

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday September 9, 2014
7:00 p.m.

Vice-Chairman Ryan Mills called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Vice-Chairman Ryan Mills David D’Amato
Patricia Burkard Gregory Thrun
Richard McNamara

Zoning Board of Appeals member absent: Chairman Daniel Michnik

Town Officials present:

Director of Community Development James Callahan
Junior Planner Jonathan Bleuer
Deputy Town Attorney Steven Bengart
Councilman Peter DiCostanzo

Other interested parties present:

Sean Hopkins David W. Deats Rocco J. DelGrosso
Pam Armstrong Matt Vanderbrook Dawn Trippie
Kenneth Thompson Justin Kennedy John Lydon
Deborah Gold Kevin Hanley Bernard Kolber
David Sutton Raj Sharma David Huck
Brett Fitzpatrick Bruce Wisbaum JoAnn Azzarella
Richard Lippes Roslyn Marcus Elinor Bernacki
Esther Surowiec Edward Dzedlic

Motion by David D’Amato, seconded by Richard McNamara, to **approve** the minutes of the meeting held on August 12, 2014, as written.

Richard McNamara Aye Gregory Thrun Abstain
Patricia Burkard Aye David D’Amato Aye
Ryan Mills Aye

MOTION CARRIED.

New Business

Appeal No. 1

David W. Deats
Agricultural Floodzone

Requests the Board of Appeals approve and grant variance to allow for the construction of a 168 square foot detached accessory structure within the front yard setback located at 10660 Rapids Road.

Appeal No. 1 is in variance to §229-34(E).

DISCUSSION:

David Deats is present and explained that he wants to have a shed built. It will be constructed by the same person that put the siding on his house and sided the other shed on his property. It will be identical to the existing shed and will be next to the garage. The pitch to the roof and the shingles will match the garage. The doors will be the same on both sheds. Everything will match. The shed will be used for his wife's gardening equipment.

Two (2) neighbor notification forms are on file.

The aerial photograph that is being referred to is labeled Exhibit A and is on file. There are no objections from adjacent neighbors.

Vice-Chairman Mills read a letter into the record from Joseph Lancellotti, Civil Engineer to Jim Callahan dated September 9, 2014: "The Engineering Department has reviewed the location of the proposed structure at the above address and has determined, based on the information that is available to us, that the proposed structure is located outside of the 100-year floodplain." The letter is on file.

Mr. Deats said the dimensions of the proposed shed are 12' x 14'. Mrs. Burkard asked if he thought about putting the shed in the back yard. He said he did think about that but it gets very wet back there. He does not want to attach it to the house because he would have to move his power meter and it would be more involved than it's worth.

In response to Mr. D'Amato's question asking how long the applicant has lived at that address, Mr. Deats said 36 years and he plans on staying there. There will be no power in the proposed structure and there will be no cars stored in it either. It will be used for storage of gardening equipment and Christmas decorations.

Mr. Deats has explored other locations on the property but in his opinion this is the best location for the proposed structure. There will be no business operated out of the structure.

ACTION:

Motion by David D'Amato, seconded by Patricia Burkard, to **approve** Appeal No. 1, as written with the condition that this accessory structure will not be utilized at any point in the future as a business use, it is strictly for home storage.

ON THE QUESTION:

Deputy Town Attorney Steve Bengart asked the applicant if he is amenable to the condition put on the approval that the structure will never be used to operate a business. Mr. Deats agreed with the condition.

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 2

Jim Czajkowski
Residential Single Family

Requests the Board of Appeals approve and grant an 88 square foot variance to allow for the construction of a 288 square foot detached accessory structure located at 9641 Carmelo Court.

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

DISCUSSION:

Rocco DelGrosso is present and representing the applicant, who is out of town. Mr. DelGrosso is the general contractor and is building an accessory structure to house a storage area, a covered patio area and a small bathroom. He noted that the size has increased from 6' of enclosed area to 8', making the enclosed area 8' by 18'. Mr. DelGrosso spoke with Paul Gross this afternoon and it was decided that they will put a 42" mono poured trench footer under that area. The total building is going to cover 324 square feet, there is 180 total square feet of open space and 144 total square feet of enclosed space. It is clarified that the applicant is now seeking a 124 square foot variance for the construction of a 324 square foot detached accessory structure. Mr. DelGrosso agreed with these measurements.

There is one (1) notification form on file.

Mr. DelGrosso said there will be no living area in the structure, it is a seasonal building and will be used for storage in the off-season. The outside of the proposed structure will be identical to the house.

Mr. McNamara asked about the three posts, Mr. DelGrosso said they are on footers, the concrete pad is already poured.

Mr. DelGrosso does not have direct knowledge that the applicant spoke with the neighbor at 9635 Carmelo Court other than the applicant told Mr. DelGrosso that he talked to all the neighbors and that neighbor said he would fill out the form. He does not know of any opposition from the neighbor at 9635 Carmelo Court.

ACTION:

Motion by Gregory Thrun, seconded by Richard McNamara, to **approve** Appeal No. 2 with the amendments made by Mr. DelGrosso. The amendment is for a 124 square foot variance to allow for the construction of a 324 square foot detached accessory structure.

ON THE QUESTION:

Vice-Chairman Ryan Mills said it appears this variance request encompasses a structure with an open are covered terrace area of approximately 18' x 10'. The whole variance request is not encompassing a closed-in structure. This differentiates this variance from other similar size variances that have come before the board.

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 3

Matt Vanderbrook-SED
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 94' variance to allow for the construction of a 154' wind turbine located at 6879 Salt Road.

Appeal No. 3 is in variance to §173-4(C).

DISCUSSION:

Pam Armstrong is present and explained that she lives at 6879 Salt Road. She owns an 85 acre horse farm and would like to install a wind turbine to help protect against electricity price spikes and to offset some of their electric costs on the farm. Mr. Armstrong submitted neighbor notification forms. She said she notified all of her neighbors and none of them had a problem with the request. She noted that horses are very skittish animals and react abruptly and quickly to movement and sound. So when she looked into the wind turbine project she was very concerned about the horses because she didn't want any horse to get hurt or anyone who is handling a horse get hurt. She did a lot of research from reputable sources and was convinced that this is safe for her farm, the animals and the people. She also contacted a man in Scotland who had a horse farm with the exact same wind turbine, the same size farm, the same number of horses. The wind turbine is in the pasture with the horses; the horses had no problem with it. They were not bothered by the shadow flickering because the shadow dispersed over a certain distance, they were not spooked by the noises. The wind turbine Ms. Armstrong wants to install is state-of-the-art, it has been improved over the years and has quiet blades.

Matt Vanderbrook works for Sustainable Energy Developments (SED) and noted that they have installed approximately 60 turbines in total, 32 of those installations were similar to the one being discussed this evening. All they installations were in New York State and have been very successful.

Mr. Thrun asked how the base will be reinforced. Mr. Vanderbrook said it has rebar built into the foundation, it is a pad 6' deep with rebar in it. It is about a 21' x 21' area. There are three (3) piers that will stick above the ground that hold the power lens. There are no guide wires. Mr. Thrun asked what precautions will be taken to ensure there is no climbing and how does the power feed back into the power grid so it doesn't cause a problem for anyone working around the power lines. Mr. Vanderbrook said there are pegs on the structure for the employees to climb on in order to perform maintenance on the structure, those pegs will be removed up to 12 feet, so it makes it very difficult for someone to climb it. He went on to explain that they have to go through a separate process with National Grid in which they have to submit an interconnection application and they have to approve of all the designs and precautions. They do a line

tap in front of the main panel that feeds everything on the farm, which is basically how they feed back into the grid. In most cases the energy is going to be used on sight, however it is possible that there could be excess power. If the power goes out the turbine shuts down and stops generating, nothing goes to grid. Ms. Armstrong noted that the turbine will generate about 15,000 kilowatts per year. The wind resource map that is used is based on a company in Albany that has 20 years of wind data from around the country, they model it and have specific wind maps for specific areas. They have very proprietary algorithms to determine what wind resources will be based on long term averages. Every airport has 20-30 years' worth of wind data and they can take that data and predict what the wind resource will be based on. Mr. Thrun asked at what point the turbine will shut itself off. Mr. Vanderbrook said it will shut itself off at around 35, there is an automatic furling device where it will actually turn itself out of the wind, they are designed for 165. The burgey's are made in Oklahoma where they have a lot of tornadoes so it has to withstand those types of wind speeds. The further you get from the ground the more consistent the wind is going to be. Mr. Thrun asked if the nearby wetlands would cause any issues with the turbine. Mr. Vanderbrook said there should be no issues from the wetlands, they have had no bird fatalities associated with these turbines.

There are four (4) neighbor notification forms on file, there are no objections from any of those neighbors. Mrs. Burkard is concerned with the neighbor across the street on Salt Road. Ms. Armstrong said she did not get a neighbor notification form signed from that neighbor because it says adjoining property, however Ms. Armstrong spoke with the owner of the property and he has no objection to the turbine. Mrs. Burkard is also concerned with the noise of the turbine. Ms. Armstrong purchased a sound meter and brought it to the meeting. She turned it on and asked everyone to be silent, this way you could hear the ambient sound level in the room. Chairman Mills noted that when the room was silent it was 48-52 decibels. The turbine is rated at about 42 decibels. Mr. Vanderbrook said 95% of the time the wind turbine will operate at the 42 decibel level or less. Exhibit A shows the different sizes available for the turbine, that exhibit is placed in the file.

Mr. Vanderbrook has been with Sustainable Energy for seven (7) years. Among the 32 turbines that have been installed, they have installed three turbines in Pavilion, and three in Newstead. He explained that as you go down in tower size you reduce the production of the turbine. It is not an economical thing to do if it can't be done on tall towers. Mr. D'Amato asked what can go wrong with these turbines. Mr. Vanderbrook said as long as you provide the proper maintenance to the tower, it should be fine. The regular maintenance consists of once a year or every two years the SED employees will climb the tower to change the oil, tighten the bolts and make sure everything is ok. The turbine comes with a ten (10) year warranty. They are remotely monitored so if there is an issue SED is notified immediately. Mr. Vanderbrook has never had a turbine fall. Mr. D'Amato asked who picks the site area for the turbine. Mr. Vanderbrook said sometimes they pick the site, in this case they did not, although they were consulted on the proposed location.

Vice-Chairman Mills voiced his concern with the proposed height of the turbine. He noted that it is a large variance request. He asked Mr. Vanderbrook if he would dispute the notion that the average wind turbine is 80' in most towns. Mr. Vanderbrook said he would dispute that. Vice-Chairman Mills said he obtained that information from the American Wind Energy Association. Mr. Vanderbrook said many of the towers that association uses are shorter, they are geared towards the mid-west where there aren't as many trees. This part of the country has many more trees so the turbines need to be higher to obtain better a wind resource. Vice-Chairman Mills asked if 2 or 3 100' turbines would generate the same amount as a 154' turbine. Mr. Vanderbrook said the costs of putting in the foundations, the towers and the separate electrical infrastructure would not make that worthwhile. Vice-Chairman Mills said, cost aside, would it net about the same amount of energy. Mr. Vanderbrook said potentially, but they would not recommend it.

Ms. Armstrong has done some research and explained that if the tower was dropped to 120' they would lose about 25%-30% in energy production. If the tower is dropped down to 80' the production is cut in half.

Vice-Chairman Mills asked if the applicant is aware of any other structures in the Town of Clarence that are this tall. Ms. Armstrong referenced cell towers, Mr. Vanderbrook said he does not know. A cell tower has a much larger footprint. Vice-Chairman Mills asked the applicant if a 40' variance was approved to allow for a 100' tall tower would they still do the project. Ms. Armstrong said no because it wouldn't produce enough energy; it would create only half of the energy that she would need. Vice-Chairman Mills asked if there is a height less than 154' that would work for the applicant. Ms. Armstrong said the next step down is the 120' height, they ran the numbers on this height to see if it would work and it didn't make sense economically; there is no height less than 154' that would work efficiently.

A resident asked when the contract ends, and what happens after that. If this breaks down will he be staring every day at this white post with no blades spinning? Ms. Armstrong said the contract is for 20 years. At the end of 20 years if the applicant decides she doesn't want it anymore, the company will remove it from the property at the company's cost or she can keep it and take on the maintenance herself. She plans on living on her farm for a long time and she does not want to look at a rusty structure so if she doesn't like it, it can be taken down. Mr. Vanderbrook said the life of the turbines are 30-35 years, the towers actually last longer than that.

Vice-Chairman Mills asked what the life-span is in terms of corrosion and when will it set in on the tower. Mr. Vanderbrook said the tower's design life is 50 plus years. The tower is galvanized. No blinking lights are necessary, the FAA requires a light when the tower is 200' or over and when it is in a certain distance to an airport, which this is not. There colors of the towers are usually white or gray.

ACTION:

Motion by David D'Amato, seconded by Richard McNamara, to **approve** Appeal No. 3 as written.

ON THE QUESTION:

Mrs. Burkard would like to distinguish this project from a previous similar project that was before the Board. This project has more land around it, there are very few residents involved, and none of the residents are objecting.

Vice-Chairman Mills explained that the Board refers to Town Law §267 in terms of looking at an area variance. The first criteria asks if the variance would create an undesirable change in the character of the neighborhood. The character of this neighborhood is different and distinct from others that have come before the Board, it is not as dense of a residential area. The actual location is at least 500' off Salt Road in one dimension and in an excess of 300' in another dimension. The Board is asked to look at whether there is an adverse effect on the physical environmental conditions in the neighborhood, because this is such a large parcel with not much residential in the area, this is different and unique from some of the others that have been before the Board.

Mr. Thrun said other than the sight of the structure there would be no other incidental noise for the neighbors because of the distance to their property.

Richard McNamara Aye
 Patricia Burkard Aye
 Ryan Mills Aye

Gregory Thrun Aye
 David D'Amato Aye

MOTION CARRIED.

Appeal No. 4

Deborah and Richard Gold
 Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 174 square foot variance to allow for the construction of a 374 square foot secondary detached garage.
- 2.) A 1'1" variance to allow for the construction of a 17' 1" tall detached garage.
- 3.) A 4' 11" variance to allow for a 5'1" side yard setback for the construction of a detached garage.

All requests apply to 6352 Everwood Court.

Appeal No. 4 is in variance to §229-55(H), §229-55(E)(2), and §229-55 (E) (1).

DISCUSSION:

Architect John Lydon is present and explained that the house already has a garage so this detached garage would require a variance. This particular 12 on 12 roof slope matches the existing 12 on 12 roof slope but the ridge height resulted in 17' 1", so they would be looking for a 1' 1" variance from the 16' height requirement unless the new gateway was attached to the garage and to the house. Regarding the side yard setback, Mr. Lydon said not much can be done on the side of the house without infringing on the property line. The proposed garage is 15' 7" wide which gives them 5'1" from the property line and 6' from the house.

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

Deborah Gold is present and said they have lived in the house for 13 years. They have teenagers and four (4) cars now so they need another garage. The construction materials will match the house. There will be no storage space up top; it is an open floor plan. There will be a solid wood gate connecting the garage to the house. Ms. Gold said they are looking to build this immediately, before the snow.

Mrs. Burkard voiced her concern with the neighbor to the north. Ms. Gold said there are trees on that property line and they will landscape around the garage.

Mr. Thrun asked what type of landscaping will be done around the garage. Ms. Gold said the side that faces her house would have some type of ivy and on the other side some type of shrubbery that would make it blend in to the landscaping.

Mr. McNamara asked if there will be a foundation. Mr. Lydon said yes it will be a spread foundation. There will be no water running to it.

Mr. Lydon confirmed that the façade is going to be brick. He thinks it is very important to obtain the height variance so that it will match the dormer on the house. Vice-Chairman Mills asked if the applicant explored a breezeway connection. They did look at a breezeway but thought a more open type connection would be better. Vice-Chairman Mills asked if the applicant could get away with any less size structure. Mr. Lydon said no, he is already down to a 15' wide garage. There is no other feasible location on the site for a garage.

ACTION:

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

ON THE QUESTION:

Mr. Thrun said due to the space of the property and how tight it is for them to build, this request is acceptable in this circumstance.

Vice-Chairman Mills said the design characteristics of the height would distinguish this from other applications in that it is necessary to tie in with the existing structure for the additional height. There are numerous third car garages in the neighborhood.

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 5

Kevin J. Hanley
Residential Single Family

Requests the Board of Appeals approve and grant a 2' variance to allow for the construction of a 6' tall fence located in the front yard setback at 8301 Old Post Road East.

Appeal No. 5 is in variance to §101-3(C)(2).

DISCUSSION:

Kevin Hanley is present and explained that he wants to replace the existing chain link fence with a privacy fence. They would like the fence to be 6' tall instead of 4'. They have dogs that bark at everyone who goes by his house, he would like to try and cut down on that and see if they can stop the dogs from doing that. He owns a dog that can jump very high and he might be able to jump over a 4' fence. It will be a wood fence.

Vice-Chairman Mills referred to Exhibit A and asked the applicant if it is an accurate depiction of where the fence will be located. Mr. Hanley said yes it is accurate, he is just replacing an existing fence, he is not adding to it.

There are two (2) neighbor notification forms on file. Mr. Hanley said there were no objections from the neighbors.

Mrs. Burkard said Mr. Hanley will be the only one in the neighborhood with a fence like this. Mr. Hanley said he believes that is true.

Mr. Hanley has lived at this location since 2001. They obtained their first dog in 2003, and the second dog in 2007.

Vice-Chairman Mills said there are other fences in the area. Mr. Hanley said the issue is because they live on a corner they have two (2) front yards. If they didn't live on a corner they would have a backyard and they could have a privacy fence there. Vice-Chairman Mills asked if there will be any additional landscaping on the Bridlewood side of the fence. Mr. Hanley said probably not.

Mr. Thrun asked what type of fence it will be. Mr. Hanley said the style will be dog-ear straight.

ACTION:

Motion by Gregory Thrun, seconded by Richard McNamara, to **approve** Appeal No. 5 as written.

Richard McNamara	Nay	Gregory Thrun	Nay
Patricia Burkard	Nay	David D'Amato	Nay
Ryan Mills	Nay		

MOTION FAILED.

Appeal No. 6

Raj Sharma
Residential Single Family

Requests the Board of Appeals approve and grant an 11'6" variance to allow for a front yard setback of 33' 6" from the edge of a proposed attached garage located at 5035 Red Tail Run. Established front yard setback of 45'.

Appeal No. 6 is in variance to §229-52(A)(1).

DISCUSSION:

Dave Sutton of Sutton Architects is present along with Raj Sharma, owner of the property. Mr. Sutton explained that they are requesting relief from the established 45' front yard setback requirement to provide for a 33' 6" setback. The reason for the variance is to add another bay to the garage, in doing so the only logical place for it to go is adjacent to the existing two-car garage. Another reason for the variance is the unique nature of the lot. The 45' front yard setback it to protect an interest line of sight down a street so it maintains some integrity with the existing houses adjacent to them. This is a corner lot and it is unique because the adjacent property is not directly close to it. Mr. Sutton submits Exhibit A which is a site plan, Exhibit B which are photos, and Exhibit C which are additional photos. The exhibits are on file. There is a dense mature line of Spruce trees that buffers the neighboring property from the proposed location of the garage. The structure itself is a one story structure, single car garage, 14' in width. The placement of the proposed garage is intentional so that it is in line with the house. The variance could be reduced if they set the garage back further, but they thought that would be more of a deterrent and add to the extent of the driveway. Mr. Sutton referred to Exhibit B and said the photo shows a house across the street that has a similar garage addition however, this proposed garage would have a much lower roof line than the one across the street. The proposal is not out of character with the neighborhood as there are several three car

garages. They feel the existing landscaping is more than adequate to buffer, although they would be willing to consider additional landscaping if the Board suggests that it would be appropriate.

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

Vice-Chairman Mills asked if a neighbor notification form was obtained from 5000 Red Tail Run as that property will have a good view of the proposed garage. Mr. Sutton said no because they were under the assumption that they only needed to contact the two neighboring properties. Mr. Sharma said he has not had dialogue with the homeowners at 5000 Red Tail Run regarding his variance. The side of their house that faces the proposed garage does not have windows. Those homeowners are friends of Mr. Sharma's and he can certainly have a conversation with them regarding the variance. Those neighbors are aware of the variance request but have not come to Mr. Sharma with any objections.

Mr. Sharma built the house, he is the original homeowner. Mr. McNamara asked if they thought about the third garage when they first built it and if they thought about relocating the house on the property so they wouldn't have this issue now. Mr. Sharma said this was their first home and they weren't expecting to stay in the area, but now they have fallen in love with the Clarence area and they want to stay. He has lived in the house for 17 years. He plans on landscaping along the side of the garage.

Mr. Sutton said there is an addition going on to the back of the home but that is in compliance with all the zoning regulations. The addition will be done simultaneous with the garage. All the construction materials will match the house.

Vice-Chairman Mills asked if any other locations would work with less of a variance being required. Mr. Sutton said the only other possibility would be to slide it back which would reduce the extent of the variance but would extend the driveway requirement and might become more of a visual impact to the neighboring properties. Vice-Chairman Mills noted that there is a decent amount of existing landscaping buffering the south side of the property.

ACTION:

Motion by Richard McNamara, seconded by Patricia Burkard, to **approve** Appeal No. 6 as written.

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 7

Regent Development
Commercial

Requests the Board of Appeals approve and grant an area variance for the proposed density of 124 apartments for the multi-family component of the proposed project at 8230 Wehrle Drive.

Appeal No. 7 is in variance to §229-126(D)(1)(c). Per the amendment to the Town's Multi-Family Law, adopted by the Town Board July 23, 2014, the allowable density for this proposed project is 93 units.

Richard McNamara recused himself and left the dais, he has completed the appropriate paperwork and submitted it to Deputy Town Attorney Steve Bengart.

DISCUSSION:

Sean Hopkins of Hopkins & Sorgi LLC is representing the applicant. Dave Huck, Caleb Huck, Brett Fitzpatrick are present along with Michael Metzger of Metzger Civil Engineers. Mr. Hopkins explained that the project they are proposing consists of a multi-family component and a commercial component pursuant to the Multi-Family Law that was adopted by the Town Board in June 2013. One of the reasons for the law is because the Town is interested in ensuring most of Transit Road is zoned Major Arterial and the Town Board did not want to see a lot of Multi-Family development in the Major Arterial Zone. Another intention of the law was to preserve Open Space. The Town has a lot of open space in the northern and eastern areas of the Town. The third reason for the law was to preserve the rural character of the Town. Given the location of this project which is so close to Transit Road and Wehrle Drive, the applicant does not think that the criteria of preserving open space and preserving the rural character of the Town apply. They ask the Board to consider this.

Mr. Hopkins said this project began in 2012, at that point Mr. Huck and his company had entered into a contract to purchase the site, and they began the review process with the Town. At that time there were other multi-family projects being proposed and the Town Board that it was appropriate to consider the adoption of a Multi-Family Law. In June 2012 the Town told Mr. Huck he would have to wait to move forward with his project so they could look at adopting a Multi-Family Law. In June of 2013 the Town Board adopted a Multi-Family Law which included the requirement that a 30% commercial component must be included in the plan. Another requirement was that there must be 25% preserved permanent green space. A third requirement is the height is limited to two-stories in size. You have to try to propose a project in which there is a blending between the multi-family component and the commercial component. The applicant came up with a plan that complies with the newly adopted Multi-Family Law. The law stated that the maximum density for multi-family projects was eight (8) units per acre; that's eight (8) units per acre for the overall site. The Town Board referred the project to the Planning Board in April 2014. At that time there were questions on how to calculate density. Do you look at the overall site which is 15.5 acres or do you only look at the residential, multi-family component, which in this case is 11.625 acres? In April of 2014 the majority of the Town Board believed the law referred to the overall site, Mr. Hopkins also believes that to be true. Councilman Kolber was the biggest objector to that interpretation, however, during the meeting in April he made it clear on the record that with respect to this project he did not have a problem with the applicant coming before the Zoning Board of Appeals. Subsequently the Town adopted an amendment to the Multi-Family Law on July 23, 2014. That amendment made it clear that the density for a multi-family mixed use project is only based on the Multi-Family land. So the density for this project would allow 93 units, they are currently showing 124 units. It is clear that the 124 units complied with the code until late July 2014. The client has not closed on the property yet, they have a contingent contract.

Mr. Hopkins said the current layout of the plans addresses a wide assortment of concerns, including traffic, in which a proposed road on the eastern side of the project site was eliminated from the plan per the Town Board's request. The Planning Board Executive Committee asked the applicant to flip the buildings and the driveway on the western portion of the site, the applicant changed the plan to reflect his request. There were concerns with the proposed dog park, so it was relocated. The Planning Board asked the applicant to consider a recreation trail around the storm water pond, which has been added to the plan. The Planning Board also asked for more landscaping, that change has been made. The Planning Board asked for some additional interior connections between the commercial component and the multi-family component, that

change has been made as well. There was some concern regarding the 3' berm with landscaping at the back end of the site, it is confirmed that the berm will be preserved in its entirety as it acts as a buffer. The project before the Board this evening includes all the changes mentioned. If the applicant is forced to strictly comply with the amended language in the Multi-Family Law which would reduce the number of units from 124 to 93. In order to comply with the new law they would have to eliminate 2 buildings and reorient another building and reduce the size of its units. Mr. Hopkins said from the perspective of any adjacent property owner, the reduction is incremental, it doesn't do anything if you are looking at the site from the outside.

Mr. Hopkins asked the Board to consider the benefits to the applicant and weigh those against any resulting detriments as per instructed in Town Code §267 (B) (3) (b). The benefits are substantial. Mr. Huck and his company have been working on this project for 28 months. Until late July of this year this layout would have complied with the Town Code, they would like to move forward with that layout. When Mr. Huck entered into a second contract to purchase this property, the layout complied with the code. The purchase price reflects this. If they are forced to reduce the project the financial picture changes dramatically; they think it would be difficult to obtain financing. The 124 unit layout is exactly consistent with the layout that was subject to environmental review conducted by the Town Board pursuant to SEQRA. The Town conducted a coordinated review, input was solicited from a wide assortment of involved agencies including the DEC, NYSOPRHP, ECDPW and ECDEP. After all comments were received and addressed, the Town Board issued a Negative Declaration based on that 124 unit layout.

Mr. Hopkins said the Board needs to weigh the benefits against any resulting detriments associated with the granting of the variance. He goes on to clarify that the Board needs to look at any detriments associated not with the project but with the incremental increase. Given the minor differences in the two plans, the applicant feels there are no detriments to the surrounding community. Mr. Hopkins said there is also 5 criteria the Board needs to consider when performing a balancing test for the requested variance. The first one is whether or not the requested variance will produce an undesirable change in the character of the area or a detriment to nearby properties. The project site is surrounded by multi-family development on three sides. To the west is Coventry Greens at 216 units, the density is 12 units per acre. Behind the site and with a driveway to the east of the site is Stonegate Apartments, it has a density of 8.5 units per acre and is slightly less than 120 units. 3.2 acres of the Stonegate site is the driveway leading back to the project, if the driveway was subtracted, the density would be just under 11 units per acre. The density for the applicant's project would be slightly under 11 units per acre. Thus, the applicant's proposal is not inconsistent with the area. He reminded everyone that a Negative Declaration was issued by the Town Board which means that after considering a wide assortment of evidence the Town Board, the same Board that adopted the current law, concluded that the project as currently proposed at 124 units will not have any potentially significant adverse environmental impacts.

Criteria #2 requires the Board to consider any alternatives that are feasible to the applicant that would allow it to receive the benefits it is seeking without the necessity of a variance. Mr. Hopkins said there are no other alternatives. If this variance is not granted the applicant will have to reduce the project to 93 units and they would not be able to realize any of those benefits they are seeking. If they could increase the size of the site they could move forward with the proposed density. They cannot increase the size of the site due to the existing surrounding properties.

Criteria #3 is whether or not the requested variance is substantial. The difference in units is 33%. Mr. Hopkins said you have to look at what the harm is associated with the substantiality of the variance. For reasons listed under criteria 1 and 2 the applicant feels this is not a substantial request.

Criteria #4 is whether or not there are any physical or environmental impacts associated with the granting of the variance. Mr. Hopkins asked the Board to consider the environmental review. He has submitted the reports, studies and letters from involved agencies regarding the environmental review. All documents weigh in the applicants favor.

Criteria #5 is whether the alleged difficulty is self-created. Per the Town Law this cannot be the sole criteria that the Board applies in connection with the decision making. Until about six (6) weeks ago this project did comply with the Multi-Family Law that had been adopted in June 2013. Clearly the hardship is not self-created.

Mr. Hopkins said the benefits outweigh the detriments and the 5 criteria weigh in the applicant's favor.

Mr. Hopkins noted that since Wehrle Drive is an Erie County highway this project did need to be referred to Erie County Department of Environment and Planning pursuant to NYS Municipal Law §239M. They have 30 days to comment. Since they have not commented as of this time the Board does not have jurisdiction to vote this evening. The applicant is ok with this.

Mr. Hopkins referred to Exhibit A which is a list of all the meetings and important steps in the review process to date.

Mr. Hopkins noted that every other aspect of the project meets the code.

Vice-chairman Mills noted there will be a three (3) minute limit on anyone from the public who wants to speak on this agenda item.

Bruce Wisbaum is present and representing the owner, management and residents of Stonegate Apartments. Mr. Wisbaum said he found out about this request late Friday by neighbor notice and the information that was supposed to be attached to the request wasn't submitted until 7:00 pm this evening, so they had no chance to prepare properly for this meeting. He noted that Mr. Hopkins had 25 minutes for his presentation, Mr. Wisbaum wants to be afforded more than three (3) minutes for his presentation. He submitted a letter at 4:00 pm this afternoon and is not sure the Board was able to read that letter.

Vice-chairman Mills said it appears that this agenda item will be tabled so the Board will have time to review Mr. Wisbaum's letter. Deputy Town Attorney Steve Bengart suggested the Board table the item which will provide the opportunity for anyone to put comments and concerns in writing and submit it to the Board. Based on the way the Town handles these matters, the three (3) minute rule must be followed.

Mr. Wisbaum said the project was originally approximately 100 units and was a senior project. The density on a senior project and this type of project is totally different. His Stonegate Apartments has an average density of one and a quarter units per apartment, where as this type of project is closer to two and a half or more. It has twice the number of residents than what he has, this should be considered. Mr. Wisbaum said the applicant knew in April that there would be issues because Mr. Wisbaum was against this and said he would do whatever he could to try and limit what was done on that site. There was also another project that they were going to do two years ago closer to Transit Road that someone was proposing to build 140 units. So the density for this area is not just adding the applicants 124 units, there is a possibility of adding another 140 units closer down. He also disagrees that the project met the amended zoning code, the code was not clear and that's why there was so much discussion going on. Mr. Wisbaum was told that the Planning Board did not sign off on all the changes that were made and there were many more to be made. Specifically

he referred to the road that looks like a runway and runs parallel to the road he has. He was told the road that runs along the east side of the property was going to be changed and there are several other comments that he was told was going to be changed and haven't been per the aerial that he is referring to. He said Stonegate was built at 7.3 units per acre. If Mr. Hopkins wants to subtract the Stonegate road from the calculation then the proposed road for the proposed project should be subtracted, too.

Roslyn Marcus is manager of the Stonegate Apartments, she submitted a petition signed by 63 residents of the Stonegate Apartments in opposition to the variance related to 8320 Wehrle Drive.

Richard Lippes is an attorney with the offices at 1109 Delaware Ave in Buffalo, NY. He is appearing on behalf of the Stonegate Apartments and its 200 residents. Mr. Lippes said there was one day notice given to the owner of Stonegate and no notice given to the residents of Stonegate. He said the Planning Department indicated that only owners have to be noticed but that is not what the regulations say. The regulations say adjoining residents. The notice has to be rectified before the next meeting. Mr. Lippes said the application, up to this evening, wasn't complete. He said that looking at a variance on an amendment that was passed by the Town Board after significant discussion and deliberation six weeks ago is a slap in the face. There was a significant policy issue that was resolved by the Town Board in terms of what the Board members wish the multi-family density to be in the future. In 2013 the ordinance said 8 units per acres. Mr. Lippes referred to the first criteria Mr. Hopkins spoke to and said it is a consistency and detriment to the community. Consistency is not the issue, detriment to the community is what this is all about, particularly to senior citizens. He said even in the Negative Declaration the Town Board indicated that there may be a traffic issue; they should not have issued a Negative Declaration once they made that determination. Mr. Lippes referred to criteria #2 and said the applicant told the Board that they have an alternative plan with the 93-unit plan. He said the request for a 33% greater density, an extra 34 units, is substantial. He then referred to the last criteria that addresses the impact on the physical environment and said the proposal takes open space away from Clarence. There would have been 15 acres of open space there but for this project. Clearly, the applicant can build a 93 unit apartment building, there are buildings less than 93 units all over Western New York. There will be specific traffic problems that they will address in next month's meeting.

Edward Dzedlic lives in the Stonegate Apartments and said when he moved in there he was 79 years old, he has been there for 11 years. He moved there because it is a 50 and over community, you expect security and tranquility. Now there is going to be something built next door with a lot of noise and congestion. He voiced his concern regarding the traffic.

Brett Fitzpatrick, of 202 Morris Avenue, is David Huck's partner. He also represents the ownership group and the residents of the Coventry Green Apartments. His staff at Coventry Green Apartments have made the residents aware of the proposed plan and the response has been positive. Those residents have long viewed the golf dome as an eye-sore with the bright lights, tall unsightly poles, ripped netting, and golf balls going through windows on almost a weekly basis.

Mr. D'Amato noted that the petition that was submitted by Ms. Marcus has no addresses of those who signed it. He suggested she obtain the addresses and submit them at the next meeting.

Vice-chairman Mills asked the applicant to address the traffic impact/studies. Deputy Town Attorney Steve Bengart said at some point this Board will have to take a SEQRA action. Mr. Hopkins said as part of the coordinated environmental review pursuant to SEQRA in which the Town Board was the lead agency, Carl Dimmig of the Erie County Department of Public Works provided Jim with a letter indicating that it was

Erie County's position that a traffic study needed to be done. The Executive Committee of the Planning Board agreed with that request and as a result the applicant was required to retain the services of SRF Associates, a reputable and licensed traffic engineering firm from Rochester to prepare a traffic impact study. The study looks specifically at the impacts, largely focusing on Wehrle Drive. That traffic impact study was prepared and submitted to the Town and to Mike Asklar who is the Senior Traffic Engineer at the Erie County Department of Public Works. The Executive Committee issued a comment letter with 9 or 10 comments that they want addressed, those comments have been addressed. Mr. Asklar issued a letter to the Town saying based on his review of the traffic impact study and the supplemental responses the County determined the project will not have any potentially significant adverse traffic impacts. There was one requirement and that was the traffic study should be updated upon build out of the project site to determine if there is any mitigation necessary. The traffic study acknowledges the fact that there will be an increase in traffic.

David Huck said the units will be 1, 2 and 3 bedroom; 25% 1 bedroom, 25% 3 bedroom and 50% 2 bedroom. It will be marketed to a similar demographic as Coventry Green. They will be higher end units. A two bedroom could run for \$1100-\$1500 a month. Mrs. Burkard asked if there will be an impact on the school system. The applicant said the development is targeted for single people, couples and seniors.

Mr. Thrun asked for clarification on the location of the proposed road. Mr. Callahan noted that there is no Concept Plan Approval, no design has been approved at this point. Mr. Hopkins noted that a driveway to Wehrle Drive has been eliminated from the proposal per the Town Board's request at their April 2014 meeting. The Planning Board asked the applicant to flip the building and the driveway locations on the original plan, the applicant has done that.

Mr. Hopkins asked that all submissions from Mr. Lippes be sent to him (Mr. Hopkins), and he will send any documentation that he submits on the project to Mr. Lippes.

Vice-chairman Mills asked if there any tenants in mind for the commercial structures. Mr. Huck said he is looking at office space but he has no tenants at this point. The construction material would be brick and stone. Mr. Hopkins said he will provide elevations before the next meeting. Vice-chairman Mills pointed out the berm along the Stonegate side of the site and asked why the applicant did not berm the side along Foxwood. Mr. Huck said the existing landscaping is doing a good job at buffering on that side of the property. Mr. Hopkins said the residents of Coventry Green said they would rather have the driveway located closer to the property line and have the building located further away. All the structures will be two story.

Mr. Wisbaum said he does not want the road next to his road, he does not see it as a boulevard, he does not see that design as attractive. He would rather see it flipped like the applicant did for Coventry.

ACTION:

Motion by Gregory Thrun, seconded by Ryan Mills, to **table** Appeal No. 7 until the next meeting.

ON THE QUESTION:

The public hearing will remain open.

Gregory Thrun Aye
David D'Amato Aye

Patricia Burkard Aye
Ryan Mills Aye

MOTION CARRIED.

Meeting adjourned at 9:37 p.m.

Carolyn Delgato
Senior Clerk Typist