

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday January 10, 2012
7:00 p.m.

Chairman Arthur Henning called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Arthur Henning
Ryan Mills
Patricia Burkard

Vice-Chairman Daniel Michnik
David D'Amato

Zoning Board of Appeals members absent: Jonathan Hickey

Town Officials present:

Director of Community Development James Callahan
Town Attorney Lawrence Meckler
Deputy Town Attorney Steven Bengart
Councilman Peter DiCostanzo
Councilman Bernard Kolber
Planning Board Chairman Al Schultz
Planning Board 1st Vice-Chairman Robert Sackett

Other interested parties present:

Michael Connors
Paul Wheeler
Ken Pearl

William Rohr
Anthony Napoli
Terrance P Reilly

Old Business

Appeal No. 3

Affordable Senior Housing Opportunities of NY
Commercial

Requests the Board of Appeals approve and grant a 59 unit or a 6.6 units per acre variance to allow for the construction of a new multi-family senior housing apartment development having 131 units or 14.6 units per acre at 8040 Roll Road.

Appeal No. 3 is in variance to § 229-126 (B).

DISCUSSION:

Jim Callahan provided the background on the project. The proposal was originally introduced to the Town Board at the annual public hearing of the Master Plan 2015 in 2011. At this point the senior housing project was introduced. It was referred to the Planning Board for an analysis of the Transit Road corridor north of Roll Road and points north. The Commercial zoning district along Transit Road as it existed was 500' in depth. What was recommended and ultimately approved on a Master Plan

amendment was an addition 180' of depth of Commercial zoning and that allows for some larger uses in that zone. The 300' is typical of any large scale commercial development in the Town having a 300' separation to large lot single family. The Planning Board recommended 180' Commercial, the 300' to be Restricted Business to allow a transitional land use into the large lot single family zone. This recommendation had full analysis under the State Environmental Quality Review Act (SEQRA) and there were not significant impacts found. The Town Board acted to amend the Master Plan to increase the depth of zoning at a future date to this configuration. Once the Master Plan amendment was granted the Affordable Senior Housing project came in, was introduced to the Town Board and referred to the Planning Board. It is a Type I Action under SEQRA so it was immediately referred out for coordinated review. Full analysis from all the involved agencies including NYS DOT, Erie County DPW, Erie County DEP and the Health Department; the Action was to issue a Negative Declaration which the Town Board subsequently did. The Planning Board then acted on the Concept of this, identifying that it would require a variance in terms of the density and would also require a Special Exception Use Permit (SEUP) as issued by the Town Board. Mr. Callahan wants the Board to understand that there has been a full review of this project to date. If the variance was granted, the SEUP will be required and ultimately Development Plan approval which would require the detailed engineering and site development including landscaping, drainage and minimal architectural standards. A Negative Declaration under SEQRA identifies that there are no significant negative impacts associated with approving the project as it is submitted.

Michael Connors is present.

Chairman Henning explained that the request was tabled pending further information. Mr. Connors provided the information to all the members. The information includes the addresses of similar apartment buildings in the area and more details on the elevation of the building and its materials. He also provided traffic flow information and the details on the connection to Roll Road and a Landscape plan.

Mr. Connors said the variance request is similar to that which was granted to Coventry Green and Oak Apartments. Coventry Green has a higher persons per unit density and thus a higher persons per acre density than the proposed building. Coventry Green is available to anyone whereas the proposed building is only available to senior citizens who are capable of living independently. The unit mix at Coventry Green contains more three (3) bedroom apartments than one (1) bedroom apartments. Coventry Green received a 66 unit variance as compared to the 59 unit variance Mr. Connors is seeking. The Clarence Town Board has approved the amendment of the Land Use Map within the Master Plan to accommodate the implementation of the proposed apartment building and they unanimously issued a Negative Declaration under the SEQRA review for the rezoning and Concept Plan indicating the apartment building will have no adverse impact on the environment. The Town of Clarence Planning Board has also unanimously approved the Concept Plan for the project. The green space calculation for the approved Concept Plan is 62% which is much higher than a green space calculation would be for a shopping plaza or grocery store which are permitted uses within the Commercial district. Those uses would generate more traffic than an apartment building for senior citizens. This is evidenced in the submitted traffic study. The Erie County Traffic Engineer has advised that the proposed project will have a minimal impact on traffic in and around the surrounding area. The elevations the Board requested have been supplied. Mr. Connors is aware of the approvals that are needed by the various town boards.

Mr. Michnik visited two (2) Affordable Senior Housing Apartment buildings in the area. He said the one parking lot was busy for a Saturday; however there were no residential areas around to be affected by the traffic or the lights. This looked like it was stuck where a plaza could go. The other building that he

looked at did not have residential buildings around it either and it is located on a straight street that is busy and can handle the traffic generated by the apartment building. Mr. Michnik said the proposed site has a bend in the road and he is concerned with traffic going in and out of the project site.

Mr. Connors said he has several buildings that are immediately adjacent to residential areas; one in particular is in West Seneca, NY, where there is a subdivision next to the apartment building. The subdivision is completely sold out and the single family home rear yards abut immediately to his property. Many of these yards have no screening and have had no problems; they have been neighbors for a number of years. There are no issues with traffic or maintenance of the neighbor's property. Mr. Michnik said he has driven down Roll Road and found interesting to try and get through there with the traffic. Mr. Connors said he drives down Roll Road at the project site every day and finds no problem with the traffic; he has driven down this road to get to work for six (6) years in the morning and in the evening. Mr. Michnik said if a plaza was built there it would most likely have access from Transit Road. Mr. Connors said this property does not have ingress from Transit Road. Mr. Michnik said maybe that is something that needs to be looked at. Mr. Connors said they looked at acquiring property to obtain frontage on Transit Road but it was above and beyond the budget for a project that is directed at affordable housing for senior citizens. In response to Mr. Michnik's concern regarding a full parking lot at the other buildings he visited, Mr. Connors said they implement parking that is suitable for the building, they don't like to implement additional parking and sacrifice green space. In his experience with all the other buildings he has been involved with a 1:1 parking ratio is adequate.

Deputy Town Attorney Steve Bengart clarified that this meeting is to obtain information on the record so the Zoning Board of Appeals can make an informed decision; it is not a meeting for debate.

Mr. Mills sees the request as a substantial variance and asked Mr. Connors if he could compromise the number down and still meet the objective he is looking for. Mr. Mills thinks this is a positive project but is concerned with the large variance. Mr. Connors said originally the proposal was for 138 units, this project is not dissimilar to Coventry Green or the project that People Inc. has on Sheridan Drive. Mr. Mills said the Board looks at each parcel as a unique distinct entity; this parcel has different surroundings than Coventry Green. Mr. Connors said it would not be viable economically to pare it down that far.

William Rohr has relatives that live next to the site on Roll Road; he visits a lot and said that there is plenty of room to go around a vehicle that is waiting to turn left.

Paul Wheeler, of 5647 Kippen Drive, lives behind the property and has been extensively involved in this piece of property for the last 3-4 years. He has attended many board meetings and has no issue with this proposal.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **deny** Appeal No. 3 under Old Business for the following reasons:

- an undesirable change will be produced in the character of the neighborhood as the project would be in the middle of a residential area. The other projects are located on main highways off the Youngman.
- the benefit sought by the applicant can be achieved by some other method by reducing the size or the amount of the units to meet the code.

- the request is substantial; it is an 8.0 increase per acre.
- the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood as the size of the project is large for the site, there will be additional traffic on the road.
- the alleged difficulty is self-created because there are other parcels of property in the Town of Clarence or the applicant has the ability to reduce the size of the project.

ON THE QUESTION:

Mrs. Burkard asked if the rent would go up if the applicant pared down the size of the project. Mr. Connors explained that if they had to pare down the project it would be scrapped. It is not viable economically with smaller number of units on site. He disagrees with some of the findings listed above, he has implemented several buildings in residential areas, Coventry Green is in the middle of a residential area. He is not sure how this is a unique situation.

Patricia Burkard	Nay	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Nay		

MOTION CARRIED.

New Business

Appeal No. 1

Napoli's Men's Store
Commercial

Requests the Board of Appeals approve and grant a 4 square foot variance to allow for the installation of a 14 square foot LED sign board onto an existing pylon sign at 5841 Transit Road.

Appeal No. 1 is in variance to § 181-3 (B) (4).

DISCUSSION:

Anthony Napoli, owner, and Michael Yost, of Yost Neon Display Sign Company, are present. Mr. Napoli said he needs the sign because business is so bad, he needs more exposure. The existing sign can hardly be seen by vehicles driving by. The proposed sign will let people know what products they sell and any special events that might be happening. They have been at this location for 10 years; they were profitable in the beginning but haven't been lately.

Mrs. Burkard said if she owned one of the other businesses in the plaza she would be upset by the proposed sign because anyone driving by would only see the applicant's sign. Mr. Napoli said he obtained approval from the owner of the plaza for the sign. Mrs. Burkard asked if any of the other tenants objected to the proposed sign. Mr. Napoli has no idea, he never asked, it is up to the owner to ask. Mrs. Burkard asked why the sign can't be the allowable size. Mr. Yost said the existing sign is 70" wide. He wants to move Kings Acupuncture up and use the two bottom slots for Napoli's. If the sign stays like that it is only a 2' x 5' area. He would like the variance to allow a 2' x 7' sign.

Mr. Napoli addressed Mrs. Burkard's concern regarding the other tenants in the plaza. He noted that Pietro's is gone. Mrs. Burkard said another tenant has replaced Pietro's in the plaza. Mr. Napoli said the plaza owner's daughter owns Tyori's and he is not sure how long she will be there. Kings Acupuncture, Nationwide Insurance and Shannon McCarthy, DDS are points of destination, if someone is going there they are going there for a reason, they are not shopping. Gi-Ro is the third dry cleaner that has been there. Studio 2000 and Salon & Day Spa are the same business and have been there as long as Mr. Napoli has. Mr. Napoli said he needs the sign in order to get traffic to the plaza and to stay in business. Mrs. Burkard asked what the distance is from the driveway to the sign, she wondered if an SUV would block the sign if it drove or parked next to it. Mr. Napoli said he does not think so; a person can walk under the sign. Mrs. Burkard is also concerned with setting a precedent, how would it look if other tenants asked to have a similar sign granted. Mr. Napoli said he currently has a temporary sign which is an eye sore but it is the only thing he has to advertize. He can't put things in the window of the store because it is too far away. Mrs. Burkard asked if the applicant has any research studies that indicate an LED sign will improve business. Mr. Napoli said there are studies but he does not have them with him. Mr. Yost said the LED sign will make a difference.

Mr. D'Amato pointed out that there is a substantial building sign on Mr. Napoli's store front; the other tenant's signs are smaller. Mr. D'Amato is not in favor of this variance request; he does not see how the granting of this sign will increase business. He pointed out that Mr. Napoli has been there for 10 years, he has an established business there.

Mr. Michnik clarified that a temporary/portable sign is only allowed for 30 days, twice a year.

Mr. Mills asked for details on the proposed sign. Mr. Yost said it is a Watchfire, which automatically dims at night. The colors of the sign have not been decided yet. Mr. Mills asked if a larger sign could go in the 12' square foot area. Mr. Yost said he discussed a 2' x 6' sign with Mr. Napoli and it is doable.

Mr. Michnik asked if the existing pole sign is in compliance with the code. Mr. Callahan clarified that the existing sign exceeds the current Sign Law, but the sign is pre-existing. Mr. Michnik asked if the whole sign has to come into compliance if the Board grants this variance. Mr. Callahan said no, this request is just replacing a face; it is a pre-existing, non-conforming sign. Mr. Michnik does not know if he was a tenant in that plaza if he would appreciate the larger sign for Napoli's. Mr. Napoli said other tenants might appreciate it because it will bring traffic into the plaza. He thinks the new restaurant that is going in there will not spend \$20,000 on a sign. Mr. Napoli is willing to go to each tenant and discuss the sign. Mrs. Burkard voiced her concern with what future tenants would want.

Mr. Mills asked if the applicant prefer 5' x 2' color or 6' x 2' red and black lettering. Mr. Napoli said it would be more advantageous to have the larger red and black sign.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **approve** Appeal No. 1 as a 2 square foot variance to allow the installation of a 12 square foot LED sign board on an existing pylon sign at 5841 Transit Road with the condition that the sign be limited in color to red and black. There is to be no other signage, specifically temporary signage, at the front of that parcel.

ON THE QUESTION:

Mr. Callahan noted that the temporary changeable copy sign has been a problem for years. It should be made a condition of the motion that that sign be removed. Mr. Mills and Mr. D'Amato both agree to amend the motion to reflect no other signage is allowed. Mr. Napoli agreed to remove the temporary sign.

Patricia Burkard	Nay	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Nay
Arthur Henning	Nay		

MOTION FAILED.

Appeal No. 2

Architecture Unlimited/Ken Pearl
TND/Residential Single Family

Requests the Board of Appeals approve and grant an expansion of an existing non-conforming use to allow for the construction of a 3,750 square foot addition to an existing commercial facility at 9605 Clarence Center Road.

Appeal No. 2 is in variance to § 229-162.

DISCUSSION:

Ken Pearl, of Architecture Unlimited, and Terry Reilly of Universal Woodworks, are present. Mr. Pearl is the architect for the project, Mr. Reilly owns the business. Mr. Reilly does millwork, cabinets and doors and his needs are growing to be able to fabricate on-site. It is Mr. Pearl's understanding that sometime after the applicant bought the property the zoning was changed and so the property has split zoning. It was originally zoned commercial and not is Traditional Neighborhood and Residential Single Family. There is no access to this part of the property either through Mr. Reilly's property or through neighboring property that would allow the back portion to function as residential. He would like to continue the existing use and intent of the property.

Mr. Michnik pointed out that there is a lot of equipment in the rear yard. Mr. Reilly said he is trying to sell some of the equipment but that is why he wants to put an addition on in order to house that equipment. He also owns snowmobiles that will be stored there and allows some employees to park their snowmobiles there as well. Mr. Reilly said he would like a larger addition but does not want to ask for too much. He will put a board and batten siding on the front and along the one side. He will keep the building all white or a light cream color so that it will blend it.

The roof will be asphalt shingles.

Mr. Mills voiced his concern regarding the aesthetic impact to the neighbors to the west of the property. He asked if the applicant would consider a buffer along the western border. Mr. Reilly said he discussed putting up a stockade fence along that border to mitigate the neighbor's view of equipment that needs to remain outside the building. Mr. Reilly said he is willing to put a berm up if the Board would prefer it.

Mr. Pearl noted that the truck traffic and deliveries will remain on the side of the building they will not go to the back of the building.

Five (5) neighbor notification forms are on file.

The total square footage of the building is just over 11,000.

Mrs. Burkard is concerned with the clutter on the site and asked if that will be gone if the addition is built. Mr. Reilly said yes that is what the proposed addition is for, but there are some trailers that will remain outside because they are used weekly for deliveries. Mr. Pearl pointed out that one or two of the trailers belong to the neighbors.

Mr. Reilly said he has 16 employees and anticipates hiring a couple more.

ACTION:

Motion by Daniel Michnik, seconded by Patricia Burkard, to **approve** Appeal No. 2, as written with the condition that landscaping/berm/fence be installed. The applicant is to discuss landscaping with the Landscape Committee and receive their approval.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** the minutes of the meeting held on December 13, 2011, as written.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Meeting adjourned at 8:21 p.m.

Carolyn Delgato
Senior Clerk Typist