

Town of Clarence  
One Town Place, Clarence, NY  
**Zoning Board of Appeals Minutes**  
Tuesday December 10, 2013  
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:02 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
David D’Amato	Patricia Burkard
Jonathan Hickey	Gregory Thrun

Town Officials present:

Junior Planner Jonathan Bleuer  
Deputy Town Attorney Steven Bengart (arrived at 7:10p.m.)  
Councilman Peter DiCostanzo

Other interested parties present:

Sean Hopkins	David Huck
John Yurtchuk	Mike Metzger
Caleb Huck	Dmitry Kaplin
Ed Smart	Jaime Lorenz
Tamara Stephen	Paul Stephen
Councilman Bernie Kolber	

Motion by Gregory Thrun, seconded by Ryan Mills, to **approve** the minutes of the meeting held on November 12, 2013, as written.

Gregory Thrun	Aye	Jonathan Hickey	Aye
Patricia Burkard	Aye	David D’Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye

MOTION CARRIED.

**Appeal No. 1**

Regent Development, Inc.  
Restricted Business

Requests the Board of Appeals approve and grant an area variance for the construction of a three-story multiple family residential development located within the Restricted Business Zone. Proposed development located within 4520 Ransom Road, and the overall Brothers of Mercy Campus.

Appeal No. 1 is in variance to §229-126(D)(1)(e) Adopted on June 26, 2013.

**DISCUSSION:**

Sean Hopkins of the Law Firm of Hopkins & Sorgi is present representing the Brothers of Mercy Project. Dave Huck, John Yurtchuk, Michael Metzger and Caleb Huck are also present. Mr. Hopkins said they are asking for a height variance for a proposed building at the Brothers of Mercy site. The site is approximately 120 acres, and zoned Restricted Business. The existing structures consist of a four (4) story adult home, a couple of two (2) story buildings out front, a three (3) story nursing home, and a two (2) story senior apartment building. The proposal is for two (2) phases. The first phase would consist of a three (3) story 111 unit independent senior housing project. There will be care services available at this location consistent with what the Brothers of Mercy already provide. They have been at this location for about six (6) decades. The property being discussed this evening is a portion of a 95 acre parcel. A future phase would be the opportunity for an assisted living building which would consist of 80 beds as well as an additional 36 senior living units. This project is subject to the Town's new Multi-Family Law which was recently adopted in June 2013. The applicant has complied with as many requirements of this new law as possible and, with the exception of the variance being requested, they comply with them all.

Mr. Hopkins said the requirement for greenspace is 30%; they are showing 78% which is approximately 19 acres. The project shows the commercial component at 32%, which is 71,000 square feet of the 219,000 square feet. In terms of density, the project is at 7.48 units per acre, the new Multi-Family Law allows 8 units per acre. The required recreational component is 15%; the applicant is complying with this by providing a recreational path that will be integrated into the project. The applicant is aware that this area variance is subject to Town Law §267(B)(3)(b), and to the five (5) criteria that the Board looks at when reviewing a request. The benefits realized by the Brothers of Mercy should this variance be granted, outweigh any resulting detriments to the health, safety and welfare of the surrounding community; however the applicant does not think there are any detriments to the surrounding community. Mr. Hopkins said the Brothers of Mercy are interested in taking a step into the future which includes the need for providing additional services on site. This includes new senior housing with a wide assortment of amenities, as well as the possibility of an assisted living facility on the campus.

Mr. Hopkins noted that the proposal is set far back from both Ransom Road and Bergtold Road. The setback from Ransom Road is 642 feet, and from Bergtold Road the setback is 1,243 feet, that is to the closest point of any building to the adjoining roadways. The applicant pointed out that there are existing buildings on site that exceed 2 stories; these buildings are located closer to adjoining roadways. The Sacred Heart Adult Home is four (4) stories and the nursing home is three (3) stories, therefore the proposed building heights will not be out of character with the surrounding community.

The second criteria is whether there are any feasible alternatives that the applicant can pursue that would allow it to receive the benefits it's seeking. Another option would be to provide a two (2) story building with a larger footprint; this would be problematic because it would impact Federal and State Wetlands which are located on the site. The applicant would rather leave those wetlands alone and not need any permits from the Army Corp of Engineers or the NYS Department of Environmental Conservation. Because this project is targeted at seniors, larger footprints are problematic because what they result in is future residents having to walk further distance to take advantage of the amenities. It is better to have a vertical footprint, use elevators, and thereby allow those residents to travel around more easily.

The third criteria is whether or not the requested area variance is substantial. Mr. Hopkins said you can't quantify the deviation; you have to look at what impacts it would have. There are already existing

buildings on site that are four (4) stories or setback a considerable distance from the road. The request should be viewed in the overall context of the project site.

The fourth criteria is whether or not the variance will have an adverse affect or impact on the physical environmental condition in the neighborhood. There has been an intense SEQRA review done on this site. Wetland delineations have been submitted along with a Phase 1A and Phase 1B archeological assessments. Clearance letters have been received from the NYS Office of Parks and Recreation Historic Preservation. Jurisdictional determinations have been issued by the Army Corp of Engineers and the NYS DEC. Nearly 80% of the site will be preserved as greenspace, including all onsite wetlands. There will be no significant environmental impacts.

The fifth criteria is whether or not the alleged hardship has been self-created. The applicant thinks it is not self-created, the Brothers of Mercy have owned this property for six (6) decades, the Multi-Family Law as adopted approximately six (6) months ago. Therefore it would be difficult for anyone to take the position that the hardship is self-created. Mr. Hopkins said the benefits outweigh the detriments.

Chairman Michnik said there are no neighbor notification forms on file. Mr. Hopkins spoke with Mr. Callahan regarding neighbor notifications and he was advised that since there are no neighbors in approximate distance to the proposed expansion there was no need to notify the neighbors. Deputy Town Attorney Steve Bengart said there were several neighbors from Bergtold Road and Ransom Road that attended the other hearings; they have all seen this project and have made comments. Some comments were related to traffic issues, there were no comments related to architectural style or to the height of the building.

Mr. Huck was asked and proceeded to explain the phases and timing for the project using the concept plan dated December 9, 2013. The first phase would start as soon as possible and consist of common area for dining and shopping, and a residential three (3) story building. The timing of the second phase depends on the completion of the first phase and includes the expansion of the residential three (3) story building extending the hallways with six (6) units per floor. It also would include the assisted living wing which consists of eighty (80) beds. It has a strong synergy to the residential area because residents who are couples can still be in close proximity if one needs to move from the residential to the assisted living area. Mr. Yurtchuk added that the assisted living requires state approval which is approximately a two (2) year process. The process has been started because there is already assisted living on the campus but is aging and may be difficult to renovate so may need to be replaced with more modern facilities. Mr. Hopkins added that the new buildings will be entirely equipped with sprinklering and meet all New York State building requirements. The Brothers of Mercy will own the facility.

Mrs. Burkard asked if the current buildings would be kept as they are. Mr. Huck said the skilled nursing would receive a face-lift and become modernized with updated technology. Using the aerial plan prepared by Sylvestri Architects dated December 9, 2013 to identify the Sacred Heart building as the one that is on Ransom Road, he said that it could be upgraded inside but that would be a longer process. Mrs. Burkard referred to an article in the Clarence Bee that discussed the fact that the neighbors were concerned about traffic during rescue calls because all of the fire equipment comes out for the calls which blocks traffic. Mr. Huck pointed out that the plan calls for another road coming into the campus from Ransom Road so the fire trucks will have two (2) means of ingress. Mr. Yurtchuk pointed out that the proposed plan is for independent living which should mean less rescue calls than the assisted living and skilled care facilities. In general this type of proposed type of housing probably generates the least amount of traffic. Mr. Hopkins said in terms of traffic impacts there is an organization known as the

Institute of Transportation Engineers, they provide trip projections for different uses and they found that attached independent senior housing generates one tenth of one trip during peak hours, meaning 111 units would generate 11.1 trips. There is nothing you can put on this parcel that would result in less traffic. Mrs. Burkard asked if the apartments are subsidized. The applicant said they are not subsidized, they are private pay. The rent is mid-to-upper two thousand dollars to three thousand dollars a month which is comparable to Greenfield in Lancaster. The rent includes meals with dining in a restaurant-like setting, and other services such as an in-home-type theater, and a kind of village setting. There will be a shuttle van to move residents around outside the facility for shopping and other things.

Mr. D'Amato asked if a one (1) story building was ever an option in the plan. Mr. Hopkins said no, with a one (1) story the footprint gets too big. A certain number of units is needed to justify additional staff. An important issue is the travel distance between the furthest apartment and the center core. The plan uses an 'H' pattern to bring all units closer to the center core. Mr. D'Amato asked what the size is of each apartment. Mr. Hopkins said the one-bedroom units are a minimum 622 square feet and the two-bedroom units are a minimum 759 square feet. The different sizes are scattered throughout the building; two (2) people can live in a one-bedroom unit. Mr. Hopkins pointed out another benefit of a two-story building is that there is a larger greenspace area. This plan shows 78% greenspace. If the building was one-story there would be less greenspace and permits would be required from the Army Corps of Engineers and/or the DEC, these permits are difficult to obtain.

Mr. Mills asked if the 78% greenspace will remain the size for the parcel being identified. Mr. Hopkins said yes, this represents full maximum build-out of the site. The materials depicted on the elevation show a mixture of brick, dry stacked stone, and vinyl siding. These are the actual materials to be used in the final product. Mr. Mills said these materials will provide an aesthetically nice view.

Mr. Hopkins said there will be landscaping around the parking areas and around the building. A full landscaping plan will be submitted and the applicant knows that it must be reviewed and approved by the Landscape Committee. Mr. Metzger said there is a stand of existing trees that have been incorporated into the landscaping and will line the entrance to the new complex. Much of the existing vegetation will remain. The courtyards will be landscaped as well.

Chairman Michnik asked if the fire department has been made aware of the project. Deputy Town Attorney Steve Bengart said the fire department has been contacted; he has a letter dated December 2, 2013, from the Fire Department which indicates their only concern is about tax issues which are not a concern for this board. Mr. Hopkins said there are very stringent provisions that apply in terms of the building code for materials, sprinklering and access to the senior housing buildings. There are all four (4) sides accessed in this building. This project has Concept Plan approval from the Planning Board, but still requires Development Plan approval from them. If the fire chief has any substantive comments then they will be addressed at the Development Plan process.

Chairman Michnik asked if the walking paths will be open to the public. Mr. Hopkins said no, due to security issues. The walking paths will not be lit; they will be used for daytime use only.

#### **ACTION:**

Motion by David D'Amato, seconded by Patricia Burkard, to **approve** Appeal No. 1 as written.

**ON THE QUESTION:**

Mr. Mills said the remaining high percentage of the site is going to remain green space because of the allowing of the third floor. A large portion of this parcel is wetland and would be difficult to construct upon. The location in proximity to nearby residential single family as well as any other structures is isolated; it will have a minimal impact on the surrounding environment.

Jonathan Hickey	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

**Appeal No. 2**

Dmitry Kaplin  
Planned Unit Residential Development

Requests the Board of Appeals approve and grant an area variance of 398 sq. ft. to allow for a 598 sq. ft. detached accessory structure at 8142 Golden Oak Circle.

Appeal No. 2 is in variance to §229-55(H).

**DISCUSSION:**

Chairman Michnik noted that there are two (2) neighbor notification forms on file.

Jaime Lorenz, from Smart Design Architecture, is present and explained that they are proposing this pavilion as a compliment to the addition they are putting on the house that extends the house and adds a two-car garage. The pavilion is meant to cover the living room area and the grill area. This area was designed not to be attached to the house to provide some breathing area between the two and for water and snow purposes. They also wanted to allow for natural light to filter into the back of the house as much as possible. There is a skylight on the top of the pavilion for natural light to enter, the roof is metal, there are no sides on the pavilion just structural posts for support. There are heaters being proposed to go on the underside of the structure.

Mrs. Burkard asked what happens to the structure in the winter. Ms. Lorenz said the furniture is indoor/outdoor furniture but there will be a storage room in the back of the garage for this equipment. The grill and the cooking appliances area stainless steel and will have covers on them. The outdoor rug will be stored. The fireplace is double-sided and is an outdoor unit. They have designed a shutter for the TV unit that will close and seal the TV; Mr. Kaplin can remove the unit and take it into his house if he needs to for security purposes. The unit will remain open in the winter time, there will be no sides put in it. Mrs. Burkard pointed out that this applicant would be the only neighbor around the pond that has all of this in their backyard; she wondered if the neighbors had any concerns. Ms. Lorenz said currently there is a small stamped concrete area with a grill that is only used occasionally. This proposal is so Mr. Kaplin can utilize his property almost all year round.

Mr. D'Amato asked if there are any deed restrictions in this development. Mr. Mills said there are no deed restrictions; he knows this because he lives three (3) houses from the variance location. There is an informal association that is not mandatory that maintains the pond. Mr. Kaplin has lived there since 1997.

It is clarified that the whole house will be bricked.

Mr. Hickey asked if anyone looked at a smaller variance. Ed Smart, of Smart Design Architecture, said when you are considering an exterior kitchen and living room, 200 square feet is not enough square footage for that program; the proposed size of the structure it to satisfy the program they are using.

**ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 2 as written.

**ON THE QUESTION:**

Mr. Mills said there is a great deal of open space within this project because of the pergolas, and while the footprint is measured around the pergolas they are not truly enclosed spaces, that mitigates this variance and the impact it has on the neighbors.

Jonathan Hickey	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

**Appeal No. 3**

Stephen Development  
Residential Single Family

Requests the Board of Appeals approve and grant a relief from the condition applied to the area variance on June 14, 2011 relating to 4905 and 4915 Kraus Road.

Appeal No. 3 Reference: ZBA Minutes of June 14, 2011 Old Business, Appeal No. 1.

**DISCUSSION:**

Michael Metzger, of Metzger Civil Engineering, is present along with his clients, Tamara and Paul Stephen.

There are eleven (11) neighbor notification forms on file. Most are signed with the comment, "no objection to side setback, no objection to modular type building." There was one neighbor who does not want anything to happen at the site.

Mr. Metzger noted that with a previous approval for this project there was a condition that of the two (2) homes to be built one was to be a modular and the other was to be a stick built home. The applicant's desire was to put four (4) modular constructed homes on the four (4) lots. There was a concern regarding how modular homes would look in the neighborhood so the condition for one stick-built home and one modular home was placed on the approval so a comparison could be made. The first home was built and it is a modular-type home. The applicant is asking for relief of the condition because there are plenty of stick-built homes in the area to compare to the modular home. The modular home that was built on the site is consistent with the character of the neighborhood as an asset and not a detriment in any way, so the applicant does not see the need to build the stick built home at this point. They would like to continue with the modular type construction for the second, third and fourth homes on the project site.

Deputy Town Attorney Steve Bengart said the appeal would need to be re-opened in order to take any action on the applicant's request and it must be a unanimous vote to re-open it.

Mrs. Stephen provided photos of the recently built modular home for the Board members to view, the photos are on file. She said she spent 30-45 minutes with each of the neighbors answering any questions they had and explaining the difference between a stick built and a modular home. Most neighbors were glad to have the area improved with this development. There was one couple that was concerned that the structure would fit into the character of the neighborhood, but they are happy with the finished product.

Mr. Mills asked Mrs. Stephen if she was aware of the e-mail that was sent by David and Maureen Audino dated December 10, 2013. She was not. A copy of the e-mail is on file. The Audino's live immediately across the street from the project and they are the only neighbors Mrs. Stephen was unable to contact after various attempts.

Mr. Metzger pointed out that the construction process for the modular home was less intrusive to the neighborhood as there weren't days and weeks of construction noise. The structure is a quality, attractive home and is consistent with the character of what currently exists in the neighborhood.

#### **ACTION:**

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **re-open** Appeal No. 1 from the June 14, 2011 Zoning Board of Appeals meeting with regards to the condition placed on the approval of a modular home versus a stick built home.

Jonathan Hickey	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

#### **DISCUSSION:**

Mr. Mills asked what the difference is between a modular and a stick built home. Mr. Metzger explained that it is a full poured foundation for both types of homes. A modular home is built in sections off-site and then the sections are assembled on-site. A stick build is actually built on-site. Mrs. Stephen explained that this particular home has four (4) sections, the vinyl siding and architectural shingles were put on after assembly. The approximate cost savings for modular versus stick built is 15%-20%. The value of this property is approximately \$299,000-\$310,000. The structure on the next lot would be of similar construction and of similar square footage.

Mr. Hickey asked what kind of neighbor turn-over there has been in the area, he further clarified asking if it is the same group of neighbors for this variance request as for the request in 2011. Mrs. Stephen said yes, they are the same neighbors. Mr. Hickey asked Mrs. Stephen if she knows Mrs. Audino. Mrs. Stephen said yes she knows her; she has talked to her, explained the plans to her and showed her photos of the modular.

Mr. Hickey reads a portion of the e-mail from the Audino's, "Variance requested that the 2nd new build to be modular versus stick-build. As stated above, it is my recollection (as is my neighbors) that the two

new builds were to be done within 1 year if the existing structure being removed. This did not happen. In that case, Stephen Development should have to reapply for the zoning variance concerning front lot footage which they were allowed to decrease the footage by almost 20 feet per lot. This was because the developer could not profit enough to make the project worthwhile (as stated by Stephen Development) something that is not the Town's issue. If the variance is being requested due to the developers financial constraints, and unforeseen costs (ie: drainage issues); again that is not the Town's issue and the original variance should be enforced. I am concerned at how long the present construction has been going on, and how much longer the neighborhood would be affected by requiring a stick-build for the next structure. If a stick-build is imposed by the Town, time constraints should be included preventing a prolonged impact that the neighborhood has had to deal with because of the length of the present build.”

Mrs. Stephen said she tried to contact Mrs. Audino numerous times but to no avail.

Paul Stephen confirmed that the existing home was demolished within one (1) year of the approval.

Mrs. Burkard asked if modular homes appreciate in value as much as stick built homes do. Mrs. Stephen said there is no difference. Mrs. Burkard asked if there are modular homes outside of the mobile home parks in Clarence. Mr. Stephen said yes. Mr. Metzger said there are different types of modular homes for instance Barden Homes are panelized, which is a similar building process to a modular home. There are 100's of these types of homes in Clarence. Mrs. Burkard asked about the drainage. Mrs. Stephen said there are pockets where flooding occurs during a downpour but there are none in front of this project site. The people who live across the street have been having drainage/flooding problems since they moved in nine (9) years ago. Deputy Town Attorney Steve Bengart asked if the applicant's plan met with the Town Engineer's approval. Mr. Metzger said yes the plan for the project was reviewed and approved by the Town Engineer. The Stephens took it upon themselves to discuss drainage issues with the Building and Engineering Departments and provided some assistance to correct the issue in that area. They installed a drainage facility on site, they excavated down to the bedrock and installed some corrugated perforated pipes with a catch basin on top of it and back filled it with uniform stone. This will collect the water that previously pooled on the surface and will temporarily hold it in that stone, it also provides an access directly to the fissured bedrock that is beneath to allow it to drain away. There is no storm sewer in this area.

Chairman Michnik asked if the applicant was asking for relief of the conditions for building homes three and four. Mr. Metzger clarified that there was never a condition placed on homes three and four.

Mr. D'Amato thinks the house is beautiful and said it fits in the neighborhood, but his concern has to do with the size of the house. He thinks it is large and is concerned with it fitting on the lots; he is also concerned that there will be four of them in a row. He understands that this has already been approved. It doesn't matter to him whether the homes are modular or stick built.

Chairman Michnik asked if the Stephen's will be holding the mortgage on these homes or if they will be sold. Mr. Stephen said they will be sold. Mrs. Stephen said they will list the house as soon as they have the Certificate of Occupancy.

Mr. Mills asked if there are any building code issues at the house. Mr. Metzger said no.

Mr. Hickey clarified that this appeal was re-opened with regards to the specific condition set forth on the approval of the Zoning Board of Appeals June 14, 2011 meeting which read, “Of the two (2) homes built

initially, one must be stick built and the other must be modular.” The applicant is asking for relief from this condition only, the remainder of the approval from June 14, 2011 remains the same. Mr. Metzger agreed.

### **ACTION:**

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **approve** Appeal No. 3, as stated. In practical terms the second house can be modular.

### **ON THE QUESTION:**

Mr. Hickey noted that the reason he made the motions to re-open Appeal No.1 from the June 2011 meeting and to approve Appeal No. 3 of this agenda is because there has been a significant change in circumstances in the past few years, most prominently anyone in and around the area near these homes has had the chance to see what a modular home looks like and how it impacts the community. With respect to that information, in retrospect, there are no substantial neighbor objections apart from the e-mail that was received.

Jonathan Hickey	Aye	Patricia Burkard	Aye
David D’Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

### **Appeal No. 4**

Stephen Development  
Residential Single Family

Requests the Board of Appeals approve and grant an area variance of .59’ to allow for a 12.5’ side yard setback at 4905 Kraus Road.

Appeal No. 4 in variance to §229-52(B).

### **DISCUSSION:**

Michael Metzger, of Metzger Civil Engineering is representing the applicant and explained that the reason for the request is that they made a mistake in establishing the side yard setback. The minimum requirement is 12.5’. Due to a construction error the building is actually somewhat slanted at the site making the back corner (the southeast corner) of the building slightly further than 12.5’ from the property line and the southwest corner of the building is slightly closer to the property line than the required minimum setback. The southwest corner is at 11.91’ from the property line, making it approximately 7” deficient from the required minimum setback. It was not done intentionally; it is clearly a stake-out error. The 7” is effectively unperceivable and will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The closest neighbor is John, who lives next door, and he is aware of it and is not concerned that that portion of the house is closer. There are other methods to achieve the goal but none that are feasible. Other methods might include de-construction of the home and re-pouring of the foundation; these things are extremely costly and are not feasible. The applicant feels that the 7” variance request is not a substantial request nor will it have an adverse effect or impact on the physical or environmental conditions in the neighborhood. While the difficulty is clearly self-created, it was not intentional, and it was an honest mistake that was not advanced to serve any other purpose.

Mr. D'Amato asked if the same guy who staked this property also staked the trailer park. Mr. Stephen said yes, it is frustrating.

Mr. Hickey asked if Mrs. Stephen advised the neighbors of this variance request and what the reaction was to it. She said yes, she advised every single one of them and they laughed at the request. Mr. Hickey read from the e-mail sent by the Audino's dated December 10, 2013, "Variance regarding rear of newly built home being 4 inches too close to the property line. I believe the owner of the existing home should be held harmless and made whole in regards to this issue. It is not the existing owners fault the builder did not survey the land properly prior to building. One of the concerns I already discussed with the town engineering department was water runoff from the new property as it sits higher than the old structure. What impact does the home being closer to the existing home have on this? Again, it is not the existing homeowner's fault the builder did not build properly."

**ACTION:**

Motion by Daniel Michnik, seconded by David D'Amato, to **approve** Appeal No. 4, as written.

**ON THE QUESTION:**

Mr. Hickey said he relied on Mr. Metzger's explanation regarding the criteria that the Board looks at when reviewing a request and it is Mr. Hickey's opinion that this is an insignificant variance request.

Jonathan Hickey	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Meeting adjourned at 8:30 p.m.

Carolyn Delgato  
Senior Clerk Typist