

Town of Clarence  
Planning Board Minutes  
Wednesday December 22, 2010

**Work Session 6:30 pm**

Roll Call  
Update on Pending Items  
Zoning Reports  
Committee Reports  
Miscellaneous

**Agenda Items 7:30 pm**

Approval of Minutes

**Item 1**

Rock Garden Properties/Stephen Development      Requests Preliminary Concept Review of a  
Commercial      Mixed-Use project at 9470 Main Street.

Chairman Al Schultz called the meeting to order at 7:30 p.m.

Councilman Peter DiCostanzo led the pledge to the flag.

Planning Board Members present:

Chairman Al Schultz  
George Van Nest  
Gregory Todaro

Vice-Chairperson Wendy Salvati  
Richard Bigler

Planning Board Members absent:

Timothy Pazda

Town Officials Present:

Director of Community Development James Callahan  
Planner Brad Packard  
Councilman Peter DiCostanzo  
Deputy Town Attorney David Donohue

Other Interested Parties Present:

Douglas Klotzbach  
Bob Geiger  
Paul Stevens

Noel Dill  
Michael Metzger  
Arthur Fuerst

Chairman Schultz explained that the Planning Board is technically a seven (7) member board; presently there are five (5) appointed members, two (2) are absent, and one (1) alternate member. The alternate member, Gregory Todaro, will participate in all discussions and vote on all agenda items this evening.

Motion by Gregory Todaro, seconded by Richard Bigler, to **approve** the minutes of the meeting held on December 8, 2010, as written.

|                 |     |                |         |
|-----------------|-----|----------------|---------|
| Al Schultz      | Aye | Wendy Salvati  | Abstain |
| George Van Nest | Aye | Richard Bigler | Aye     |
| Gregory Todaro  | Aye |                |         |

**MOTION CARRIED.**

Chairman Schultz explained that the Planning Board is in the process of revising approval authorities per Town Board resolution of December 1, 2010. There is one agenda item this evening; it is a site plan review of the mixed use proposal of Rock Garden Properties. Under the new code the Planning Board will have approval authority for this project.

The proposal currently includes multi-family residential units in a commercial zone, which is allowed only under a Special Exception Use Permit approved by the Town Board. The procedure will be to review the project site plan in its entirety. Any approval will include a condition that the Town Board approves a Special Exception Use Permit, and a Planning Board recommendation with regard to that permit. The Town Board will have final authority on that aspect of the project. Since any action by the Planning Board or the Town Board will require an evaluation under the New York State Environmental Quality Review Act (SEQRA) the Planning Board will not be in a position to take any approval action at this meeting. The three actions open to the Planning Board are (1) to initiate a coordinated review under SEQRA (which is a Planning Board function under the December 1, 2010 resolution) or (2) to table the project for more review and information prior to initiating a SEQRA review or (3) to reject the proposal. The standard procedure begins with Jim Callahan introducing the agenda item, the applicant will discuss plans and the Planning Board will ask questions. The residents will have the opportunity to comment and ask questions as well. The Planning Board will then have more discussion with applicant and make a motion for an action.

### **Item 1**

Rock Garden Properties/Stephen Development  
Commercials

Requests Preliminary Concept Review of a mixed  
use project at 9470 Main Street.

### **DISCUSSION:**

Jim Callahan introduced the project. It is located on the north east corner of Main Street and Goodrich Road. It is an existing residential and vacant property located within the Commercial Zoning classification. The proposal was previously tabled at a Planning Board meeting to allow the opportunity for the applicant to revise setbacks and pursue additional information related to sewers. The applicant is present with a revised concept.

Noel Dill, vice-president of Stephen Development, Paul Stephen, president of Stephen Development, Douglas Klotzbach, architect, and Mike Metzger, engineer are present to discuss the project. Mr. Dill said they were asked to revisit their approach on setbacks and to complete a tree survey. They were

also asked to meet with the DEC, which they did on November 18, 2010. The Town Engineer and the Town Planner was present at this meeting as well. DEC requested the applicant to move forward with inquiries to Spaulding Lake about tying into their sewage treatment plan. The applicant has reviewed preliminary numbers as to how they could build to tie into it; they have met with the operator and Spaulding Lakes' Board. The applicant has retained an engineer to review the project and to make sure it contained the projects flows. An approximate savings of 15% would be realized by the average Spaulding Lake resident. The applicant is also moving forward with the septic plan. The DEC authorized up to a 10,000 gallon system. They are looking at utilizing the front space on Main Street to locate sand filter system. Town Engineer, Joe Latona and the Planning Board met in an informal capacity to discuss the sand filter. Mr. Dill is under the impression that the Town feels he needs to obtain a variance from the Zoning Board of Appeals or take a look at shifting the project forward to meet the 45' rear yard setback. If they were to shift the project, everything works except it gets really tight for the septic. The applicant would like to continue to look into the tie in at Spaulding Lake. Nothing will change with respect to the Coordinated Review.

George Van Nest addressed the issue of parking. He prefers less parking and asked if spots were eliminated with the redrafting of the plan. Mr. Klotzbach said the parking is right where they need it; there were originally 151 spaces they are now down to 110 spaces. This is approximately 67% of the required parking for the residential area. There is a potential for shared parking and the flexibility of mixed use is incorporated in the design. The current plan incorporates sewers. The footprint of the building would remain the same whether a sewer system or septic system is used; the use of a small percentage of that space will change. The large trees will remain.

Mr. Klotzbach agreed to wrap the sidewalk around the corner and bring it to the south side of the Goodrich road entrance. The stamped concrete will break up the black-top behind the spaces to make it fell more like a park setting. Chairman Schultz points out that there is an existing 70' front yard setback. There is some flexibility regarding the setback; the adjoining properties provide an average of 55 feet. Executive Cleaners is at a 35' setback, the applicants existing buildings are at 55' and 44' setbacks. Mr. Dill said they will look at adjusting the setbacks as best they can or obtain a variance. Even if the townhouses were moved south, the Goodrich driveway can still be maintained.

It is clarified that the greenbelt is to remain in its natural state.

Mr. Klotzbach referred to § 229-87 (C) (4) and (5) of the Town Code. Item (4) states any commercial uses shall not be located adjacent to residential uses unless separated by a minimum forty-five-foot greenbelt. Item (5) states arcades, awnings and open porches shall be permitted to encroach a maximum of 12 feet into front setbacks and side setbacks.

Deputy Town Attorney David Donohue said apartments are considered a commercial use, thus a greenbelt is required.

Mr. Dill asked if the 45 foot is a setback because there is no commercial use within 45 feet anyway. Does this constitute a greenbelt if it is apartments or is it just a residential use inside a commercial zone? Deputy Town Attorney David Donohue said it is a commercial use under the code; there must be a greenbelt-not a setback. A greenbelt would not include patios or decks; these are setbacks. Mr. Klotzbach said they may need two (2) separate variances, he asked if he needs to obtain a variance for item #4 and #5. Deputy Town attorney said there is a difference between a greenbelt and a setback. A greenbelt is a green space area and the setback refers to the building. Mr. Dill asked what situation would require a setback but not a greenbelt; he does not understand this concept. Deputy Town

Attorney David Donohue said there could be two (2) neighboring residences requiring 45' setback, but there can be a setback area that is not part of the greenbelt.

Mr. Van Nest said he is not sure a decision should be made on the issue at this meeting; he does not want to do something that is going to create an unnecessary greenspace that is going to have an impact on the overall design. He referred to the definition of Commercial Use found in the Town Code Chapter 8, page 96: essentially, commercial use would be just that. It doesn't define mixed use or multi-family in that capacity. It suggests that we have a residential use within the context of a mixed-use development. The greenbelt vs. setback issue needs to be clarified prior to any decision making.

Mr. Dill said the foremost issue in front of the Board is to initiate a coordinated review. Between now and the next meeting the applicant will come up with solutions that make the most sense.

Arthur Fuerst does not understand why there is such an issue over such a small thing as five feet (5'). He assumed that if they asked Jay, who lives there, what he thought, that would solve it all.

Chairman Schultz said the issue with the 5' is a question of complying with the code and per the Town's Deputy Town Attorney; the Planning Board does not have the option of approving something that does not comply with the code. The Zoning Board of Appeals must get involved at that point.

Deputy Town Attorney David Donohue explained that townhouses are considered commercial use and a Special Exception Use Permit is required under the commercial section of the code. There is no permissive use for multi-family dwellings in a commercial zone without a Special Exception Use Permit which can be obtained under commercial zoning. The whole project before the Board is for mixed use. One building cannot be separated from the whole project.

Chairman Schultz stated that the request to move forward with the SEQRA Review for the project will be considered at this meeting. It will take thirty (30) days before people receive answers back from the involved agencies. At that point, the next step will be decided.

#### **ACTION:**

Motion by Gregory Todaro, seconded by Wendy Salvati, to **proceed** with the initiation of the Coordinated Review with the anticipation that during the time it takes to conduct the review, the sewer question will be more clearly answered and the setback issue will be resolved in terms of what sort of variance is needed depending on what the applicant comes up with.

|                |     |                 |     |
|----------------|-----|-----------------|-----|
| Al Schultz     | Aye | George Van Nest | Aye |
| Wendy Salvati  | Aye | Gregory Todaro  | Aye |
| Richard Bigler | Aye |                 |     |

**MOTION CARRIED.**

Meeting adjourned at 8:05 p.m.

Carolyn Delgato  
Senior Clerk Typist