

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday December 13, 2011
7:00 p.m.

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

Zoning Board of Appeals members present:

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| Chairman Arthur Henning | Vice-Chairman Daniel Michnik |
| Ryan Mills | David D'Amato |
| Patricia Burkard | |

Town Officials present:

Director of Community Development James Callahan
Planner Brad Packard
Town Attorney Steven Bengart (arrived at 7:13pm)
Councilman Bernard Kolber

Other interested parties present:

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| Jen Van Dewater | Mike Van Dewater |
| Ravi Sinha | Michael Connors |
| Sheryl Rohr | Bill Rohr |
| Mark Maier | Chris Streng |

Appeal No. 1

Michael T. Van Dewater Jr.
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a variance to allow for the construction of a detached accessory structure (garage) in the front yard space of a primary residence at 6161 Salt Road.

Appeal No. 1 is in variance to § 229-44 (E).

DISCUSSION:

Michael and Jen Van Dewater are present. Mr. Van Dewater said he wants to put up a detached garage to store lawn maintenance and snowplowing equipment. Construction is planned for sometime in the summer.

Mr. Van Dewater staked the proposal out at 60' x 100' because the Building Department advised him to stake it as large as he may ever need, if they built smaller it would not be a problem. He is actually looking for 40' x 50' or 50' x 60'. The proposed structure would be 40'-50' off the driveway, the property line is approximately 30' to the back of the shed. The proposed building is depicted on the printout showing Morton Buildings reference #1685. A copy of this printout is on file. This structure will not be used for any type of business.

Mr. Mills asked if the applicant could get away with a smaller building. The house is 2800+ square feet in size. The vehicles, a tractor, a plow truck and the equipment that Mr. Van Dewater wants to store in the structure will fill the building quickly. Mr. Mills voiced his concern regarding the view shed for the neighbors who were before the Zoning Board last month. Mr. Mills asked if the applicant would be willing to put some landscaping in on the south side of his property. Mr. Van Dewater agreed.

Neighbor notification forms are on file.

The size of the property is 23.4 acres. Mr. Van Dewater said the biggest reason he is asking for the variance is because the leach field is in front of the house, so they couldn't go over there with the driveway. Behind the house is low and there are a lot of trees that would have to be removed in that area, he would also have to bring in a lot of fill if he were to put the shed in this area. The electric and water lines are already in the proposed area.

Mr. D'Amato asked if the applicant has explored other options if this variance is denied. Mr. Van Dewater submitted photos of other types of sheds which are similar in size, they are in the file. He understands that the dimensions of a side porch need to be included in the total measurement of the square footage for the shed.

There is no size limitation on a shed in the Agricultural zone.

The driveway for the shed would come off the existing driveway. Mr. Van Dewater said he is not sure which side of the shed the porch will be on. A view of the side of the building is what a driver will see from Salt Road.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 1 as written with the condition that the applicant provides landscaping on the southern portion of the structure and on the western portion of the structure to mitigate the neighbor view shed from Salt Road. The structure is to be limited in size to no larger than 40' x 50'.

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

MOTION CARRIED.

Appeal No. 2

Ravi Sinha
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a variance to allow for the construction of a detached accessory structure (shed) within the front yard space of a corner lot at 5496 Oak Field Lane.

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

DISCUSSION:

Ravi and Kashi Sinha are present. The shed is already up; it was built a month ago. Mr. Sinha said he needs the shed for storage; he thinks the location is the most attractive place for it. There have been no neighbor complaints. The Sinha's were not aware that they needed a variance when they went for the building permit for the shed.

There are two (2) neighbor notification forms on file.

Mrs. Burkard asked why the applicant did not put the shed next to the pool. Mr. Sinha said the property slopes in that area. The trees around the shed will grow and create a sizeable hedge to hide the shed. The Sinha's have owned the property since 2000.

Mr. D'Amato asked what the applicant would do if the variance was denied, would it be a hardship to move the shed? Mr. Sinha said yes because there is also a fence on site that would be affected. He said the shed would be more visible to the neighbors if it was located in any other area on the property. The cost of the shed is approximately \$3,000. It is on a wooden base, there is no poured concrete pad.

Mr. Michnik thinks the shrubbery that is there will help cover some of the sight lines.

ACTION:

Motion by Daniel Michnik, seconded by Patricia Burkard, to **approve** Appeal No. 2 as written.

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

MOTION CARRIED.

Appeal No. 3

Affordable Senior Housing Opportunities of NY
Commercial

Requests the Board of Appeals approve and grant a 59 unit of 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:

Michael Connors of 348 Harris Hill Road, Suite B, Williamsville, NY is present. He explained that the mission of Affordable Senior Housing Opportunities of NY is to make housing affordable for seniors who are capable of living independently. The density variance that is being requested is to permit an apartment building for senior citizens. There are 131 apartments situated on nine (9) acres. The density is 14.6 units per acre. The plan is for a single building, wood frame, three (3) stories in height and fully sprinklered. There are nine (9) similar buildings in the Buffalo area. The building will have a mixture of one (1) and two (2) bedroom apartments. There will be approximately 138 parking spaces. The variance Mr. Connors is seeking is similar to other buildings in Clarence such as 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 project. Coventry Green is for anybody while the proposed building is for

senior citizens capable of living independently. The Clarence Town Board has approved an amendment to the Land Use map within the Master Plan to accommodate implementation of the project. The Town Board has also unanimously issued a Negative Declaration on the SEQRA review in connection with rezoning and the Concept Plan for the project. The Clarence Planning Board has unanimously approved the Concept Plan. The variance request is essential in order to make the project economically viable.

Mr. Connors is the Director of Development at Affordable Senior Housing Opportunities of NY. Mr. Connors sent out a mailing to all the residential homes immediately east of the property and to the businesses along Transit Road to the west of the property and to the property owners to the immediate south and north. He met with the neighbors at Transit Middle School and at Perkins to discuss the project. Some of the neighbors have also been at the public meetings held by the Town of Clarence.

Mr. Connors referred to the Concept Plan dated September 7, 2011 and pointed out where the access road will go. The property has not been purchased yet, it is under contract. The property is in ECSD#5, Mr. Connors has discussed the project with Erie County Sewer representatives and they advised 138 units are acceptable. Mr. Connors discussed a traffic study which would indicate minimal traffic generated by his building. The travel period for seniors is typically 10 am to 3 pm. This development offers a free van service as well.

Mrs. Burkard asked if the neighbors had any negative comments towards the proposal. Mr. Connors said the comments were inquisitive not negative. There is a distance of 300' from the resident's rear yard lot line to the most easterly edge of the project footprint. There will be landscaping between the parking and the property border of the rear of the Kippen Drive residents. The pond needs to be installed, its location will depend upon topography and the grading plans. Mrs. Burkard is concerned with what might happen in the future and if the elderly population isn't there, will this turn into housing for families? Mr. Connors said building is designed specifically for senior citizens, not only in the design of the building but in the design of the units themselves. It would be very costly to change the one and two bedroom apartments to three and four bedroom apartments.

Mr. D'Amato asked if the applicant explored other properties in the Town. Mr. Connors said they looked at other locations but they were not affordable and economically viable. Mr. D'Amato questioned the demographic of Clarence and asked if there is a waiting list for the proposed complex. Mr. Connors said there is an interested person list of about 10-15 individuals. Mr. D'Amato asked how long it will take to fill the complex. Mr. Connors said they would probably open this building to 100% occupancy; a typical apartment building has a rent-up of 18 months. The age of the residents would be 55 years old and greater. A single story on this piece of property would not be feasible. The three story building would have elevators which would allow easier access to common areas; the residents would not have to use the stairs if they did not want to. In his experience, Mr. Connors noted that the third story units are rented out much sooner than the first and second story units. Typically the units rent out under a one (1) year lease, there is no smoking in the units and most units are rented out by one (1) individual.

Mr. Mills is concerned with the traffic implications. He asked why there is no access on Transit Road. Mr. Connors explained the property does not have frontage on Transit Road. Mr. Mills asked if the applicant explored gaining access to Transit Road. Mr. Connors said no, the property has access to Roll Road. 65%-70% of the residents will have a car. There are 12 garages planned, Mr. Connors has found that those residents who have a garage do not park their cars in it, they use it for storage. Mr. Mills asked if there is state funding for this project. Mr. Connors said no, it is all privately held. There are nine (9) apartment buildings in Western New York, one (1) in Syracuse and a building under construction in

Johnson City. Mr. Mills asked if the applicant looked at purchasing property towards the southern portion of the property. Mr. Connors said his company is maxed out with what they can pay for land. Mr. Mills asked if the applicant can get away with any less than the 14.6 per acre; this is a substantial request. Mr. Connors noted that Coventry Green apartments has a 66 unit variance which is higher than the variance that he is requesting. Mr. Mills said there is a different dynamic at Coventry Green. Mr. Connors noted that Coventry Green is near Stonegate, which is a lot of residential use. If this project had fewer units it would not be economically viable, so if this variance is denied, the project would be dead.

Mr. Michnik referred to the Planning Board minutes from the November 30, 2011 meeting: "Mr. Pazda asked the applicant if he is amenable to land banking some of the parking to the east and only put it in if needed." "Mrs. Salvati voiced her concern regarding the narrow area between the property line to the west and the proposed entrance drive. She is concerned about potential impacts to the owner of that land and how the applicant would go about mitigating those impacts. Mr. Connors said he has not had a specific meeting with that homeowner; however that homeowner has attended informational meetings that were held early on in the process." Mr. Michnik asked if Mr. Connors has received any further information from the homeowners were he is going to put the driveway; is the driveway going to be moved more to the east? Mr. Connors reminded the Board that this is just in the Concept Plan stage; therefore the driveway could move east. He has spoken with the owner of the music shop and they agreed that if the project continues to receive approvals they will discuss landscaping and buffers for the respective property border. There are some mature trees in that area that Mr. Connors would like to retain. Mr. Michnik asked about the curb cuts. Mr. Connors explained that the current driveway will be eliminated; a new one will be built with an "elbow" that comes off the access drive to service the existing property. Mr. Michnik said the traffic study must include not only the residents of the apartment building but visitors as well. Mr. Connors said the numbers reflect tenants, visitors and staff. Very seldom is the parking lot full. Mr. Michnik asked if the applicant considered tearing the house down and moving the driveway to where the house was. Mr. Connors said he has not considered tearing the house down.

Dorothy Gerstner is the current property owner. Chairman Henning asked if there were any problems with the utilities at the site. Mr. Connors said no. Chairman Henning asked what type of facilities are available to the residents. Mr. Connors said there will be two (2) laundry rooms on each floor. There are several community rooms within the building for gatherings, whether it be to play cards or to have a cup of coffee with friends. The room will seat approximately 70 people and will have a large television in it. There are libraries, computer rooms and lounges within the building as well.

Mr. Mills would like to see more detail in terms of the structure, the ingress and egress, the curb cuts, traffic flow and landscaping for the southern and eastern portion of the property. Mr. Callahan noted that this proposal is preliminary and still has to go back to the Planning Board and Town Board; there are minimum architectural styles and Landscape Committee approval will be required. Before getting to that point, the variance needed to be requested.

Mr. Michnik wants the addresses of the other nine (9) apartment buildings in the area so he and the other members of the Zoning Board of Appeals can go and look at them.

It is noted that if the variance request is tabled that does not guarantee an approval at next month's meeting. Mr. Connors is aware of this.

Mr. Connors will forward the addresses of the other apartment buildings to the Planning and Zoning office where they can be forwarded to the Zoning Board of Appeals members.

Mr. Connors does not have a problem with the proposal being tabled; he understands that there will be further information requested of him to be provided by the next meeting.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **table** Appeal No. 3 to allow the applicant time to provide more detail as follows:

- the addresses of the other similar apartment buildings in the Western New York area.
- more details on the elevations of the building and its materials.
- traffic flow information and the details on the connection to Roll Road.
- a landscape plan.

ON THE QUESTION:

Mrs. Burkard asked for details on the pond. Mr. Connors noted that the pond would have to be approved by the Town Engineer.

Mr. Mills asked about a fence around the property. Mr. Connors said there will probably not be a fence between the site and the Kippen Road residents. There will be a fence around the dumpster. Mr. D'Amato asked about lighting and signage at the site. Mr. Connors noted that these are site plan matters, right now there is only a conceptual plan.

Town Attorney Steve Bengart said the questions are getting beyond the scope of the Zoning Board of Appeals and warns the Board be careful not to act as the Planning Board with its questioning.

Mr. Callahan said there are minimum standards in the Zoning Law related to the architectural, landscaping and lighting.

Mr. Michnik asked if there will be a sign on the property. Mr. Connors said there will probably be a sign at Roll Road. Jim Callahan noted that the sign will have to receive approval from the Sign Review Board. Mr. Michnik said part of the street is residential and he is concerned if a sign will go up there. Mr. Callahan said the sign would have to be compatible with the zoning classification. Town Attorney Bengart said the sign issue is not before the Board at this point.

Mr. Michnik asked how the applicant plans on eliminating the curb cut for the existing driveway. This request is included as part of the motion, Mr. Mills amends his first to include this request. Mr. Connors will get back to the Board with this information.

The applicant understands the questions that are being asked of him and is in favor of tabling the request.

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

MOTION CARRIED.

Appeal No. 4

Michael Fitzsimmons
Residential Single Family

Requests the Board of Appeals approve and grant a 3.2' variance to allow for a 21.8' side yard setback for the construction of an addition to an existing commercial facility at 4400 Shisler Road.

Appeal No. 4 is in variance to § 229-87 (C)(2).

DISCUSSION:

Mark Maier, general manager of Fitzsimmons Hydraulics, and Christopher Streng of Kulback's Construction are both present. Mr. Streng said they are proposing a 7,000 square foot pre-engineered metal building addition and when they put the building on the back of the existing structure they found there was a 21.3' setback to the adjacent property line at the northwest corner, which is just shy of the required 25' setback.

Mr. Michnik asked who lives in the house that is next to the building. Mr. Maier said the owners of the business, Mr. Fitzsimmons and his wife, live there.

There are two (2) neighbor notification forms on file.

Mr. Streng explained that the addition is a continuation of the existing building. The addition will be metal; the metal will be continued along the existing building. The metal roof of the addition will be continued over the roof of the existing building, there will be uniformity from the road to the rear of the addition. The mansard will be taken off the front of the building and replaced with a nice façade; the existing brick will be extended to the other side.

Mr. Michnik asked if there are plans to rent or sell the house in the future. Mr. Maier said the house may be rented but there are no intentions of selling it.

Mr. Maier explained that the business is a repair and distribution center for hydraulic components, there is no manufacturing done at the site. The addition is for the same type of work they just need more room.

Mr. Mills asked if the applicant explored tweaking the rear structure to comply with the Town Code. Mr. Maier said no. There are no architectural drawings prepared because the project is in a very preliminary stage; however they want to move forward quickly.

Currently, there are eighteen (18) employees; this number could increase by a few with the new addition.

Mr. Callahan explained that the reason this request is on the agenda is because it is a pre-existing non-conforming use and per the Zoning Law the Zoning Board of Appeals would have the opportunity and could take action to approve an increase of any expansion on this non-conforming use. The use itself is "grandfathered" in, but it is not an as-of-right action.

Mr. Michnik asked if the applicant has an area planned for the location of the dumpster. Mr. Streng said he will put an enclosure around the dumpster if it is required; it would be located somewhere in the parking lot.

ACTION:

Motion by Arthur Henning, seconded by Ryan Mills, to **approve** Appeal No. 4 as written.

ON THE QUESTION:

Mr. Michnik said the applicant will need to block the dumpster from the neighbor to the east via an enclosure and/or buffering.

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

MOTION CARRIED.

Motion by Arthur Henning, seconded by Patricia Burkard, to **approve** the minutes of the meeting held on November 8, 2011, as written.

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

MOTION CARRIED.

Meeting adjourned at 8:29 p.m.

Carolyn Delgato
Senior Clerk Typist