

The meeting was called to order at 7:00 P.M. followed by the Pledge of Allegiance.

**ROLL CALL:** Present - Margaret Bebak  
George Clifford  
James Frick  
Dale J McCabe  
Eric Sailer  
Joseph Sherman  
Jeffrey Baksa, Code Enforcement Officer  
Chris Trapp, Town Attorney

Absent - Raymond Nalewajek

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**ELECTION OF CHAIRPERSON & SERGEANT-AT-ARMS**

Motion by Clifford, seconded by Frick, to elect Margaret Bebak to the position of Chairperson.

Ayes: All    Noes: None    Motion Carried

Motion by Bebak, seconded by Sherman, to elect George Clifford to the position of Sergeant-at-Arms.

Ayes: All    Noes: None    Motion Carried

**APPROVAL OF PROOFS OF PUBLICATION**

Motion by Frick, second by McCabe, to receive and file the proofs of publication and posting of legal notice.

Ayes: All    Noes: None    Motion Carried

**APPROVAL OF MINUTES**

Motion by Sherman, seconded by Frick to approve minutes 2021-11 of December 9, 2021.

Ayes: All    Noes: None    Motion Carried

**OLD BUSINESS**

**SPR2021-05**

A request from Brad Vaillancourt c/o Canisius High School for site plan approval for property located at 2885 Clinton Street for construction of an athletic complex with all related site improvements.

Motion by McCabe, seconded by Frick, to table the item at the request of the applicant.

Ayes: All    Noes: None    Motion Carried

**NEW BUSINESS**

**2021-08**

A request from Dr. David Avino c/o Ralph Lorigo for a rezoning for property located at 1105 East & West Road from R-75 to R-75A for construction of a 2-family home.

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

Ayes: All

Noes: None

Motion Carried

Mr. Lorigo presented on behalf of the applicant and stated the following:

- ✓ The request is to change the zoning from R-75 to R-75A to construct a duplex for family use
- ✓ Documents handed out show the zoning of surrounding properties; directly across the street from the parcel has a zoning of R-60A with several 2-family homes along East & West Road.
- ✓ East & West Road from Union Road to Orchard Park Road is zoned R-75A and contains approximately six recently constructed duplexes; between Union Road and Leydecker Road there are approximately two 8-unit complexes and several 2-family homes.
- ✓ Historically the zoning was a B zoning and allowed 2-family homes
- ✓ The lot is 44,392-sf in size; the house will be located towards the back of the parcel
- ✓ This will be an upscale duplex and properly landscaped
- ✓ Referred to page 60 of the West Seneca Comprehensive Plan focusing on the following: the need in West Seneca is to grow the tax base; increase the need for diverse housing with mixed residential use; limit the portion of single-family units to encourage the development of 2-family units.
- ✓ Referred to the Zoning Code: This is currently an R-75 district which allows a church, single family home, or school. The R-75 A simply adds the two-family dwelling. The parcel across the street zoned R-60A allows substantially more. R-60A allows what is permitted in R-50 zoning, as well as a real estate office and mortuary. R-50 zoning allows for group dwellings.
- ✓ There are many multi-family parcels on East & West Road and this does not create spot zoning; this is in accordance with the comprehensive plan; across the street allows substantially more and this creates a more personal use.
- ✓ The building would be a duplex, both 3-bedrooms with 2-car garages and will carry its tax dollars.

Mr. McCabe stated the lot the structure is to be built on is an approved subdivision. Mr. Lorigo stated this is correct; this is a subplot on the map cover of a subdivision.

Chairperson Bebak requested clarification on the appearance of the home. Mr. Lorigo stated the home will be upscale, with a wood frame and siding. The home will be very similar in appearance to the homes constructed by Young Development with a garage in the middle and a house on each side.

Mr. Sailer questioned the square footage of each home. Dr. Avino stated each side will be 1,650-sf.

An East & West Road resident stated his land has been passed down through the generations. Dr. Avino bought the surrounding land when the parcel was divided and sold off. There have never been issues in the past as everyone followed the code and the resident questioned the point of the code if it will not be followed. The resident stated he believes this is spot zoning. Originally this was a beautifully treed lot and Dr. Avino has since

**2021-08** (continued)

removed most of the trees. The resident further stated this comes down to politics, money, and litigation. Approving this rezoning sets a precedent in the town. Other duplexes in the area are preexisting, non-conforming. Spot zoning is the application of zoning to a specific parcel and/or parcels of land within a larger zoned area when the rezoning is usually at odds with the city's master plan and current zoning restrictions. Spot zoning may be ruled invalid as an arbitrary, capricious, and unreasonable treatment of the limited parcel of land by a local zoning ordinance. While zoning regulations regulate the land uses in the whole district, spot zoning makes unjustifiable exceptions for parcels within that district. The resident presented the Planning Board members with signatures from nineteen residents surrounding the parcel who are against the proposed project due to spot zoning.

Chairperson Bebak noted for the record, the Planning Board has a petition signed by nineteen residents.

An East & West Road resident stated he lives on the west side of the property. At the time the property was purchased the subdivision was zoned single family and was one of the reasons they chose to build. The resident stated his opposition to the duplex as this is a small subdivision with the duplex being out of character for the neighborhood. The lot is flag shaped and will cause the duplex to be in the resident's backyard. There are no woods left on the lot causing a lack of privacy for the neighbors.

An East & West Road resident stated he has lived at his property since 1991 and his backyard property touches the parcel in question. The neighborhood is all single-family homes; duplexes are not located in the area, only apartment buildings towards Leydecker Road. The property across the street zoned R-60 is owned by the Town of West Seneca and occupied by the Children's Psychiatric Center. There are no 2-family homes on this side, only group homes which have mostly been abandoned. On the opposite side is land undevelopable and under the jurisdiction of the state. Upon original purchase of the resident's property, the property was landlocked with no access to the back from any road. One property was listed for sale and burned, allowing access to landlocked land. There are no trees on the lot and the resident questioned if permits were pulled to remove the trees. There are plenty of townhomes in West Seneca and this area is single family homes. The resident questioned where a potential zoning change would end and would like his lot included. The resident expressed concerns with the driveways being access roads and the movement of a brook.

Chairperson Bebak stated the zoning ends with the property in question. Mr. Sherman explained if the resident wished to pursue a change in zoning the resident would need to file an application for rezoning; it does not occur simply because a neighboring property is rezoned.

Mr. Sherman stated he counted approximately four duplexes down East & West Road on the same side of the side as Dr. Avino wishes to build. There is an 8-unit apartment at 1395 East & West Road; a 4-unit at 1535 East & West Road; a 2-unit at 1471 East & West Road and a 2-family at 1796 East & West Road.

Chairperson Bebak stated she did look at the driveways and noted the East & West Road driveway is for the subplot on East & West Road. There are two sublots off Angle Road and have a different driveway.

An East & West Road resident showed pictures of cracks in his basement floor and believes they are caused by construction trucks in the area. The height of the land is now higher and drains into the yard.

