

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday October 11, 2016
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present: Chairman Daniel Michnik
Vice-Chairman Ryan Mills
Richard McNamara

Zoning Board of Appeals members absent: David D’Amato
Patricia Burkard

Town Officials present: Director of Community Development James Callahan
Town Attorney Lawrence Meckler
Councilman Paul Shear

Other interested parties present:

Tyler Palmer	Kris Blajszczak	Dennis Steszewski
Richard Scherer Jr	Roy Olsen	Kathy Yu
Yan Kit Yu	Ray Peters	Kevin Revak

Motion by Richard McNamara, seconded by Daniel Michnik, to **approve** the minutes of the meeting held on September 13, 2016, as written.

Richard McNamara	Aye
Ryan Mills	Aye
Daniel Michnik	Aye

MOTION CARRIED.

Old Business

Appeal No. 1 (from Sept 2016 Meeting)
John Braddell/Lakeside Sod
Industrial Business Park

Requests the Board of Appeals approve and grant a 93’ 8” variance to allow for a 153’ 8” tall wind turbine located at 6660 Goodrich Road.

Appeal No. 1 is in variance to §173-4(C).

DISCUSSION:

Tyler Palmer of United Wind is present representing the applicant.

There are four (4) neighbor notification forms on file.

Mr. Palmer said the requested height is the only height that will get that much production out of the system to meet half of Lakeside's electricity usage for cost offset. With this height they are more than 1 and ½ times the distance away from the lot lines and well beyond that for other structures on different lots. Although this is self-created there is no other way to get that much production out of the system besides going with this height. Mr. Palmer has authorization from the owner of the property to discuss this and represent them.

Town Attorney Lawrence Meckler asked the applicant if the turbine would be used exclusively for the farm operation. Mr. Palmer said yes it will be interconnected on the lot. Town Attorney Lawrence Meckler then asked for confirmation that it will supply no more than 100% of the farms anticipated electrical usage. Mr. Palmer replied that is correct, it is about half of the usage.

Mr. Mills asked if the applicant looked at different site placements. Mr. Palmer said they looked at a different lot on the other side of the pond but the wire-run would be substantially larger and the cost of the wire in turn would be much greater. It cannot be moved more north without substantially increasing the cost; it would not be economically feasible to locate it on the other side of the pond and would potentially kill the project. Mr. Palmer said it would not be his decision, it would be the home owner's decision and the company who will install it. The homeowner is out of town and Mike, a representative of the company, is at another meeting in Tonawanda. Town Attorney Lawrence Meckler asked what the cost differential would be, Mr. Palmer does not know exact number on the cost but said it would be a lot.

Mr. Callahan asked if the tower could be kept on the south side of the pond and move it closer to Goodrich Road. Mr. Palmer said this could be discussed. The wire is down 2'-3' in the ground, it is a #2 wire. Mr. McNamara estimated it would cost a couple thousand dollars to move the wire 100' north to give the neighbors relief. There are no guide wires on the tower, it is self-supporting. Mr. Mills asked if the drop-zone circle can encompass where a building is. Mr. Palmer said that is something set by the Town, he has seen it done in the past, as long as the buildings are not occupied/residential. The buildings on this property that would be in the drop-zone are warehouse/farm buildings. If the turbine was placed closer to Goodrich Road there would be less wire used thus being less costly. There are no homes on the same side of the road as Lakeside Sod.

Dennis Steszewski, of 9430 Pine Meadow Drive, has discussed the turbine with Mr. Braddell. He did not receive another neighbor notification form for this meeting. Mr. Steszewski has numerous concerns including the property value of his home. This project will negatively impact the neighborhood and could potentially create a problem in selling their house. He has a 4 year old child and a 7 year old child. He was reading on the internet about Wind Turbine Syndrome. He does not know what it is but it has become a big thing because there were five (5) articles on it. He doesn't want to have his children within 600' of a windmill if it causes some sort of disease. There are two (2) lawsuits in progress regarding this and it concerns him. He knows there was a similar proposal for a farm on Thompson and it was rejected, he believes he should have the same right and to say it is not fair.

Kris Blajszczak, of 9420 Pine Meadow Drive, agreed with everything Mr. Steszewski said. She had a signed contract on the sale of her house, the buyer got word of some structure going up on Lakeside Sod and backed out of the contract. It is impacting the sale of the property and the value of the property. For the taxes they are expected to pay on their property, she expects support from the Town to preserve the nature of the neighborhood.

Mr. Palmer will talk to the property owner about moving the turbine east or northeast on the property.

Ms. Blajszczak asked what the noise level is on the unit. Mr. Palmer said they are rated at 42.9, he explained that the higher the turbine the further away sound will be.

Mr. Callahan noted that there is a similar turbine, at 153', at the intersection of County and Salt Roads.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **table** Appeal No. 1 under Old Business so the representative can speak with the applicant about alternative locations.

ON THE QUESTION:

Chairman Michnik noted that the owner of the property must attend the next meeting in which this appeal will be heard. It is clarified that the applicant will need to re-notify the adjacent property owners of his request and the date of the meeting it will be heard.

Richard McNamara	Aye
Ryan Mills	Aye
Daniel Michnik	Aye

MOTION CARRIED.

New Business

Appeal No. 1

Richard M. Scherer, Jr., Esq.
c/o Lippes, Mathias, Wexler, Friedman, LLP
Traditional Neighborhood District

Requests an interpretation reversing the Town Board's issuance on August 10, 2016, of an approval of the request of the Applicant, the Clarence Hollow Bistro, located at 10641-10647 Main Street for a site plan amendment as per recommendation of the Planning Board for a parking lot wall.

Appeal No. 1 is in variance to §229-163(E).

DISCUSSION:

Richard M. Scherer of Lippes, Mathias, Wexler, Friedman, LLP is present on behalf of Roy Olsen. Mr. Olsen resides in the Town of Clarence at 4888 Sawmill Road which is directly adjacent to the Hollow Bistro, the site of which this appeal relates to. Mr. Scherer explained that on August 10, 2016 the Town Board approved the request of The Clarence Hollow Bistro for a site plan amendment related to a retaining wall on the east side of their property line abutting the Cornerstone. Mr. Scherer went on to explain that the two (2) grounds that the site plan amendment should not have been approved and should be reversed are it violates the Clarence Master Plan as well as the Zoning Laws. Mr. Scherer said the rationale for this appeal is based on statutory language. The statute is clear and unambiguous, the interpreting authority has to give a fact to the claiming of statute, this is solid case law, wording cannot just be rejected. As the Appeal relates to the Clarence Master Plan it violates §81-3 of the Town Code which provides that any development must be in accordance with the Comprehensive Plan which provides that if there is a demolition of an existing structure the standard Commercial Zoning requirements have to be followed. There was a

demolition as it relates to this property. Town Code §229-88 provides that all parking areas which this retaining wall relates to shall be screened from view of the street to the greatest degree possible. The screen should be continuous and conceal the parking area. In §229-88 provides certain methods of screening which includes stacked stone walls, picket fences, evergreen or deciduous hedges or other simple landscape materials. The steel sheet pilings are nothing more than temporary structures that originally were put into place to allow aesthetically pleasing screening to be put in place. They have now turned into a permanent structure and is not an approved method of screening and runs directly contrary to that. The rationale that the Clarence Hollow Bistro and their architect indicated at the August 2016 Town Board meeting for having to do this was because they would need to excavate several feet onto the neighboring property. Mr. Scherer does not believe that is correct and believes it is the complete opposite. The steel pilings were put into place to allow for the construction of a wooden fence on the property side of the Bistro, not the other side. At which point the wall would be constructed, the sheet pilings that were meant to be temporary would be removed. The steel pilings were a stop gap measure to allow construction to proceed. Not only has the site plan amendment changed the design and aesthetics it has also changed the actual setback. If this is going to be done then the setbacks need to be looked at, that haven't been followed in the first place, and at this point should be reverted back to. Mr. Scherer referred to §229-87(c) (1-4) and said the setback requirement is 25'. If there is a 25' setback there is no reason to even get close to the neighboring property. This is the reason it violates the Master Plan. Mr. Scherer went on to say as the appeal relates to the Zoning Ordinances this falls into the Traditional Neighborhood District as well as the Clarence Hollow Overlay, these respective ordinances and statutes were not followed either. The site plan amendment violates §229-109 of the Overlay District Zoning Laws. Mr. Scherer said he drove by the pilings this past Monday and they are ugly steel pilings that are going to rust, which is what the architecture firm indicated they were going to do. This was not something that was built to preserve the character of the Hollow, to ensure the building modifications are harmonious with the surrounding structures or to encourage preservations of existing. This is modern industrial sheik, this is not something that belongs in the Clarence Hollow. It also violates the site design standards for the Clarence Hollow Overlay District §229-113(a)(5) which expressly states that blank concrete block walls or sheet metal at street level shall be avoided. There has been no effort to avoid the use of sheet metal, it is right at street level. The decorative wood beam across the top does nothing to take away from the fact that this is a rusty steel piece of metal that has now become a wall. Mr. Scherer goes on to refer to §229-113(b)(1)(d) which states that walls which are visible from the street may be constructed of stone, brick, Stucco or a combination of masonry materials and should be in keeping with the character of the surrounding businesses and the surrounding architecture. This project is the complete opposite. Mr. Scherer said the most clear violations are in Article VII of the Zoning Law which sets forth the standards for the Traditional Neighborhood District which state that all the redevelopment requirements must be in compliance with what exists there. If it violates the Traditional Neighborhood District it also violates the Clarence Hollow Overlay District. §226-67(C)(4) specifically states that metal paneling is prohibited, which is exactly what the project is. The Zoning Board does not have the ability to reject language as superfluous because they decide not to have it apply. The amendment should not have been allowed. He asked the Board to interpret the law in a manner which reverses the decision. Mr. Scherer said he is most disappointed in the fact that despite the stay that goes with the filing of this appeal, the Clarence Hollow Bistro went ahead with some of their construction. When Mr. Scherer learned of this he sent a letter to the Clarence Hollow Bistro, hand delivered. He also sent the same letter to Mr. Meckler via electronic mail. The letter did not stop the construction which is a blatant disregard for the process.

Mr. Mills referred to Town Code §229-88 and said it appears that methods of screening may include stacked stone walls, picket fences, evergreen or deciduous hedges or other simple landscape materials, it is not limited to these methods. Mr. Scherer said he would agree that it is not limited but when you look at the Town Code as a whole, especially some of the items listed in §229-67 and §229-113 that list metal paneling

as prohibited and should not be at street level. Mr. Mills asked Mr. Scherer if he would agree that this is not just straight metal paneling, there is some design element to it laid out in a manner that is more aesthetically pleasing than straight metal paneling. Mr. Scherer said he would agree that they tried to “gussy up” something that is inappropriate, it does not take away from the fact that it is sheet metal.

Mr. Callahan said that, as the author of both the Master Plan 2015 and the new Zoning Law adoption in 2005, he can add comments on how this came about. The Master Plan was written in 1998, 1999, 2000 and adopted by the Town Board in August 2001. At that time the thought was that the Hollow area should have a zoning classification that fits it better and also an overlay. At that time, and up until 2005, the zoning in the Hollow was Commercial under an old zoning ordinance. That old zoning ordinance had little or no decorative requirements, it was strictly zoning. Commercial allowed a number of uses, there were setbacks but every property in the Hollow violated those setbacks, they were classified as pre-existing non-conforming lots of record in that Hollow area. The Town wanted to discourage the demolition of potentially historic structures, there was no mechanism to control or stop a demolition. The Town identified that they did not want random demolitions going on, but if there were they wanted to make sure there was a mechanism in place to identify historic character and then have rules and regulations in the Hollow that could address how reconstruction could occur that matches the character of the Hollow. The language in the Master Plan was interpreted not to the old Commercial zone, but the Town drafted a new Traditional Neighborhood District (TND) that identified smaller lot sizes and reduced setbacks. They also made any demolition of a building built prior to 1950 a Type I Action under the State Environmental Quality Review Act (SEQRA) which requires a more thorough and vigorous review to ensure that if there is historic character it should be attempted to be retained. If there was reconstruction there is a mechanism in place through the TND and then through the adoption of an overlay in Clarence Hollow which includes a Community Character Protection Board made up of the residents of the Hollow to review and approve every future construction project. Mr. Callahan would argue that §229-88 is not even in play. It was not commercial zoning, it was the old law of commercial zoning so it has to comply with the TND, which it does. He referred to §229-113(a) and said the project went to the Community Character Protection Board, which is process through the Clarence Hollow Overlay. The Community Character Protection Board approved the design that is ultimately approved and is constructed now. The issue of the architectural building wall was on the building and not on a parking lot design element. This element also went through the Community Character Protection Board. The Town Code was followed all the way through this process.

Mr. Scherer asked if the site plan amendment as it relates to the retaining wall was put through the Community Protection Board, Mr. Callahan said yes.

Chairman Michnik said the type of metal material is open for discussion, for example what is sheet metal, what is iron metal or what is aluminum metal. He went on to say that the statement made by Mr. Scherer about it being strictly sheet metal is off target. Mr. Scherer said to be clear, it is metal paneling. Mr. McNamara said it is not metal paneling, paneling goes on walls.

Town Attorney Lawrence Meckler referred to the State Code that refers to the Town Law and said it indicates that all proceedings occur from the action appealed from, but there were no other proceedings that were going to occur. Mr. Scherer said until the town renders a decision on the site plan amendment, the site plan amendment is not in effect.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to interpret Appeal No. 1 as the Planning Board has acted in accordance with Town Law and other applicable rules and regulations.

ON THE QUESTION:

Based upon the evidence and the application presented to the Board by the applicant, and based upon Mr. Callahan's dissertation, sufficient evidence has been presented to show that the Planning Board acted appropriately.

Richard McNamara	Aye
Ryan Mills	Aye
Daniel Michnik	Aye

MOTION CARRIED.

Appeal No. 2

Raymond Peters
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 6.5' variance to allow for a 6' side yard setback for the construction of an attached accessory structure located at 5441 Via Del Sole.

Appeal No. 2 is in variance to §229-52(B).

DISCUSSION:

Raymond Peters is present along with Kevin Revak, of Colley Pools.

Three (3) neighbor notification forms are on file. Mr. Peters explained that the house directly next to his is owned by an individual who visits her children in other states quite often. He has only seen her once since he moved in but he has her phone number.

Mr. Peters would like to add a garage with mud room.

Town Attorney Lawrence Meckler asked Mr. Peters if he lived next door what his comment would be about the project. Mr. Peters said it is completely on the other side of this neighbor and she is probably going to sell.

Mr. Revak said there will be an attached accessory structure, a pool house and a pool in the back. The existing concrete deck will be ripped out and re-poured. There will be pillars poured for a future second story deck.

It is clarified that the pool will be directly behind the house. There is no second floor on the proposed garage. Mr. Revak said they would like to start the project this winter. The front façade of the proposed structure is going to be brick to match the material on the existing house.

Chairman Michnik asked if the accessory structure can be any smaller than what is proposed. Mr. Revak said they made it as small as they could which is a single car garage because there is not much space there.

They looked at a two car garage but it would not fit on the property. Chairman Michnik asked if the mud room could be smaller. Mr. Peters said he and his wife prefer the size of the structure as presented. Mr. McNamara said the entrance door needs to be 32" to fit a washer and dryer through it and then there is casing on both sides which takes it up to 40". The washer and dryer stick out about another 36" with duct work behind it, this measures up to about 6'8". Mr. Peters said the reason for the 10' door is because they have a larger SUV.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** Appeal No. 2, as written.

ON THE QUESTION:

The approval is based on the fact that the applicant has demonstrated that they are going to construct this with a similar design and similar materials as the house. The presented plans have a strong aesthetic design.

Richard McNamara	Aye
Ryan Mills	Aye
Daniel Michnik	Aye

MOTION CARRIED.

Meeting Adjourned at 8:11 p.m.

Carolyn Delgato
Senior Clerk Typist