



**SPR2019-10** (continued)

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

Ayes: All

Noes: None

Motion Carried

Motion by Bebak, seconded by Clifford, to grant site plan approval for property located at 1700 Union Road, for construction of a 9,000-sf building to be used by the current operation.

Ayes: All

Noes: None

Motion Carried

**SPR2020-10**

A request from Levy Grid, LLC for site plan approval for property located at 799 Indian Church Road, for construction of a battery storage energy complex.

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

Ayes: All

Noes: None

Motion Carried

Jeff Palumbo and Ari Goldberg with Barclay & Damon, LLP were present on behalf of the applicant. Mr. Palumbo stated the SWPP has received approval from the Town Engineer. Snow removal was addressed at the last meeting and has since been resolved.

A resident had the following questions:

- ✓ Will a SEQR be required – Code Enforcement Officer Jeffrey Schieber stated a coordinated SEQR is required; this is a previously disturbed site.
- ✓ What is the noise level – Mr. Palumbo stated the noise is no louder than a refrigerator. Ms. Bebak stated this was asked at the last meeting; it is not an accumulative noise.
- ✓ Has a stormwater prevention plan been completed – Ms. Bebak replied the prevention plan has been done.
- ✓ Is there a need for a wind study and a worst-case scenario – Mr. Goldberg stated the prevailing winds are from west to east. The safety analysis plan was discussed at the last meeting, noting Levy Grid works closely with the local fire department for training. The batteries are cells which are approximately the size of a Kleenex; they are sealed and airtight. 52 cells are in each module and there are 8 modules in each rack. The rack is in a 2 1/2-hour fire rated cabinet. This battery skews towards safety.
- ✓ What happens to discarded batteries and what is the contract length with National Grid – Mr. Goldberg stated the battery will dissipate over time and there is a decommission plan on unused batteries. The contract states if the site is no longer used as a battery storage facility it will be returned to the previous site condition. The contract length is still to be determined with National Grid.

Chairman Rathmann questioned if easements are required from neighboring properties to connect to National Grid. Mr. Goldberg replied the immediate adjoining neighbor is National Grid.

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

Ayes: All

Noes: None

Motion Carried



**SPR2020-10** (continued)

Motion by Bebak, seconded by Frick, to adopt the following resolution issuing a negative declaration regarding the State Environmental Quality Review Act ("SEQR") for the proposed project at 799 Indian Church Road:

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 Short Environmental Assessment Form ("EAF") prepared by the applicant for property located at 799 Indian Church Road (SBL 134.06-2-28) ("Subject Property"), for construction of battery storage energy complex (the "Project"), and reviewed the draft completed Part II of the EAF analyzing the potential for the Project to result in any significant adverse environmental impacts and has otherwise taken a hard look at the identified potential environmental impacts utilizing the criteria specified in 6 NYCRR 617.7(c); and

WHEREAS, upon review of Parts I and II of the EAF and documentation and plans submitted by the applicant in connection with the review of the Project, the Planning Board has not identified any potentially significant adverse environmental impacts associated with the proposed use of the Subject Property, has determined that preparation of an Environmental Impact Statement is not necessary and that the issuance of a Negative Declaration is therefore appropriate; now, therefore, be it

RESOLVED that pursuant to 6 NYCRR 617.7(a) the Planning Board does hereby adopt a Negative Declaration with respect to the Project based on its determination that the Project will not result in any potentially significant adverse environmental impacts.

Ayes: All

Noes: None

Motion Carried

Motion by Bebak, seconded by Sailer, to grant site plan approval for property located at 799 Indian Church Road, for construction of a battery storage energy complex.

Ayes: All

Noes: None

Motion Carried

**NEW BUSINESS**

**2020-07**

A request from Carmina Wood Morris for a rezoning and special permit for property located at 1042 Orchard Park Road, being part of Lot No. 332, changing its classification from R-75A to R-50(S), to allow construction of a 4-unit townhouse.

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

Ayes: All

Noes: None

Motion Carried

Chris Wood the project engineer from Carmina, Wood & Morris stated the proposal is for a rezoning from R-75A to R-50(S) to allow for construction of a single story 4-unit apartment building. Each unit will have its own attached garage and entrance along with the proposal of eight parking spaces. Two variances will be required, one for the side yard setback and for the number of units; the property allows for 3-units and the proposal is for 4-units. To the north of the proposal is green space that is owned by the Town of West Seneca; to the south is a multi-unit apartment building; to the north of the town property is an additional multi-family project.



**2020-07** (continued)

This use fits in good with the character of the neighborhood and existing structures.

Ms. Bebak questioned if this was an apartment building or a town house and the need for 4-units. Mr. Wood replied this will be townhouse style apartment. Construction today is costly, and the request of 4-units makes the project more financially viable.

Chairman Rathmann commented on an adjoining brown building with a basement garage and driveway; questioning how this will be accessed Mr. Wood stated the apartment buildings will have to be stepped down given the slope to the east; this will be addressed with the engineering plan.

Chairman Rathmann stated although there is the required eight parking spaces; one is handicapped accessible which negates that as a space for the unit and two visitor spaces are required. The plan is therefore short three spaces. The roadway access entering a multi-family dwelling should be 30' wide and the plan is 24'. Mr. Wood replied the code states the entrance is to be 30' wide or 20' wide in and 25' wide out. This plan calls for 25' wide in and out due to the utility pole on Orchard Park Road. Code Enforcement Officer Jeffrey Schieber stated in some instances the entrance has been 30' and subsequently reduced, this may be looked at. Chairman Rathmann replied other multi-family projects were required to have 30' wide for emergency vehicles. Another concern is the handicapped accessible parking which has no easy access to any of the units as the paving leads directly to the front entrance portion. There is no pedestrian walkway to get from the parking area to the units. Mr. Wood replied this is something that can be looked at with site plan.

Ms. Bebak questioned the number of units with and (S)-zoning. Mr. Schieber stated the (S)-zoning is for more than 2-units.

A resident requested clarification on the zoning. Mr. Schieber stated zoning throughout the town dictates what may be allowed on a property. R-75A allows for construction of a one- or two-family home. Numerous parcels within the town may be deemed preexisting non-conforming. Various parcels surrounding the project fall under this.

A resident questioned if there will be a basement and what the monthly rent would be. Mr. Wood stated there is a basement and from the back will look like a two-story home. The rent will be starting at approximately \$900 - \$1000 per month.

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

Ayes: All

Noes: None

Motion Carried

Ms. Bebak stated the request was for R-50(S) for a 4-unit; the Planning Board could make a recommendation for R-50(S) and not commit until a 4-unit until site plan. Mr. Wood replied that is correct; the variance is required for 4-units.

Motion by Bebak, seconded by Sailer, to recommend approval for property located at 1042 Orchard Park Road, being part of Lot No. 332, changing its classification from R-75A to R-50 (S), to allow construction of a townhouse, noting there will be no guarantee on the number of units.



**2020-07** (continued)

On the question, Mr. McCabe stated if a recommendation is made for the change in zoning for a 3- or 4-unit building, that will give the petitioner the go ahead for the variance from the Zoning Board of Appeals; the assumption would be the Town Board and Zoning Board would take the Planning Boards recommendations. If the Zoning Board of Appeals grants the variances the petitioner will be coming back with the variances for the 4-unit and could recommend a 3-unit.

Motion by McCabe, seconded by Frick, to amend the motion, to recommend approval for property located at 1042 Orchard Park Road, being part of Lot No. 332, changing its classification from R-75A to R-50 (S), to allow construction of a 3-unit townhouse.

Ayes: All

Noes: None

Motion Carried

**2020-08**

A request from Alexander Miller for a rezoning for property located at 3448 Clinton Street, being part of Lot No. 12, changing its classification from R-60A to C-2, to allow the storage of construction equipment.

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

Ayes: All

Noes: None

Motion Carried

Mr. Miller stated he closed on the property in December and upon purchase believed he could use the property to park his landscape equipment. The lot is large and is almost 70' wide and 350' back and was perfect to park equipment on. The building is a multi-use with a store front and rentals. There is no business currently occupying the building and the rental is not ideal for families. The purchase was mainly for the grounds of the property. Mr. Miller believes since the purchase, he has invested over \$100,000 into the building including landscaping and fencing. To the left of the property is an old Chevrolet dealership owned by Mr. Clark and is also C-2 zoning and to the back of the property is condominiums. Two of the three sides of the condominium complex is fenced off. Mr. Miller stated it was his belief that fences were to surround the condominiums and feels he has suffered the brunt of decisions that were made at the back of the condominium complex. During the summer, Mr. Miller parked various construction equipment on the property and rented the building out to families. No other business will be run out of the building, the rezoning is to just park equipment.

Mr. Sailer questioned what equipment would be parked. Mr. Miller replied the biggest piece of equipment would be a Bobcat Skid Steer which is approximately 8' -10' in height. Other items are basic landscaping equipment, i.e. mini excavator, dumping trailer, landscape trailer.

Chairman Rathmann questioned the current number of tenants. Mr. Miller replied there are currently two families and the store front is not used; this is a 2-family building with a storefront.

Chairman Rathmann questioned who installed the stone paving. Mr. Miller replied he did the installation. Chairman Rathmann stated that area is required to be paved and drained. Mr. Miller stated he is getting quotes for the paving as it is an expense and will be budgeting for it.

Chairman Rathmann commented on the connection to the neighbor on the east and questioned if it agreed upon. Mr. Miller stated to the east are two doubles with a blacktop to stone connection with Mr. Millers elevation being higher.



**2020-08** (continued)

Chairman Rathmann questioned who put the wood chips in the back; it appears there is a yard drain off site and the wood chips may have blocked flow to the drain. Mr. Miller replied he was responsible and has no knowledge of a yard drain. The fence went up months ago and no one established where the property line was connecting to the condominiums; Mr. Miller paid for the survey. Chairman Rathmann reiterated it appears a drainage way that directed water to the drain has been filled in with wood chips impeding the flow of water to the back, trapping water on adjoining properties, as well as the stone paving. There appears to be a substantial amount of stone and there is no indication of where the water went to before. Mr. Miller replied in the past he was told there was over a foot of water in the yards for many years and has been told and believes he has improved the any drainage issue.

Mr. Nalewajek questioned if an engineer has been engaged to help plan the water/drainage for such a large piece of property. Mr. Miller stated from his construction knowledge, he has done what he felt is necessary to handle the water and reiterated neighbors have told him this is better. Mr. Nalewajek sated his concern is once everything is blacktopped; will there be a slide slope, how will the water be handled? Mr. Miller stated before the stone was laid down, he placed a fabric, waterproof barrier between the stone and the ground. The water does not seep into the ground, it runs completely, if blacktop is over the stone it will have the same effect.

Mr. Nalewajek questioned if the blacktop will be from the back-property line to Clinton Street. Mr. Miller replied his intent is to blacktop only wear the stone is now. The dotted line on the drawing is in correlation of the garage where the stone ends. The stone ends approximately 150' back from beginning of the property line and there is still another 150' of green space.

Mr. Nalewajek questioned the need for lighting. Mr. Miller replied he would like to light his property due to theft issues; the equipment is very expensive. Mr. Miller also has had security cameras installed. Originally a very intense light was on the back of the framed garage. Code Enforcement had contacted Mr. Miller regarding the light; a light study was performed, and the light was turned off with supplemental lighting installed. Mr. Miller does not want people cutting through the property.

Chairman Rathmann requested clarification if the only area needed for equipment was the area with stone. Mr. Miller replied that is correct. Code Enforcement Officer Jeffrey Schieber stated the town code requires construction equipment be stored on concrete or blacktop.

Mr. Clifford question if a C-2 zoning required the entire area to be fenced in. Mr. Schieber replied town code states construction equipment must be shielded from public view and does not give a specific answer; this is at the Planning Boards discretion. Mr. Clifford questioned if the trees on the left of the property may be permissible if the neighbors have no objection. Mr. Schieber stated trees are different from bushes and fencing; everyone must agree.

Chairman Rathmann questioned if the request for rezoning could be just to the end of the paving, leaving the remainder of the property with R zoning. Mr. Miller stated if that what is what the Planning Board decides, that is fine. The tree line is not just a tree line, but a berm made up of dead trees, debris and mud through the decades and blocks out houses and is the perfect barrier. Mr. Clifford stated if people are cutting through the area it is not impenetrable.



**2020-08** (continued)

Mr. Sailer questioned if the debris is on the neighbor's property or Mr. Miller's. Mr. Miller stated it is technically on the line between him and Mr. Clark. Mr. Miller stated Mr. Clark has no objection to the zoning change. Mr. Clifford inquired if there was a letter from Mr. Clark stating as such. Mr. Schieber stated Mr. Clark did call the office, but a letter is preferred.

Mr. McCabe questioned if there was a landscaping business and how many pieces of equipment will be on site. Mr. Miller replied yes, and he is the only employee. Most of the landscaping is for his own properties; there will be no more than six pieces of equipment.

Mr. Nalewajek questioned if refuge will be contained in the empty trailers. Mr. Miller stated the dump trailers never come in with anything, tree service trucks come in to dump wood chips.

Mr. Frick requested clarification on the paving, specifically if the only need is to pave back approximately 200' from the front right away line. Mr. Miller stated that is correct. Mr. Frick questioned if there would be a problem screening the commercial property from either side of the residential area. Mr. Miller was unsure if this was a possibility. Mr. Frick stated the town code would require the commercially zoned portion of the property to be screened from the adjacent residential property. Mr. Miller replied the side by Mr. Clark may be an issue and difficult; the opposite side could be fenced in.

Chairman Rathmann questioned the attorney's if changing the zoning on the front portion was possible. Mr. McCabe stated the application would have to be amended. Ms. Bebak stated it has been done with a legal description. Mr. Clifford replied there has been issues in the past doing this, the goal is to get one zone. Mr. Schieber stated clearly there is a risk changing the entire zoning, the Planning Board has done both. From Union road west is zoned C-2 until this parcel in question; from this parcel west is R-60A meaning residential and small business.

Mr. McCabe stated in terms of the code, there would be the requirement to the west and rear line with fencing, but not the east line. Mr. Schieber stated the town code states there would need to be clarification on the verbiage, residential district or adjacent to residential use. Mr. Schieber feels if there was a house there, the goal is to protect the house and the residents.

A resident who owns the east side property stated he spent over \$50,000 on drainage and blacktop to the town code and believes the Code Enforcement Officer is incorrect. Zoning 60-A is not from the corner as his two properties, 3454 and 3458 Clinton Street are zoned R-60A. C-2 is light commercial property. There is foot and a half drop off between the properties, if this were to be blacktopped, there would have to be drainage in place. Mr. Schieber stated he would sort out the zoning with the Town Engineer. The resident stated if there is shielding, drainage and Mr. Miller is held to the same standard, he does not have an issue with the proposal.

A representative from Gardenville on the Green was present on behalf of the condominium residents and stated there was previously a drainage problem in the area and the condominium association spent approximately \$30,000 putting in drainage to the storm sewers. Directly behind the fence there is a drainage box that Mr. Miller installed with a tie-in into the condominium's private drainage box that leads into Mr. Miller's property and believes this to be a trespass. Some of the concerns with the rezoning include the Town's Comprehensive Plan. There is no industrial or construction in the surrounding area. On the north side of the property there is no privacy fence; the fencing are all individual fences the landowners on North Street have installed; it is not uniform and not owned by the association.



**2020-08** (continued)

A resident from Gardenville on the Green requested another opportunity to speak as they did not feel they were adequately notified by the association. The association does object to the rezoning. The ownership of the property is in the name of Dump King, LLC and Mr. Miller is the operator of the business. This property falls in the Comprehensive Plan under the Union Road design standards and asks the Planning Board take this into consideration.

A resident from Gardenville on the Green stated he appreciates having the greenery behind him and is concerned this will set a precedent for future properties and the zoning. If people are cutting through the property, he does not believe it is anyone from the condominiums.

A resident residing directly behind Mr. Clark stated she has been harassed by Mr. Miller since his acquisition of the property and the Town of West Seneca is aware of it. No one is cutting through the property and the property is overloaded with garbage. The resident would like the fence to be enforced if the rezoning takes place. The trees and natural barrier are filled with garbage from Mr. Miller; this brings down the neighboring property value. The fence along the back of the property only shields one house; multiple pieces of equipment are consistently on the property that is zoned residential and at the back of the property. The resident is concerned with the noise and pollution. Multiple signs are posted on the property towards the neighbors, i.e. no hunting, no fishing. Bright lights have been placed towards the neighbors. There have been many parties on the property with unruly guests. Mr. Miller is a very confrontational neighbor and has made threats. If the zoning does go through the neighbor would like a fence along the back of the property to shield the junk yard look of Mr. Millers property. Neighbors had cleaned the wood chips off the drain to have Mr. Miller place more there.

Mr. Miller stated this is a large area of greenspace with no light. Any unnatural light looks extremely bright to the condominium neighbors. Only 15' behind the condominiums is the associations, the rest of the green space is legally his.

Mr. Clifford requested an explanation on the pipe going into the associations drain. Mr. Miller replied maybe it happened before he bought the property, or the neighbor was confused. If there is more flooding, there will be proper procedures followed. Mr. Clifford asked if the applicant was aware of any wood chips or drainage coming from the property onto the drain. Mr. Miller replied wood chips dry out and maybe they blew that way.

Chairman Rathmann asked the petitioner if he was aware of the requirement to put in a storm drain to tie into Clinton Street. Mr. Miller replied he was aware.

Ms. Bebak stated if the Planning Board were to recommend the rezoning the entire 350' deep would need to be fenced and blacktop to the 150' to the parking of trailers and the drainage plan; would this be feasible with the cost. Mr. Miller replied he will not sell the property and must make it work.

Mr. Nalewajek questioned if there could be a more detailed site plan. Mr. Miller stated there is not much more to know other than what is on there. Mr. Nalewajek questioned if the black top and drainage is something foreseeable soon. Mr. Miller stated he believes so. Mr. Nalewajek reiterated he would like more information.

Mr. Miller stated he owns several properties under Dump King, LLC. Mr. McCabe stated that should be the applicant; the LLC owns the property. Town Attorney Tina Hawthorne stated the property is not deeded to Mr. Miller it is deeded to the LLC. Mr. Miller replied commercial property must be purchased by an LLC. Mr. McCabe stated that information is false.



**2020-08** (continued)

Chairman Rathmann would like to see if the adjoining properties are zoned R-60A or C—2.

Ms. Bebak stated she would like Mr. Miller to research the costs associated with the requirements of a C-2 zoning. If approved the requirements are to be done immediately. Mr. Miller replied he has six months.

Mr. Miller requested the Planning Board to amend the application name to Dump King, LLC.

Motion by McCabe, seconded by Bebak, to amend the application and change the name of the applicant to Dump King, LLC.

Ayes: All

Noes: None

Motion Carried

Mr. Sailer stated he would like to determine the zoning of the adjacent properties to avoid spot rezoning; however if they are C-2 he would not be in favor of rezoning the entire property and would not like the entire property fenced in. The portion, if allowed to be rezoned, should be fenced in, or shielded to fit town code. Paving the entire parcel is required by the town but we could change that as needed to not add to the runoff. Only a portion should be paved.

Motion by McCabe, seconded by Clifford to close the public hearing and table the request of Dump King, LLC for a rezoning for property located at 3448 Clinton Street, being part of Lot No. 12, changing its classification from R-60A to C-2, to allow the storage of construction equipment.

On the question, Mr. Clifford stated the reason for tabling the request is to check the zoning of neighboring properties for cohesiveness. The applicant will also need to appear before the Town Board for approval.

On the question Mr. McCabe stated if the recommendation goes through the applicant will be told exactly what his responsibilities are - namely parking area, draining and lighting issues.

On the question, Mr. Frick stated the Union Road corridor requirements need to be reviewed.

Ayes: All

Noes: None

Motion Carried

**ADJOURNMENT**

Motion by Clifford, seconded by Bebak to adjourn the meeting at 8:33 P.M.

Ayes: All

Noes: None

Motion Carried

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**AMY M KOBLER**  
**TOWN CLERK/PLANNING BOARD SECRETARY**