

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday September 13, 2016
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:11 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
David D'Amato	Patricia Burkard
Richard McNamara	

Town Officials present:

Director of Community Development James Callahan
Deputy Town Attorney Steven Bengart
Councilman Paul Shear

Motion by David D'Amato, seconded by Ryan Mills, to **approve** the minutes of the meeting held on July 12, 2016, as written.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** the minutes of the meeting held on August 9, 2016, as written.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Other interested parties present:

Dennis Steszewski	Kris Blajszczak	Keith DeGraff
Donna Kaminska	Paul Hudson	Randy Garver
Michael Patti	Joe Savakinas	Mary A. Konitzer
Steven Rzasa	David Sutton	Noel Dill
Michael Metzger	Paul Stephen	

New Business

Appeal No. 1

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:

Deputy Town Attorney Steve Bengart noted that the variance was not staked with regards to the location prior to yesterday (Monday, September 12, 2016) afternoon. He said the Board has a concern about this and their inability to see where the proposed turbine will be located. The Board members asked if it is legally permissible to table the request because it was not staked, Deputy Town Attorney Steve Bengart said yes it is.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **table** Appeal No. 1. The basis for this action is because the variance was not marked until this past Monday September 12, 2016 as to the specific location where the windmill is supposed to go. Based upon the large variance request as well as the height and the overall conditions of the application, the Board feels this is an appropriate action.

ON THE QUESTION:

Deputy Town Attorney Steve Bengart said the application and numerous documents state that the areas in question are supposed to be staked/marked so that when the members of the Board go out to view the property they can see the areas.

Chairman Michnik said there are no neighbor notifications in the file. The applicant needs to contact all owners of property that touches the applicant's property.

The applicant noted that he went to his neighbors and they completed the forms, he then submitted the signed neighbor notification forms, they should be in the file.

Chairman Michnik said the applicant needs to make the location accessible so the Board members will know where it is when they visit the property.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 2

Donna J. Kaminska
Residential Single-Family

Requests the Board of Appeals approve and grant a variance to allow for an accessory structure to be located in the front yard setback of 8300 Clarherst Drive.

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

DISCUSSION:

Robert and Donna Kaminska are present. Two (2) neighbor notification forms are submitted.

Mr. Kaminska explained that there was a large 45' pine tree on the property when they purchased the home 31 years ago. It died and had to be removed, as a result it left a gaping hole and they lost privacy, rather than put landscaping there, they would like to put up a shed. They purchased the shed knowing they needed a building permit, but never expecting they would have an issue with location. They were under the interpretation that the location was not in the front yard but in their back yard. The sales representative for the shed and the site evaluator both assured the applicant that they would not have a problem. The shed would be made and delivered, the applicant was put in a predicament where they had to accept deliverance of the shed before obtaining approval for the variance. When they first applied for the building permit on July 9, 2016, they expected to get the permit right away. They called the Building Department a week later and they were told they needed to wait a while longer. The applicant waited and waited and did not hear anything. Mrs. Kaminska called the Building Department on August 9, 2016 and was told that she (the applicant) was notified on July 23, 2016 via telephone that the application was denied. Mr. Kaminska was home on July 23, 2016 and their phone records and logs all calls, there was no call from the Building Department. At this point it is too late to apply for the August Zoning Board of Appeals agenda. So as to not inconvenience the people that were delivering the shed and to not risk losing his \$1500 deposit they placed the shed on the property with the assurance that it could be moved if necessary. Mr. Kaminska would prefer not to move it.

Mrs. Burkard said the location looked odd to her, she asked if there is any other location where the shed can be placed. She thinks landscaping can block the view from the circle. Mrs. Kaminska said there is not another place. There will be landscaping around the shed. There is a slope to the property so the further up they go on the property the more slope they need to deal with. The proposed location of the shed is one of the flattest areas on the property.

Mr. D'Amato voiced his concern with the proposed location of the shed and asked what it will be used for. Mr. Kaminska said it will be used for storage of his summer furniture and lawn maintenance equipment. These items are currently kept in the basement. Mr. D'Amato said they can hide the shed in other spots on the property.

Mr. McNamara noted that if this was a normal back yard there would be no variance required, but in this situation there are three street sides to the lot. Mr. Kaminska explained the landscaping plan for around the shed noting that he will use a stone fence on the south side and on the other three sides of the shed he will come out 2' and put rubber edging there, that area will be filled with mulch and small shrubs. He will plant a tree in the one spot from the cul-de-sac that the shed would be most visible. Mr. Kaminska said he is amenable to his landscape plan being a condition of the approval, if it is approved.

Chairman Michnik agreed with the positioning of the shed due to the slope of the property and the landscaping that will be installed.

Mr. Kaminska asked what the time frame is for installing the landscaping, he plans on having it done by the end of the Fall, weather permitting.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 2, as written, with the following conditions:

-The applicant provide appropriate landscaping as described above and sketched out in Exhibit A, which is on file. This includes stone along the south portion and mulch and shrubbery, at least 1' high, along the north, east and west sides of the shed approximately 2' out. At least one 4' high tree to be planted to block the view from Old Post Circle to the north portion of the shed. The type of tree is at the discretion of the applicant. All landscaping to be done by June 1, 2017.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 3

Paul T. Hudson
Residential Single-Family

Requests the Board of Appeals approve and grant a 20' variance to allow for a 25' setback for a swimming pool within the front yard setback located at 8602 Lakemont Drive.

Appeal No. 3 is in variance to §196-3(C).

DISCUSSION:

There are three (3) neighbor notification forms on file.

Mr. Hudson is present and explained that the original request was for 20' but after speaking with his contractor and his neighbor, Mr. Garver, he reduced the request to a 3' variance from the rear property line and repositioned the pool layout. Mr. Hudson referred to the revised pool layout and location document that is on file, the document that is attached to that illustration shows the dimensions. The dimensions show a 3' variance request.

Mr. Mills noted that a letter has been received from Kathleen and Randall Garver dated September 5, 2016 to the Clarence Zoning Board members, received September 7, 2016. As to the content of the letter, the Board will rely on Mr. Garver's live testimony as he is present at the meeting. Mr. Garver is present and said their original concern was that of privacy because the proposed location was adjacent to his driveway. He was also concerned with the aesthetics of the pool because if they have to sell their home due to employment relocation they would need to do it quickly and any potential buyers may not like the pool so close. The only concern the Garver's have with the new layout is drainage. At one point the yards around

him flooded and Mr. Garver has water in his basement. He said a neighbor worked with the Town last summer to resolve some drainage issues. He would like to make sure the 3' setback is measured appropriately.

It is clarified that the revised plan is the document entitled "Illustration #1" and is on file. Mr. Garver said he is ok with the revised plan, however he is concerned with the drainage.

Mr. Hudson said the original plan was for an 18' x 36' pool. The revised dimensions for the pool are 16' x 32'. Mr. Hudson said if they went down to the next size pool they would still need a variance. He said a drainage plan needs to be submitted along with the pool plan. He noted that the proposed pool would fit on the other side of his property without the need for any variances. Mr. Garvey explained that the master bath is on the side of the house that faces the driveway and would look out onto the pool if the pool were to be placed in the front yard.

Mr. Hudson submitted revised neighbor notification forms that were signed within the last 48 hours, the forms are on file.

Mr. Mills asked the applicant for details on additional landscaping. Mr. Hudson said he property is well landscaped, he will provide shrubbery, trees and other landscaping all around the perimeter of the pool to provide as much privacy as possible for him and the neighbors. Decorative aluminum fencing will be installed and will be on the applicant's property.

Mr. McNamara asked if there is rear yard drainage on the property. Mr. Hudson said yes the drainage runs from west to east, there is a swale between the two yards with a drain cover.

It is clarified that the variance request has been revised to a 3' variance to allow a 7' rear yard setback on both the east and south sides of the property.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** Appeal No. 3 as follows: a 3' variance to the east to allow for a 7' setback, and a 3' variance to the south to allow for a 7' setback.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 4

Michael Patti
Residential Single-Family

Requests the Board of Appeals approve and grant a 3' variance to allow for a 7' side yard setback for a detached accessory structure located at 6340 Lakemont Court.

Appeal No. 4 is in variance to §229-55(E)(1).

DISCUSSION:

Three (3) neighbor notification forms are on file.

Michael Patti is present and explained he has storage needs and wants to build a shed. His property is unique in that all the neighbors have views of the lake. The aerial view shows a neighbor's shed that was put in some time ago and cause quite a stir in the neighborhood because it blocked views. Mr. Patti feels his proposed location is an ideal spot, it is at the end of his driveway and tucked between his house and a set of high bushes. His neighbors are in favor of this location as opposed to putting it in the backyard and blocking views. Mr. Patti thinks he only needs a variance of 2.34'.

Mr. Mills asked about setting the shed back a little farther. Mr. Patti said he chose this location because he would like to be able to come out onto the cement surface to use the items that he will store in the shed, he has a back problem and it would be easier when plowing the driveway or mowing the lawn. The ground is fairly level about 8' behind the driveway so it would not need a lot of ground leveling to put a shed there. Beyond that 8' it drops off quickly with a downhill slope towards the water. To put a shed back there would require a lot more ground work. The bigger part of the lake is to the north of him and if he put the shed farther back he would block his own view of the lake, he does not want to do that. Mr. Mills asked if there are any other houses in the neighborhood with a similar set up to what Mr. Patti is proposing. Mr. Patti said there is a house on Bridlewood with a shed on the side of the house. His neighbor across the pond put his in the backyard, which follows all the rules, but everyone in the neighborhood hates it. His neighbor across the street has a shed. Mr. Mills said he is concerned with the shed being placed at the end of the driveway and it fitting in with the characteristic of the neighborhood. Mr. Patti said it is not a barn style shed, he is spending money on it so it looks good.

Mr. Patti has lived in the house for a year and a half. Mr. D'Amato asked what type of items need to be stored. Mr. Patti said he has a lot of pool stuff, a snow blower, tools and a lawn mower. These things are now kept in his basement and in his garage, which prevents him from parking his car in the garage in the winter. Mr. Patti has explored other options, his neighbors will hate anything behind his house. The adjacent neighbor would rather the proposed location than behind the house, where Mr. Patti would not need a variance request to place it there. He also looked at smaller sheds but that would force him to go to a completely different style shed that won't look as good. He cannot come too close to his house because he has a sidewalk around the house.

Mrs. Burkard voiced her concern regarding how the shed will look being so close to the house. She asked if the shed could be turned the other way, towards the house, and landscaped so the shed won't be seen. Mr. Patti said it would still need to be in the middle of his yard and he does not think it would look right. Mrs. Burkard asked how much farther back can the shed be placed without blocking the neighbors view. If Mr. Patti puts the shed any farther back his neighbor will be able to see it because it will be past the large bushes. Those large bushes shield the neighbors view if the shed is placed at the end of the driveway.

Chairman Michnik said he drove through the neighborhood and he is not in favor of this shed being placed anywhere on the property because he feels it does not fit in with the character of the neighborhood, he thinks it takes away from the neighborhood. He suggested the applicant attach a breezeway and attach it to a bigger structure that will tie in and add value to the property. Mr. Patti said he needs the storage, he does not have money to build a whole garage now and he thinks the shed is top notch, he is trying to do the right thing. If he goes with the options where he doesn't need a variance, he does not think it will be as nice there.

Mr. McNamara asked if the shed could be moved closer to the house. Mr. Patti explained that the sidewalk comes out 6' in places, and 8' near the driveway. If he came closer than the 10' he would be placing the shed on the sidewalk. Mr. Patti gave this request a lot of thought.

Mr. McNamara referred to Google Maps and said there is a shed next to a house on Bridlewood. Mr. Patti said if that shed does not ruin the character of the neighborhood then his won't either. His shed is much nicer than the one on Bridlewood.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **deny** Appeal No. 4 on the grounds that when reviewing an area variance the Zoning Board of Appeals members are asked to look at Town Law §267 which provides 5 criteria. The first is whether an undesirable change will be produced to the character of the neighborhood or a detriment to nearby properties. Based upon the number of houses in the neighborhood and the fact that the applicant provided testimony that one house may have something similar is not substantial enough evidence proving there exists similar situations in the neighborhood. The variance would impact the character of the neighborhood. The benefit sought by the applicant can be achieved by some other method, the location of the shed could be somewhere else on the property. The variance is substantial based on the side yard setbacks being requested. The variance would have an adverse effect or impact on the environmental conditions of the neighborhood based upon the proposed location because there is nothing similar in the neighborhood. The difficulty appears to be self-created, the applicant purchased the home without the shed and now wants to add it.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 5

Joseph R. Savakinas
Residential Single-Family

Requests the Board of Appeals approve and grant a 232 square foot variance to allow for a 432 square foot detached accessory structure located at 9475 Keller Road.

Appeal No. 5 is in variance to §229-55(H).

DISCUSSION:

Two (2) neighbor notification forms are on file.

Mr. Savakinas is present and explained that the garage space that currently exists is not adequate for two (2) vehicles, it has a 15' door, a walk down basement and is only 19' deep. The lawnmower, a generator, toys for the grandchildren and patio furniture are currently stored in the basement. The snow blower is down there now and will come up soon for the winter months.

Mr. D'Amato asked what is kept in the other shed on the property. Mr. Savakinas said he keeps a John Deer 265 with a 15" deck, a bench, wheelbarrows, garbage cans and propane tanks. If this request is

approved Mr. Savakinas said he will not keep the smaller shed. The applicant has lived in the house for a year and a half. Mr. D'Amato asked if the applicant explored other options such as adding on the house. The proposed shed is 18' x 24', Mr. Savakinas said this is the smallest he could live with.

Mrs. Burkard asked if Mr. Savakinas will extend the driveway to the proposed garage. Mr. Savakinas said yes. There may be electricity in the garage, just a couple outlets.

Mr. Mills asked if the applicant explored other locations such as closer to the existing garage. Mr. Savakinas did not and went on to explain that there reason they went back 18' is because the concrete pad for the house extends 18' back, so if he pulled the car out of the garage and parked it there it would be out of the way of the patio.

Chairman Michnik asked if the applicant explored attaching the proposed garage to the house/existing garage. Mr. Savakinas said he did not, one reason being the expensive footer that would have to be installed. Chairman Michnik suggested he look into that option. Deputy Town Attorney Steve Bengart said that option may still require a variance. He went on to say that the applicant can ask the Board to table the request if he wants to look into other options or he can ask for a vote on the request. Mr. Savakinas prefers to keep the proposed accessory structure detached. If he attached it there would be an issue accessing the back yard and the electric would have to be moved. Also, if the structure was attached it would be 6' off the property line as opposed to where he is now at 12' or 14'.

ACTION:

Motion by Richard McNamara, seconded by David D'Amato, to **approve** Appeal No. 5 as written with the condition that once the new garage is built the existing shed will be removed from the property within three (3) weeks of the Certificate of Occupancy.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Nay		

MOTION CARRIED.

Appeal No. 6

Bruce Matthies
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 3.5' variance to allow for a 6.5' side yard setback for a detached accessory structure at 4100 Gunnville road..

Appeal No. 6 is in variance to §229-44(R)(2).

DISCUSSION:

Three (3) neighbor notification forms are on file.

Steven Rzasa is the contractor for the project and is present on behalf of the applicant.

Mr. Mills said the proposed location seems to be the most ideal location based upon the proximity to the gas meter and electrical service. Mr. Rzasa said that is correct. Mr. Mills asked if there were other locations

contemplated. Mr. Rzasas said they looked at the back side of the house but there is a door and windows all the way down the west face of the house, this would not be a good location.

Chairman Michnik asked how big the proposed generator is. Mr. Rzasas said the size of the concrete pad is 24' x 50', the generator will be about 2' smaller in each direction.

ACTION:

Motion by David D'Amato, seconded by Patricia Burkard, to **approve** Appeal No. 6, as written.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 7

Michael Metzger
Commercial

Requests the Board of Appeals approve and grant a variance of 8 units to allow for 24 units of multiple family housing located at 9560 Main Street.

Appeal No. 7 is in variance to §229-126(F)(1)(c).

DISCUSSION:

Chairman Michnik noted that he and Dave Sutton are involved in a contract for blueprints but that situation will have no bearing on Chairman Michnik's decision/vote for this project.

There are six (6) neighbor notification forms on file. The neighbor at 9695 The Maples would not sign the neighbor notification form and the neighbor at 9705 The Maples was out of town.

Dave Sutton, of Sutton Architects, is present along with Mike Metzger of Metzger Engineering, and Noel Dill and Paul Stephen of Stephen Development.

Mr. Sutton referred to Exhibit A which is a photo of the property as it currently exists. The photo is on file. It is currently a 30 unit motel, it has not been occupied and is in disrepair. The applicant would like to develop the property. Mr. Sutton referred to Exhibit B which is a document showing the Concept Plan of the mixed-use building they are proposing. The document is on file. This project has already been presented to the Town Board and the Planning Board. The Town Board was identified as Lead Agency and a Negative Declaration was determined for the proposed Concept Plan. The applicant is aware that they have to go through additional approvals for the site plan review and approval. The variance request is for eight (8) additional units. Mr. Sutton referred to §229-126 (F)(1)(c) of the Town Code which states that in a private septic system that is not tied into a public sewer system there is a cap of sixteen (16) units that can be put on any parcel. This law was put into effect after this property was purchased. They are proposing a mixed-use building with fourteen (14) apartments on the second floor and about 18,000 square feet of commercial space on the first floor.

Mr. Mills asked when the property was acquired. Mr. Sutton said 2011. It is clarified that the cap went into place in 2013. Mr. Sutton said in addition to the mixed-use portion of the project they are also proposing 10 townhouse-style apartments at the back of the property. All of the development is being

proposed in the commercial portion of the property. Mr. Sutton noted that if it was not for the cap that was put on in 2013 the allowable units per acre would be four (4) which would be more than in compliance. The only variance they are looking for is the cap of sixteen (16) because of the fact that it is on private septic. Public sewer on Main Street is not in the foreseeable future. This proposal would provide a state-of-the-art septic system in terms of its capabilities. Within the last year, the septic system design criteria has greatly increased in order to ensure quality control on environmental impacts. An example of the new design criteria states that a septic system has to be 150' off the property line, it use to be 10'.

Mr. Sutton noted the criteria that the Zoning Board of Appeals members take into consideration when reviewing a variance. The first is whether it would create an undesirable change to the character of the neighborhood. The variance they are asking for is about the septic system and its potential impact with the eight (8) additional units. The applicant feels that they are removing a 30 unit motel on the property that was based on lower end income, semi-transient housing. There is more than adequate land for the septic system to exist. They are aware that the Erie County Health Department as well as the DEC have reviewed the preliminary plans for this water treatment design system and they have rendered an opinion that it is acceptable, this opinion was a deciding factor in the Negative Declaration that was decided by the Town Board on August 3, 2016.

Mr. Sutton referred to the second criterion which is whether the applicant can achieve the benefit by some other method that would be feasible. He referred to the report that was submitted and said if there were public sewers there would be no question this project would be able to proceed with the number of units requested. Public sewers are not available and there is no other way to achieve this desired effect and to make this project viable.

Mr. Sutton noted the third criterion which is whether the requested variance is substantial. He noted that this project meets all other aspects of the zoning including the criteria of four (4) dwelling units per acre, that is without a septic system. The additional cap of sixteen (16) units is what the applicant is asking a variance for. They are relatively low density. The project will not have a negative impact on the surrounding neighbors or the environment.

The fourth criterion is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Mr. Sutton said they feel the project is a positive thing, they are taking down an eye sore and putting a new project in its place. They don't feel it will have any negative impacts.

The fifth criterion is whether the alleged difficulty was self-created. Mr. Sutton said this property was purchased in 2011. The actual criteria for the sixteen (16) unit cap for the private septic system was imposed in 2013. It is not a self-created difficulty. The applicant did not anticipate that the change to the Zoning Ordinance would occur.

The applicant feels this is a reasonable request and the benefits far outweigh any detriments that might be identified, if any.

Mrs. Burkard asked if the eight (8) extra units are apartments or townhouses. The eight (8) extra units are within the combined total of twenty-four 24 units. There are fourteen (14) units in the mixed-use building and the townhouse are the additional units. The size of the apartments will range from 900 to 1300 square feet. The townhouses will be approximately 1500 square feet with attached garages. The design is not finalized yet.

Paul Stephen said they submitted a plan prior to 2013, this proposal is the second phase of the Willow Square project. Mr. Stephen said he has to have the proposed amount of units, the project will not work without them. Mr. Metzger explained that the residential portion of the project is there to subsidize so the rents can be kept on the lower side for the commercial portion to entice businesses to come there. Willow Square is a very similar and successful project.

Mr. Sutton said they have done some presentations to the Town Board and the Planning Board and both Boards liked the building type and the mixed use. They also strongly requested that the applicant up the scale the quality of the materials and the nature of the spaces, they want to see a better product which will put a stronger financial burden on the overall project, making these units become much more a necessity to do the product they want to see at this location. Mrs. Burkard asked if the applicant could make the units larger instead of adding more, thus getting a higher rent for the larger units. Mr. Sutton said there is a known market for the types of apartments that they are proposing. The targeted demographic is empty-nesters or 20-30 year olds, these groups do not call for a large three-bedroom apartment.

It is clarified that the proposal involves two (2) parcels, but it will all be one property. Calculating the density based upon the entire parcel, they are at 2.4 dwelling units per acre, which is below the 4 dwelling units per acre. The large estate lots were planned as such to be used as a buffering technique along with the water detention system and septic system, it was planned this way in order to provide as much distance as possible from the neighboring property. The applicant has talked with some of the neighbors and they are doing everything they can to design a project that is respectful to all the neighbors. They are trying to keep any negative impact to a minimum.

Mr. Mills asked if the structures labelled 1 and 2 coming off Goodrich Road will be single family homes and sold. Mr. Metzger said yes the intent is for single family homes to be built there in an Open Development Area and it is limited to two (2) homes. The 45' greenbelt will be a forever green space.

It is clarified that there are fourteen (14) units on the second floor of the mixed use, commercial on the first floor. The back structures consist of ten (10) townhouse style apartments, two-story. Mr. Sutton said they are more than willing to comply with the request by the Board for a higher standard of materials.

Mr. D'Amato asked how many commercial spots are planned. Mr. Sutton said they have not identified the breakdown of the commercial spots, that is specifically done as the building gets filled. There could be ten (10) spots or less if they combine spots for a business tenant. The estimated square footage per unit for the commercial portion is 1400. Mr. D'Amato asked what the size of the townhouses will be, Mr. Dill said the townhouses will be larger than the apartments but that has not been determined yet. Mr. Sutton said although they feel there is a desire and a need for this housing in the community, there are no defined comparables. Mr. D'Amato said if there are no comparables how can the applicant say they need extra units. Mr. Dill said they are projecting what they think will work for this project.

Chairman Michnik asked how soon the applicant is looking to build. Mr. Stephen said he would like to knock the existing building down by January 2017 and start to build that following Spring. Chairman Michnik asked for details on the septic system. Mr. Metzger said the setbacks have increase significantly. The amount of flow rate you put into the system per square foot has changed so that you are dispersing less effluent over more square footage of disposal area.

Mr. D'Amato asked what the applicant would do if the Board denied the variance request. The applicant said he would not build.

Mr. Sutton reminded the Board that the project meets every other Zoning ordinance.

Mr. Metzger said that Mr. Stephen has committed, that if public sewers come in, he could spend 100's of 1000's of dollars to put the system in. After he opens, the day public sewers show up, Mr. Stephen will shut down the existing system and tie into it. This project will help the Town get to the goal of having sewers on Main Street. Mr. Metzger said the planned septic system can handle everything that is proposed on the site. He went on to say that the DEC and the State reviewed the preliminary plans for 24 units (plus the commercial component) and they both agreed it would work. Mr. Metzger said there have been questions relative to a restaurant within the commercial component. They have more than enough capacity with the land they have available accommodate a high commercial user, like a restaurant. There is more than enough space to accommodate two (2) high commercial users. Mr. Metzger said the septic system will be an open bottom sand filter with fractured rock.

Mrs. Burkard asked if this large piece of property being on a septic system will have a negative impact on the Town's ability to have sewers going down Main Street. Mr. Metzger said from a functional standpoint it is irrelevant. Mr. Sutton explained that if the sewer became available Mr. Stephen would be obligated to tie into the system, Mr. Stephen is aware of this.

Mrs. Burkard referred to the traffic study and said she finds it hard to believe that the project passed with the high school being right across the street. She asked for details on the signal. Mr. Metzger said the signal will be changed to a four-way signal. The entrance will be lined up with Gunnville Road. There will be a dedicated right turn arrow that works simultaneously with a dedicated left turn arrow off of Gunnville onto Main Street.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** Appeal No. 7, as written. The applicant has provided evidence and testimony as to a variety of the criteria set forth in Town Law §267. The applicant has provided evidence as to when the lot was purchased versus when the sixteen (16) unit cap went into effect. The applicant has provided extensive testimony in regards to the amount of greenspace and various practices that have been set forth to allow for extensive greenspace here. The applicant has also provided testimony about the necessary economics to make the project work.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Meeting adjourned at 9:22 p.m.

Carolyn Delgato
Senior Clerk Typist