suggests changing the wording in Section 4.0 (B) (3) to reflect the intent of allowing four-plexes and the minimum lot size on detached units would be five-thousand (5,000) square feet.

Councilman Bylewski said there are two (2) places in the Town that will have condo status, The Woodbridge office on Transit Road, and Laurel Park. The Town Attorney’s office is currently drafting Condo Law/Legislation which would state you can’t have a condo over or under so many square feet.

Jim Callahan refers to the changes made to Section 6.1 and explains these changes reflect added language to provide the Town Board with a basis for a defensible ability to deny a project.

Wendy Salvati has reviewed the laws of the Towns of Hamburg and Evans. The Hamburg law states that it can not be presumed that special uses are allowable and it is the responsibility of the applicant to prove to the Town that the special use would comply with provisions of the law. Then they indicate that the special use has to be four things: 1.) They have to be in harmony with the general intent of the Zoning Law 2.) They will not create a hazard to health, safety, or general welfare 3.) They will not alter the essential character of the surrounding neighborhood or be detrimental to the residents thereof 4.) They would not otherwise be detrimental to the public convenience and welfare. Special permit uses are considered on an individual basis because of their unique characteristics and special forms. Patricia Powers thinks the Town of Clarence is saying, essentially, the same thing but with different language. Councilmen Bylewski agrees and said, “except for the convenience aspect.”

Gerald Drinkard refers to Chapter 6 of the Zoning Law with regards to Telecommunication Towers and wonders if a reference to wind farms should be included. Wendy Salvati said yes it should be included. Jim Callahan explains that there is a separate Telecommunications law in Clarence. This law would include towers/wind farms. Councilman Bylewski refers to Section 173-4 Dimensional Restrictions of the Town Code, in particular item (C) Height of towers; non-commercial/wind driven devices.

Councilman Bylewski suggests amending the following sentence under Section 6.2 Procedures to: “For just cause, including **but not limited to** negative impacts...”

Regarding Chapter 7 Administration, Jim Callahan explains that “or Town Board” has been added under Section 7.06. Wendy Salvati asks why the last sentence was changed from six (6) months to two (2) years. Patricia Powers explains that sometimes the projects are large, in scale, and it takes

two years to get through the process, then comes the fundraising, so two years does not seem like a long period of time. All Planning Board members agree with the two year period.

Gerald Drinkard refers to Chapter 7, Section 7.03 (D) (8), this is not in the hand-out that is being reviewed this evening. The second sentence needs to be changed to reflect six inches (6") as opposed to eight inches (8") with regards to the measurement of trees at diameter breast height.

Patricia Powers refers to Chapter 8 Definitions. Jim Callahan explains the Wetlands definition is the same as that of the Subdivision Law. David Donohue thought that the buffer was one-hundred feet (100') for subtraction purposes. Wendy Salvati explains that the DEC has formally established an official designated one-hundred foot (100') buffer area around DEC designated freshwater wetlands, they are the only one with this establishment. David Donohue asks what the area is that protects it. Wendy Salvati said the one-hundred foot. David Donohue said that the definition does not specify the one-hundred foot (100') buffer. Councilman Bylewski said having a number in the definition, otherwise the Board is in the same "gray" area of what is the wetland buffer, how is the wetland protected? The Army Corp of Engineers does not have a formal buffer area like the DEC does.

Wendy Salvati explains that a wetland area can be declassified as a wetland area if the soil conditions change.

Wendy Salvati confirms that when the wetland is marked it is the beginning of the wetland and not the beginning of the buffer.

Gerald Drinkard suggests referencing the DEC Law in the definition of Wetland Buffer, so whatever the DEC requirement is for a wetland buffer, it will be the same for the Town of Clarence.

Councilman Bylewski suggests that under the definition of Woodlands, the words "large, medium and small" are deleted and "maturing" replace them, to describe the trees.

With regard to the definition on Wetlands, Wendy Salvati does not want to rely solely on Article 24 of the New York State Environmental Conservation Law and would like to see how the Army Corp of Engineers defines wetlands. Jim Callahan will check for a definition.

#### **ACTION:**

Motion by Gerald Drinkard, seconded by Jeffrey Grenzebach, to **table** the recommendations for the Zoning Law to allow time for the adjustments to be made to the current draft, the Planning Board will then review the revised draft.

#### **ON THE QUESTION:**

Councilman Bylewski asks if this draft will be put on the September 6, 2006 Planning Board agenda, he is hoping to have the draft on the TEQR agenda as soon as possible. Patricia Powers said they can make it an agenda item for the September 6, 2006 Planning Board meeting and as soon as the draft is ready it will be sent to the members so they can review it prior to the meeting.

Patricia Powers	Aye	Wendy Salvati	Aye
Richard Bigler	Aye	Jeff Grenzebach	Aye
Gerald Drinkard	Aye	Tim Pazda	Aye

MOTION CARRIED.

There is a gentleman present who is interested in the Woodside Drive Extension project. He has a question on the definition of “woodlands” and refers to the woodlands east of Weeks Nursery, this is the Waterford development. He asks if the definition of “woodlands” effected this development. Patricia Powers thinks that if there was a definition of “woodlands” in place at the time of the development it would have effected it. Wendy Salvati said the Tree Law would have helped as well. Councilmen Bylewski said the project predated the Zoning Code change. Wendy Salvati said the definitions and what the Planning Board says about trees and such has to be consistent in all the laws. Patricia Powers said they hope to have the Woodside Drive Extension project on the September 6, 2006 Planning Board meeting, however, it is not definite at this point. She advises the gentleman to stay in touch with the Planning and Zoning Office for the most current status.

Patricia Powers said the handout entitled “Memorandum for the record” that all members received this evening is in reference to the discussion that took place on July 19, 2006. This was the meeting between the Conservation Advisory Committee and Rick Rink from the Department of Environmental Conservation.

Patricia Powers refers to the agenda for the August 30, 2006 Joint Meeting that the Planning Board Members received this evening. Per the agenda, Jim Callahan will go through the Development procedures at the meeting. Councilman Bylewski said the Town Board members had no changes to the agenda. Patricia Powers goes through the items on the agenda and advises who will be speaking on each item. She said it would be good for the Planning Board to know what the Town Boards interest is in the Pine Meadows Golf Course. The meeting will be held in the auditorium with chairs and tables set up in a semi-circle in the “well”. If all of the items on the agenda are not discussed due to time constraints, Patricia Powers suggests a follow-up memo regarding the item. The agenda items are listed in order of importance.

Councilman Bylewski refers to the Town of Clarence Acquired Parcels and Public Space map that was distributed at the meeting. He asks if the Acquired Preservation Lands are lands that the Town Board has approved or that have been closed on. Jim Callahan explains they have all been closed on except one and that is the one with the State and Federal grant money. There is another one that is a Federal Conservation area that we were not involved with.

Meeting adjourned at 8:50 p.m.

Patricia Powers, Chairperson