

SUBDIVISION REQUEST (continued)

checked "no" if they are not regulated wetlands. Mr. Sorgi stated the Planning Board can make a notation that there are "wetlands that are not regulated on the site" in the negative declaration or part 2 or part 3.

Chairman Rathmann went through the following items for rendering determination as to their impact:

- ✓ Proposed action may involve construction on land where depth of water table is less than 3', EAF states 1' deep - Mr. Pandolfi stated he can adjust this and the following actions will mitigate the shallow water table: the roadway with the gutter curbs, the house foundations will have perimeter drains, and most of the lots will be filled to drain them properly.
- ✓ Proposed action may involve construction that continues for more than a year in multiple phases – Mr. Sorgi confirmed this and stated the houses will be built as they are sold.
- ✓ Proposed action may result in increased erosion whether from physical disturbance or vegetation removal, and questioned if the site will be clear-cut – Mr. Pandolfi stated SWPPP inspections take place to ensure this is handled correctly
- ✓ Proposed action may result in or require modification of existing drainage patterns – Mr. Sorgi confirmed this is true as there is nothing there and something is going to be placed there; the drainage will take in everything from the subdivision and there is a good chance it will assist with some of the drainage issues from adjoining properties.
- ✓ Proposed action requires the conversion of more than 10 acres of forest, grassland, or any other regionally or locally important habitat, 16 acres will be cleared – Mr. Pandolfi referred to the portion on the SWPPP critical environmental area, and it is checked no. Mr. Sorgi used the example of a critically important forest area that is unique in some way. Mr. Pandolfi referred to the response of "No" for EAF item No. E.3.d on page 12 and noted the website determines this not the applicant. Mr. Sorgi stated for this to be a critical environmental area, the town would have had to pass a law designating it as such.

Chairman Rathmann stated the applicant will need to provide a list of the types of trees to be planted for review by the Environmental Commission and meet the requirements of the Tree Ordinance. Chairman Rathmann commented on another project that resulted in the clear cutting of 105 trees before approval was granted and the developer was ordered to plant 105 trees as a mitigation measure and questioned how many trees would be removed. Mr. Sorgi commented in that situation the developer clear cut the trees prior to receiving approval. Town Attorney Tina Hawthorne clarified mitigation only applies to certain circumstances and the other matter involved a court case; there is a tree provision under Subdivision Law which would apply.

Motion by Bebak, seconded by Frick, to close the public hearing.

Ayes: All

Noes: None

Motion Carried

Motion by Bebak, seconded by Frick, on the recommendation of the Town Attorney, to adopt the following resolution:

WHEREAS, the Planning Board of the Town of West Seneca, as lead agency acting pursuant to the State Environmental Quality Review Act, Article 8 of the New York State Environmental Conservation Law, has reviewed Part I of the Full Environmental Assessment Form ("EAF") prepared by the applicant for property located at Vacant Land Reserve Road (SBL 144.18-5-1, 144.18-1-7.1, 144.18-1-8, 144.18-1-5 portion of parcel north of the a continuation of the northern property line of SBL 144.18-1-6) ("Subject Property"),

SPR2021-06 (continued)

Code Enforcement Officer Jeffrey Schieber provided the following information regarding the application:

- ✓ The applicant was before the Planning Board approximately 3 months ago; part of the Planning Board requirement was to obtain a setback variance from the Zoning Board of Appeals. The variance was granted in July.
- ✓ Site plan has been updated to reflect what is currently on site, including topography
- ✓ Parking quantity meets town code requirements

Rex Cameron from Tritec Construction of WNY, Corp stated all concerns from the previous meeting have been addressed with the new site plan that has been provided to the Planning Board.

Mr. Schieber stated the concerns of screening the neighboring residential property have been addressed as well as drainage and topography. The Town Engineer stated because the site is existing and only conducting work where needed, the town has no regulation for collection of stormwater.

Ms. Bebak recalled there being catch basins on the property that would tie in. Mr. Cameron stated there is a catch basin in the front of the property.

Mr. Frick requested confirmation that the existing tanks are in the area where the news tanks will be installed. Mr. Cameron stated the goal is to stay in the same footprint. The new tanks are safer with new technology such as a double wall. Mr. Schieber stated the technology is regulated by the DEC, and site visits are conducted.

Chairman Rathmann questioned if the entire area would be repaved. Mr. Cameron stated he was not certain of the owners' intentions but believed this would be done. The overall site topography would not be altered, and everything stays at the same elevation.

Motion by Clifford, seconded by Sailer, to close the public hearing.

Ayes: All

Noes: None

Motion Carried

Motion by Clifford, seconded by Bebak, to grant site plan approval for property located at 2111 Clinton Street for upgrades to existing gas station including installation of a 24' x 96' (4) dispenser canopy and 16,000-gallon split 12,000/4,000-gallon double wall underground fuel tank with all related site improvements.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

SPR2021-09

A request of Rachel's Mediterranean Grill for site plan approval for property located at 310 Orchard Park Road (aka 276 Orchard Park Road) for redevelopment of a subdivided parcel to an 1,800-sf restaurant with thirty-seven (37) seats, fifteen (15) parking spaces, and all related site improvements.

Motion by Clifford, seconded by Frick, to open the public hearing.

Ayes: All

Noes: None

Motion Carried

James Manguso, Jr. with Lauer-Manguso Architects presented on behalf of the applicant the following:

- ✓ Presented a new colored site plan with elevations
- ✓ The existing building will be removed, and the new building will be closer to Goodyear as to accommodate onsite parking
- ✓ Talks are being held with the bank on site to connect parking lots; this will allow patrons access to the traffic light in front of Wegman's
- ✓ The site has constraint issues as it is a narrow parcel; a variance may need to be obtained
- ✓ Parking is onsite with ADA accessibility
- ✓ Existing foliage along the back would be untouched
- ✓ The area would be repaved and cleaned
- ✓ The existing pole sign in the NYS right of way would be removed and pulled back onto the property

Ms. Bebak questioned if tonight's meeting was for concept review. Mr. Manguso replied this was correct.

Ms. Bebak referred to the narrow front and side setbacks. Mr. Manguso stated there is 0' setback at the corners; because this is a triangular shaped parcel the building has been shrunk down to accommodate the parking, sidewalk, etc. This is considered more of a satellite of a full size Rachels.

Ms. Bebak stated once final site plan is shown there should be at least 1' setback. Mr. Manguso stated this is being refined as they go. The accuracy of the survey is probably not correct, and a new survey is being completed to allow exact setbacks and distances.

Mr. Clifford questioned how many parking spaces are required for a building of this size. Code Enforcement Officer Jeffrey Schieber stated the town requires 3 parking spaces for every 5 seats and the plan meets the town code.

Chairman Rathmann questioned if the easements with the adjoining properties have been discussed. Mr. Manguso stated this is being discussed now and would help the flow of the facility. The site would still function properly without the connection.

Mr. Frick questioned if any thought has been given to rotating the building to gain more square footage and avoid congestion in and around the building. Mr. Manguso stated the building shape has been gone over; the shape is a product of the interiors with front and back kitchen, etc. and adjustments can be made as desired.

2021-03 (continued)

- ✓ The request is rezone 3808 Clinton Street to R-50 to allow for the construction of 3, 12-unit market grade apartment buildings
- ✓ The anticipated rent for the units would be approximately \$1,500 per month; all units would have modern conveniences
- ✓ Multi-family dwellings require a rezoning of the property along with a special use permit
- ✓ Wetlands are along the rear (north) of the property and the construction will not impact the wetlands
- ✓ The town ordinance is met with parking; the site contains 81 parking stalls including 12 inside of garages, 12 in front of garages and the remainder located throughout the property.
- ✓ The town's Comprehensive Plan was reviewed and only 1% of the town's residential units consisted of multi-family apartments and there is a need in West Seneca. The residents of the apartments are people who can afford the \$1,500 per month rent.
- ✓ This would be a down zoning as the commercial property in the front has uses that are far more intense than what is being proposed. C-2 zoning includes laundry mats, warehouses, and restaurants.
- ✓ Detailed engineering would be completed upon approval

Mr. Clifford referred to the statement made regarding 1% of multi-family dwellings and noted since 2016 the town has approved apartments on Center Road and Leydecker Road.

Ms. Bebak requested clarification as to the type of apartment. Mr. Palumbo stated the apartments will be a mix of 2 – 3 bedrooms. Mr. Pandolfi stated the smallest unit will be just over 1,100-sf and larger units just over 1,600-sf.

Ms. Bebak questioned the facade of the dwellings. Mr. Palumbo stated although his client is not yet at that stage this will be higher end apartments with granite countertops, etc.

Chairman Rathmann questioned if this is subsidized apartments. Mr. Palumbo stated the apartments are not subsidized.

Chairman Rathmann questioned if the apartments will be targeted to seniors or the public. Mr. Palumbo stated the public.

Chairman Rathmann questioned if the applicant was locked into 3, 12-unit buildings. Mr. Palumbo stated to make the project work, yes; they are 2-story buildings.

Mr. Clifford referred to the existing car dealership and house to the left and questioned if it would be knocked down. Mr. Palumbo stated the car dealership and house will be knocked down with construction around Mandy's Restaurant. Mr. Clifford questioned if the applicant has spoken to the owner of Mandy's. Mr. Palumbo stated they have not but would if the board would like this.

Code Enforcement Officer Jeffrey Schieber stated the Town of West Seneca regulates the items, businesses, and uses that have the potential to effect surrounding property owners with a special use permit. Surrounding property owners are notified by letter; recipients are determined by dimensional factors. This is the first step in the process, tonight is to explain what generally wants to be done. The Planning Board makes a recommendation

2021-03 (continued)

to the Town Board. The Town Board will again notify surrounding neighbors of a meeting. The presenters will be back in front of the Town Board where a decision will be made.

Mr. Palumbo stated typically a multi-family unit will raise questions regarding drainage and traffic. The final engineering has not been completed regarding drainage. Traffic will be addressed with an ITE Traffic Generation Table to determine the traffic generated; this provides an average of all different/potential users. For this type of development, the number leaving in the morning is approximately 20 with the same in the evening. People do not all leave for work at the same time, this provides the number during the peak hours.

Chairman Rathmann referred to the 3786 Clinton Street parcel stating this is zoned R-50 and questioned the back portion being sold. The back area is a flag shape and was zoned R-50 in 1993; the map does not show the C-2 and R-65. All the development is going in the used car lot parking area and area behind it. The property beyond is zoned R-50 and is Federally Regulated Wetlands which cannot be disturbed. Mr. Palumbo stated this is correct; the automotive use is currently zoned C-2, to the north a small piece is zoned R-65 and the remained R-50. The request is for all to be R-50 to allow a special use permit.

Residents proposed the following comments/questions:

- ✓ Why would the area be zoned R-50 if the area is Federal Wetlands – Mr. Schieber stated the address of the property purchase is zoned R-50; the adjacent property is being split, a resident retains their house and garage, and will sell the remainder. Every town is different and there is a math formula on how many apartments may go in a property. This a bulk area requirement; to fit the amount, there is a need for more property and counts toward the math formula.
- ✓ Referred to a line in center of the map – Mr. Schieber stated this is a creek
- ✓ Parcel borders Meadow Drive, Northwood Drive, Maplewood Drive, and Clinton Street and is filled with wildlife, etc. and a stream creating the wetlands. The land and surrounding lots flood during natural incidences when the stream expands beyond the banks. There are white deer in the area and the deer will be pushed out and into neighboring yards.
- ✓ An adjacent parcel of property running along Northwood Drive was donated to the town and dedicated as green space and suggested to combine the parcels of non-unbuildable land for other passive, safe use and let land remain a green eco-system – Town Attorney Tina Hawthorne acknowledged there is a parcel with a deed restriction dedicated to being a park. Mr. Schieber showed the tax map and the parcel which was dedicated to the town. The resident requested clarification on the egress into and out of the park. Mr. Schieber stated the entrance is along Northwood Drive. Ms. Hawthorne stated the town owns the portion of land and the town has not developed the area as a park. However, there is a deed restriction for public use. Ms. Bebak stated a title search is conducted when land is sold, if there was a deed restriction this would be on the title.
- ✓ The application was marked yes regarding archeological – Mr. Schieber stated projects of this magnitude are required to go through a review process referred to as SEQR (State Environmental Quality Review). As part of SEQR the plans, documents, etc. are provided to approximately 16 different agencies including SHPO, EC Sewer, EC Water, Fire District, WS Environmental Commission, NYSDOT, and ECDOT. This has not yet been submitted for a coordinated SEQR review because the use has not been decided. These answers will be known in the future.

2021-03 (continued)

- ✓ Referred to item 13 and questioned is there was a wetland law on replacement ratios of number of wetlands removed and additional lands to be added – Chairman Rathmann stated the project does not impact the Army Corp of Engineers regulated wetland. The Federal Government does not have a buffer zone around wetlands, the NYSDEC does. The state regulates 12.4 acres and greater; the wetland delineated here is 7.41 acres. Chairman Rathmann asked if an additional review could be done by the state biologist and via email, they have been requesting additional staff for such, chances of this being delineated for state wetlands are not good.
- ✓ Requested the wetlands mapping be questioned; the wetlands throughout the years have extended
- ✓ Apartments are in the area (Idlewood and Garden Village Apartments)
- ✓ Referred to the Comprehensive Plan and questioned if this would be updated – Town Attorney Tina Hawthorne stated to her knowledge there is no plan to update at this time. The applicant may have referred to the plan to support his application and recognized the 1% is now a higher number.
- ✓ Will there be a playground area for children – Mr. Palumbo stated it is not guaranteed there will be children and there is nothing planned now.
- ✓ How many feet will there be from the building to the wetland area – Mr. Schieber stated the proposed buildings will not be in the wetlands
- ✓ The land within 100' of Federally Regulated Wetlands are critical in maintaining the health and productivity of wetlands, while also regulate within 200' of a stream. If the creek is considered a stream this would take away the buildable land. Chairman Rathmann stated he spoke with the Army Corp of Engineers, NYS has a 100' buffer and the Federal Government does not have a buffer around the wetlands. You may fill right up to the wetlands as long as fill is not put into the wetlands.
- ✓ Requested clarification on the regulation of wetlands – Chairman Rathmann stated NYS regulates 12.4 acres or greater. The Federal Government can regulate a tiny pool of water on a property. The parcel behind (7.4 acres) was delineated as Federal Wetlands. The NYS Dec will not regulate anything more than 12.4 acres and will remain Federal Wetlands.
- ✓ The blacktop from the buildings will cause runoff that will come down Maplewood Drive into an already strained sewer system that floods - Chairman Rathmann explained it is required all the water will be collected on site and discharged off site, not into the wetlands. Ms. Hawthorne stated these questions will be part of the SEQR review process and extensively discussed.
- ✓ Expressed concerns regarding the traffic situation as pulling out is currently difficult
- ✓ Concerns were expressed with the sewer issues and water pressure
- ✓ Referred to the town code stating a building of mixed occupancy must have 400' of open space for each dwelling/unit contained in such building provided on the lot for recreation. With the number of units this would be over 1,400' and questioned where this would go – Mr. Schieber stated there is a bulk area requirement, under lot requirements. A single-family home requires 65' of road frontage and an 8,000-sf lot to build, and R-50 zoning district requires at least 50' of road frontage. The math would be 36-units x 8,000-sf divided by acres. This may not be applicable to multiple dwellings.
- ✓ Part of the Comprehensive Plan calls for the town to protect valuable open space for recreation, wildlife and wetlands and prevent their degradation.
- ✓ Concerns regarding the amount of trash and water in yards on Clinton Street
- ✓ Concerns regarding the utilities along Clinton Street
- ✓ Devonshire has apartments in another state that are not kept up
- ✓ Questioned the benefit of having this in her backyard as this is a residential area and possible effects on the value of homes

2021-03 (continued)

- ✓ What is the entrance location – Mr. Palumbo stated from Clinton Street.
- ✓ Suggested the location be the Seneca Mall or airport on Clinton Street not the proposed location
- ✓ Believes a percentage will be low-income residents; the complex may sell down the road and become low income
- ✓ Questioned the time constraints on making the delineation of wetlands – Mr. Pandolfi stated this is a long process. Chairman Rathmann stated this is in his backyard and this was delineated the past spring and lasts for approximately 5 years.
- ✓ Concerns about the garbage, smells, and rodents for a dumpster for 36-units
- ✓ Concerns regarding increased foot traffic in the area possibly causing more deer/motor vehicle accidents
- ✓ School bus and safety concerns for children with the increase in traffic
- ✓ Potential residents should spend the \$1,500 per month rent on the purchase of a home in the town; transient families do not appreciate the Town of West Seneca
- ✓ Are there protections for the white deer in the area
- ✓ Requested information about the developer – Mr. Palumbo stated the developer is a partnership in which all the partners own apartments and live locally. The developers will be spending millions of dollars and will not allow this property to be a rat-infested, low-income property. The statement that this is low income or low income is required to be in the development is fallacy and inaccurate.

Mr. Palumbo addressed the residents concerns with the following points:

- ✓ The proposed development is in the back yard of some Meadow Drive houses and are at least 500' away from the development with the wetlands in between
- ✓ The area being impacted is approximately 1.3 acres; the frontage is all impacted with pavement and buildings
- ✓ The deer have the remainder of the property and adjacent property
- ✓ The development does not back up to the houses on Maplewood Drive; they are 300' – 400' away; the development does not back up to one residence; only backs up to a restaurant
- ✓ Residents are more concerned with garbage from a million-dollar project than a restaurant
- ✓ This property is zoned commercial, and something could go there that is much worse than an upgraded apartment building
- ✓ The benefit in this case is to the town and there is not an impact to the neighborhood versus what could go there now; there is no impact to the wetlands

Residents proposed the following comments/questions:

- ✓ Renters do not treat property the same as homeowners and do not pay taxes
- ✓ Concerns regarding noise from the parking lot and lighting
- ✓ Who specifically are the people involved in the company
- ✓ What is the location of other apartments owned by the developer – Mr. Palumbo stated they are the clients' apartments, and he does not have the address but can provide this later
- ✓ Referred to item 6 on the application regarding traffic
- ✓ The property could be a parking lot for Mandy's
- ✓ Moved to the location for a country setting and ruins the habitat the residents are accustomed to
- ✓ Will the fill go into the Buffalo Creek where the DEC stocks trout
- ✓ Strains on the local schools
- ✓ Town of West Seneca should purchase the property for green space

2021-03 (continued)

- ✓ Headlights will shine into the houses and does not like the view of looking at buildings
- ✓ What is an R-65 – Mr. Schieber stated the zoning district and defines what you are allowed to do at the property. R-65 allows a single-family home and R-50 is required for multi-family use.
- ✓ What is the notification requirement – Mr. Schieber stated it is within 250' and letters will be sent for future Town Board meetings. Ms. Hawthorne stated the notice was online and a legal notice was in the West Seneca Bee.
- ✓ Would studies be done before the Town Board meeting – Mr. Schieber stated they would not, the approval is to decide if this is allowed. The item could be tabled pending results of reports.
- ✓ Who would dictate the company that performs the studies – Chairman Rathmann stated the Planning Board may not dictate who performs the study. Ms. Bebak stated the property owner also has rights and the Planning Board does not have that right. Mr. Frick stated the Planning Board does have the right to question the studies.

Mr. Schieber stated emails have been received and have been provided to the Planning Board members; emails were read and are on file in the Town Clerk's Office.

Chairman Rathmann explained the Planning Board is a recommending board and takes a vote that goes to the Town Board who has the final decision.

Motion by Clifford, seconded by Bebak, to close the public hearing.

Ayes: All

Noes: None

Motion Carried

Motion by Clifford, seconded by Bebak, to recommend denial of rezoning & special use permit for property located at 3786 & 3808 Clinton Street, changing its classification from R-65/R-65A and C-2(S) to R-50(S), for construction of a multi-family development with three (3), 2-story buildings containing 12-units each, and all related site improvements for the following reasons: 1) the invasion of wetlands; 2) drain on resources; 3) additional traffic patterns; 4) negative perceived impact on the current local residents; 5) quality of life impacted through the town's Comprehensive Plan.

On the question, Chairman Rathmann will be recusing himself as he is an adjoining property owner.

Ayes: (4) Bebak
Clifford
Frick
Sailer

Noes: None

Motion Carried

Abstained: (1) Rathmann

WEST SENECA COMMUNITY ROOM
1300 Union Road
West Seneca, NY 14224

WEST SENECA PLANNING BOARD
Minutes #2021-08
August 12, 2021

EXECUTIVE SESSION

Motion by Clifford, seconded by Bebak to enter into Executive Session to discuss Dan Warren vs. Town of West Seneca and the West Seneca Planning Board.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

Motion by McCabe, seconded by Bebak, to adjourn the meeting at 9:38 P.M.

Ayes: All

Noes: None

Motion Carried

AMY M. KOBLER
TOWN CLERK/PLANNING BOARD SECRETARY