

**Town of Clarence  
Planning and Zoning**

# Memo

**To:** Town Board Members

**From:** James Callahan, Director of Community Development

**cc:** Town Attorney, Town Clerk, Town Engineer, Senior Code Enforcement Officer, Planning Board Members, Chamber of Commerce

**Date:** September 4, 2014

**Re:** September 10, 2014 Town Board Meeting Agenda

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**Following is a review/analysis of the items listed on the September 10, 2014 Town Board Meeting Agenda:**

**PUBLIC HEARINGS:**

**1. THE MAIN INGREDIANT, 9980 MAIN STREET.**

**Location:** North side of Main Street, east of Kraus Road.

**Description/History:** Existing restaurant located in the Commercial Zone.

**Proposal:** Applicant is proposing to create an outside dining area.

**Master Plan:** Area identified in a commercial classification.

**Reason for Town Board Action:** Outside dining may be considered with a Temporary Conditional Permit as issued by the Town Board after a required public hearing.

**Issues:** Hours of operation and noise are generally the major concern associated with outside activities adjoining residential areas.

**2. PROPOSED SIGN LAW AMENDMENTS.**

**Location:** Commercial and Restricted Business Zones within the Town.

**Description/History:** The Planning Board has developed some amendments to the existing Sign Law for Town Board consideration.

**Proposal:** The proposed changes deal with temporary and flag signs, permanent monument signs in the Restricted Business Zone, digital sign parameters in the TND Zone, and landscaping requirements.

**Reason for Town Board Action:** The Town Board has approval authority for Local Law amendments.

**Issues:** An action under SEQRA has also been forwarded by the Planning Board.

## **FORMAL AGENDA ITEMS:**

### **1. SILVESTRI ARCHITECTS/C&S ENGINEERS, 8353 MAIN STREET.**

**Location:** Southeast corner of Main Street and Susan Drive.

**Description/History:** Existing vacant land consisting of .52 +/- acres in the Residential Single Family Zone. A use variance was granted in 2007 to allow for a nail salon with the condition that any future change in use would require Town Board review and approval. In addition, the use variance identifies that the Traditional Neighborhood District Zoning Classification should be used to guide design of the property development.

**Proposal:** Applicant is proposing a change in use from the previously approved nail salon to a professional office building.

**Master Plan:** Area identified within the Harris Hill TND.

**Reason for Town Board Action:** Per the use variance granted in 2007, the Town Board has authority to approve any proposed changes in use to the property.

**Issues:** Referral to the Planning Board to detail site development details would initiate a formal review of the proposed use.

### **2. ELIOT LASKY, ROXBERRY SUBDIVISION PHASE 2/GENTWOOD EXTENSION.**

**Location:** West of Gentwood Drive and East of Eastern Hills Mall.

**Description/History:** Existing vacant land proposed as an extension to the existing Gentwood Drive which received a concept approval in 1998 and was tabled at Development Plan approval by the Town Board to pursue development of a proposed access road to Eastern Hills Mall. The applicant agreed to table the action until such time that a corridor plan for the eastern Hills Mall was developed.

**Proposal:** As a corridor road for Eastern Hills Mall is no longer being pursued, the applicant is proposing to develop the residential subdivision as previously conceptually approved.

**Reason for Town Board Action:** As the item was tabled at the Town Board on 6/26/2002, the Town Board must take action to take the matter off the table.

**Issues:** As there has been 12+ years since the matter was last publicly discussed, the public should be notified of any action. The Planning Board is the final review and approval authority for final Development Plan Approval.

### **3. MICHAEL DEVELOPMENT, WEHRLE DRIVE WEST OF SHISLER ROAD.**

**Location:** South side of Wehrle Drive, west of Shisler Road.

**Description/History:** Existing vacant property consisting of 24.69 acres in the Industrial Business Park Zone and containing an active sand and gravel mine.

**Proposal:** Applicant is proposing to develop an Industrial Business Park on the property.

**Master Plan:** Area identified in an industrial area.

**Reason for Town Board Action:** The Town Board initiates all project reviews by identifying any concerns associated with the proposed development prior to initiating formal review.

**Issues:** Referral to the Planning Board would initiate formal review of the project.

#### **4. OPEN SPACE DESIGN DEVELOPMENT OVERLAY DISTRICT AMENDMENTS.**

The Planning Board has forwarded a recommendation to amend the Zoning Law to make some updates to the Open Space Design Overlay Section (Article XIII of Chapter 229). These updates come after the Town Board had referred the review of this section of The Town Code on February 12, 2014. A copy of the proposed law with amendments is attached.

#### **WORK SESSION ITEMS:**

##### **1. LOU VISIONE, EAST OF 8570 MAIN STREET.**

**Location:** North side of Main Street, east of Harris Hill Road.

**Description/History:** Existing vacant lot located within the Harris Hill Traditional Neighborhood District.

**Proposal:** Applicant is proposing to display sheds for sale at this location.

**Master Plan:** Area identified within the Harris Hill TND

**Reason for Town Board Action:** The Town Board has authority to approve uses in the TND and to issue Temporary conditional Permits.

**Issues:** Landscaping, number of display units, hours of operation. A public hearing will be required to consider a Temporary Conditional Permit

##### **2. ADMINISTRATIVE REVIEW FEES.**

The Town Board has asked for an amendment to Chapter 99 of the Code of the Town of Clarence, Fees, to consider an amendment to add a Recreation Fee to Multiple Family Housing Projects. This Recreation Fee would be similar to the Recreation Fee required for single family home subdivision approvals. The proposed amendment adds a \$450.00 per unit Recreation Fee to the Building Permit application for an approved multiple family housing project.

## Chapter 229. ZONING

### Article XIII. OSD Open Space Design Development Overlay

#### § 229-106. Purpose.

**[Amended 2-14-2007 by L.L. No. 1-2007]**

- A. Open Space Design Development (OSDD) overlay district or clustering shall be a subdivision plat or plats in which the applicable zoning law is modified to provide an alternative permitted method for the layout, configuration and design of lots; buildings and structures; roads; utility lines and other infrastructure; parks and landscaping in order to preserve the natural and scenic qualities of open lands. Private roads to service clustered lots may be approved as a part of the final plat, and lots along such private roads may be platted as legal lots. Such private roads must provide adequate access to existing public roads. The Town Board may consider a reduction in minimum lot sizes down to and including lots to accommodate up to four units with zero lot line setbacks (four-unit structures).
- B. Open space design development in the Town of Clarence shall require the final approval of the Town Board, upon the review and recommendations of the Planning Board, pursuant to the administration of Chapter **193**, the Subdivision Regulations of the Town of Clarence. Open space design development shall not be considered for approval unless it is determined by the Town Board that it will achieve the intent of these regulations. The Town Board, at its discretion, may direct an applicant to pursue open space design development if, in the judgment of that Board and the Planning Board, its application would benefit the Town. For example, if a standard subdivision is proposed in an area containing important lands and/or resources (e.g., green space, woodlands, significant views, prime farmland, etc.), the Town may direct an applicant to pursue an open space design to preserve as much of these features as possible. The Town Board may also, upon its review, find a proposed open space design development not in accordance with the purposes or requirements of this article if the proposed development has no features worth preservation.

#### § 229-107. Intent.

The purpose of these open space design development regulations is to enable and encourage flexibility of design and development of land in such a manner as to:

1. Preserve open space and protect important natural resources and sensitive lands.
2. ~~Promote the most appropriate use of land.~~ Design of the development should preserve natural features (code change 2) (see §229-108 (A) (7)).
3. ~~Allow~~ Encourage (code change 3a) a variety of lot sizes and ~~history~~ housing types without increasing the overall density as permitted by the underlying zoning district. (see §229-108 (B) (13new)).

**[Amended 2-14-2007 by L.L. No. 1-2007]**

4. ~~Allow~~ Encourage residential development that is in harmony with the rural surrounding character and scenic quality of the Town (see §229-108 (A) (14new))
5. Encourage creativity and adaptability in the layout of residential lots.
6. ~~Facilitate the adequate and economical provision of streets and utilities~~ Reduce the public long term costs associated with infrastructure maintenance. (see §229-108 (B) (15new)).

§ 229-108. Regulations governing open space and/or incentive lot design development.

**[Amended 2-14-2007 by L.L. No. 1-2007; 7-9-2008 by L.L. No. 1-2008]**

Open space and incentive lot design development may include single-family dwellings, in accordance with the following regulations and standards. The area proposed for open space and incentive lot design development shall be in single ownership or under unified control throughout the review process, inclusive of the filing of the map cover in the Erie County Clerk's Office.

- A. Open space. Unless otherwise provided in this chapter, the following regulations shall apply to all open space design developments:
  - (1) Open space design development shall only be considered where public sewer districts have been established.
  - (2) Open space design development shall only apply to any major subdivision of not less than five acres in land area.
  - (3) Having achieved all goals identified in this chapter, the minimum lot size may be reduced to no less than 5,000 square feet for detached housing units and up to four-unit, one- or two-story attached housing units may be allowed, provided that any and all such area that is not designed to serve as residential areas, roads or other public purposes be set aside and restricted on the subdivision plat for use by inhabitants as common open space, parkland or recreational purposes of an active or passive nature.
  - (4) The required minimum habitable floor area may be reduced to 1,000 square feet for a one-story structure and 1,200 square feet for a two-story structure.
  - (5) Maximum height of buildings shall not exceed two stories or 35 feet for single-family units.
  - (6) The permitted number of dwelling units shall in no case exceed the number of units that could be permitted if the land were subdivided into lots conforming to the minimum lot size (see § 229-49) and density requirements of this chapter applicable to the district or districts in which the land is situated. An aerial photograph may be required to assist in the density determination. However, prior to determining the number of dwelling units and/or building lots, the parcel to be developed shall be adjusted as follows:
    - (a) Lands utilized by public utilities or structures or recorded easements of rights-of-way shall be subtracted from the total gross area.
    - (b) Water bodies, marsh areas, wetlands, wetland buffers, woodlands, gorges, rock outcroppings, caverns, poorly drained, alluvial and unstable soils and floodplains shall be subtracted from the total gross area.

- (c) Any other areas deemed unfavorable (unusable/unbuildable) by the Planning Board because of topographic, geologic or hydrological characteristics, slopes in excess of 15%, and lands deemed important to preserve and protect existing views and character shall be subtracted from the total gross area.
- (d) For the purpose of providing land for public streets, after deductions have been made in accordance with Subsection **A(6)(a), (b) and (c)** above, 10% of the remaining area shall be subtracted from the total gross area. (Road frontage clusters will not require this subtraction.)
- (e) The adjusted total gross area of the parcel, as determined in Subsection **A(6)(a), (b), (c) and (d)** above, shall then be used to compute the maximum number of dwelling units and/or building lots permitted.
- (f) Fifteen percent of the adjusted total gross area shall be set aside or preserved and maintained as open space. The land subtracted out in calculations [Subsection **A(6)(a), (b), (c) and (d)**] cannot be included in the open space requirement.
- (g) Overall, the minimum amount of open space preservation shall be no less than 50% of the gross acreage of the parcel or parcels to be developed.
- (7) Natural features such as streams, rock outcrops, marshlands, trees and shrubs shall be preserved and incorporated into the landscaping of the development. In addition, open vistas visible from existing public roads shall be preserved.
- (8) The recreation/open space fee required pursuant to the subdivision and fee laws of the Town of Clarence shall still be applicable. Open space, green space or recreation areas in the OSDD shall be privately owned. The Town Board may recommend the dedication of land to the Town of Clarence, in lieu of these fees, if the subdivision is located in an area where a proposed park, playground or other recreation or public site is desired by the Town.
- (9) Final designs shall incorporate connectivity to surrounding areas and be developed with walkways, sidewalks and/or trails that provide access to public areas and the Town's pedestrian trail system. Such connectivity shall be developed as a part of the project. If circumstances dictate that connectivity be provided at a future time, final plats shall identify those areas for future connections to the trail system or other public lands.
- (10) ~~a: Common open space and recreation lands shall be deeded to a homeowners' association or individual that will be responsible for the continued ownership, use and maintenance of said lands. Such deeds shall be reviewed by the Town Attorney and approved by the Town Board.~~

At the time of the filing of the final plat for the subdivision, the common open space and recreation lands shall be transferred to a Homeowners Association pursuant to a deed to be file in the Erie County Clerk's office. The developer shall, at that time, create a Homeowner's Association which association shall function pursuant to an Agreement which Agreement shall contain the right for the Homeowners Association and/or the Town of Clarence to enforce the use and maintenance of the common open space and recreation lands, including but not limited to, the right to enjoin or otherwise enforce any encroachment by a private homeowner into the open space and recreation lands. Those rights of enforcement shall include the right to legal fees, costs and disbursements.

A copy of the transfer documents and Homeowners Association Agreement shall be provided to the Town of Clarence Town Attorney's office for review and approval before filing same in the Erie County Clerk's office. (code change 1c).

A baseline documentation report or baseline study shall be prepared and approved as a part of Development Plan Approval in order to develop a conservation easement on the open space (code change 1a).

b: The maintenance of sidewalks, *to include snow removal*, shall be the responsibility of the homeowners' association or property owner that will be responsible for the continued ownership of any common land as described in (10) a. (code change 6b)

- (11) Private roads shall be built to minimum standards approved by the Town Board and provided by the Town Engineering Department. Community parking areas may be required by the Town Board during subdivision review.
- (12) The underlying zoning requirements for lot coverage and setback requirements for all lots in an OSDD shall be waived. Minimum setbacks from each residential structure shall be 20 feet.
- (13) If not specifically addressed in this chapter, all other underlying zoning regulations shall apply.
- (14) Compliment the surrounding character of homes and natural features (code change 3a).
- (15) Minimize long term costs associated with the maintenance of public streets and utilities (code change 6a).

B. Incentive design. Unless otherwise provided in this chapter, the following regulations shall apply to all incentive design developments:

- (1) Incentive design development shall only be considered where public sewer districts have been established.
- (2) Incentive design development shall only apply to any major subdivision of not less than five acres in land area.
- (3) Having achieved all goals identified in this chapter, the minimum lot size may be reduced to no less than 5,000 square feet for detached housing units and up to four-unit, one- or two-story attached housing units may be allowed, provided that any and all such area that is not designed to serve as residential areas, roads or other public purposes be set aside and restricted on the subdivision plat for use by inhabitants as common open space, parkland or recreational purposes of an active or passive nature.
- (4) The required minimum habitable floor area may be reduced to 1,000 square feet for a one-story structure and 1,200 square feet for a two-story structure.
- (5) Maximum height of buildings shall not exceed two stories or 35 feet for single-family units.
- (6) The permitted number of dwelling units shall in no case exceed the number of units that could be permitted if the land were subdivided into lots conforming to the minimum incentive lot size (see § 229-49) and density requirements of this chapter applicable to the district or districts in which the land is situated. An aerial photograph may be

required utilized to protect the natural features of the land and be a delimiter assist in the density determination. However, prior to determining the number of dwelling units and/or building lots, the parcel to be developed shall be adjusted as follows:

- (a) Lands utilized by public utilities or structures or recorded easements of rights-of-way shall be subtracted from the total gross area.
- (b) Water bodies, marsh areas, wetlands, wetland buffers, woodlands, gorges, rock outcroppings, caverns, poorly drained, alluvial and unstable soils and floodplains shall be subtracted from the total gross area.
- (c) Any other areas deemed unfavorable (unusable/unbuildable) by the Planning Board because of topographic, geologic or hydrological characteristics, slopes in excess of 15%, and lands deemed important to preserve and protect existing views and character shall be subtracted from the total gross area.
- (d) For the purpose of providing land for public streets, after deductions have been made in accordance with Subsection **B(6)(a), (b) and (c)** above, 10% of the remaining area shall be subtracted from the total gross area. (Road frontage clusters will not require this subtraction.)
- (e) The adjusted total gross area of the parcel, as determined in Subsection **B(6)(a), (b), (c) and (d)** above, shall then be used to compute the maximum number of dwelling units and/or building lots permitted.
- (f) Fifteen percent of the adjusted total gross area shall be set aside or preserved and maintained as open space. The land subtracted out in calculations [Subsection **B(6)(a), (b), (c) and (d)**] cannot be included in the open space requirement.
- (g) Overall, the minimum amount of open space preservation shall be no less than 25% of the gross acreage of the parcel or parcels to be developed.
- (7) Natural features such as streams, rock outcrops, marshlands, trees and shrubs shall be preserved and incorporated into the landscaping of the development. In addition, open vistas visible from existing public roads shall be preserved.
- (8) The recreation/open space fee required pursuant to the subdivision and fee laws of the Town of Clarence shall still be applicable. Open space, green space or recreation areas in the incentive design shall be privately owned. The Town Board may recommend the dedication of land to the Town of Clarence, in lieu of these fees, if the subdivision is located in an area where a proposed park, playground or other recreation or public site is desired by the Town.
- (9) Final designs shall incorporate connectivity to surrounding areas and be developed with walkways, sidewalks and/or trails that provide access to public areas and the Town's pedestrian trail system. Such connectivity shall be developed as a part of the project. If circumstances dictate that connectivity be provided at a future time, final plats shall identify those areas for future connections to the trail system or other public lands.
- (10) Common open space and recreation lands shall be deeded to a homeowners' association or individual that will be responsible for the continued ownership, use and maintenance of said lands. Such deeds shall be reviewed by the Town Attorney and approved by the Town Board.

- (11) Private roads shall be built to minimum standards approved by the Town Board and provided by the Town Engineering Department. Community parking areas may be required by the Town Board during subdivision review.
- (12) If not specifically addressed in this chapter, all other underlying zoning regulations shall apply.

(13) Encourage a variety of lot sizes and housing types to protect the long term viability of the neighborhood (code change 3a).

C. After completing the density determination as herein described, for both an "open space" and "incentive design," the Planning Board will make a recommendation to the Town Board on either an open space or incentive design subdivision.